

# Harker Herbal Products Ltd - Terms and Conditions of Trade

**The terms and conditions of trade apply to all our Sale of Goods Contracts.** Any order placed with Harker Herbal Products Ltd ('Harker Herbal's') constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with Harker Herbal's (including an order) are hereby objected to and will not bind Harker Herbal's unless Harker Herbal's agree in writing. No sales person, representative or agent is authorised by Harker Herbal's to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

## 1 PRICE AND PRICE VARIATION

- 1.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the goods will be the current price on the day of delivery of the goods. Prices do not include any delivery surcharges.
- 1.2 Harker Herbal's shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Harker Herbal's of carrying out the whole or any part of the contract arising from the following:
  - (a) Delays in delivery or installation of the goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfil the obligations under the contract or any action or inaction by the customer or other circumstances beyond Harker Herbal Products Ltd control;
  - (b) Variation in the cost of Harker Herbal's acquiring the goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variations in currency exchange rates;
  - (c) Variations in the cost of rates of all statutory, government or governmental authority charges and obligations; or
  - (d) Any correction of errors or omissions on the part of Harker Herbal's or any of its representatives.

## 2 GST

- 2.1 All goods and services sold are subject to Goods and Services Tax.

## 3 PAYMENT

- 3.1 Failure by the buyer to make payment to Harker Herbal's on due date will constitute a default under the terms of trade and Harker Herbal's will be entitled to immediately exercise all or any of its remedies in respect of the default.
- 3.2 Unless otherwise agreed, the purchase price shall be paid to Harker Herbal Products Ltd at its address, or nominated bank account of Harker Herbal's, by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque or direct credit.
- 3.3 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3.1. Payment of the disputed portion may be withheld provided the matter is brought to Harker Herbal's attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Harker Herbal's within seven days of the dispute arising.
- 3.4 Harker Herbal's reserve the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.
- 3.5 Interest may be charged on overdue accounts at 2 percent per calendar month by Harker Herbal's from time to time.
- 3.6 Any expenses, costs or disbursements incurred by Harker Herbal's in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

## 4 NEW ACCOUNT

- 4.1 Use of this account shall constitute acceptance of these terms and conditions.
- 4.2 The customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer must on discovering the fraudulent use of the account immediately notify Harker Herbal's of such fraudulent use. The burden of proving such use was fraudulent shall lie with the Customer.
- 4.3 The Customer shall endeavour to return all goods acquired by fraudulent use.
- 4.4 The first order placed by the customer will require payment prior to dispatching of goods.

## 5 DELIVERY

- 5.1 Harker Herbal's shall deliver the goods to the address stated on the Credit Account Application Form or as agreed by Harker Herbal's in writing.
- 5.2 Harker Herbal's shall deliver the goods by such carrier and such form of transport Harker Herbal's consider to be appropriate.
- 5.3 Where you specify the carrier and means of carriage, Harker Herbal's shall deliver the goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the goods.
- 5.4 Harker Herbal's will not be responsible for any part delivery or delay in delivery of goods as a result of events occurring beyond Harker Herbal's control. Harker Herbal's shall not be in way responsible for any consequences (direct or indirect) arising from such delay or delivery.
- 5.5 The customer agrees to inform Harker Herbal's within 30 days of the date of the invoice if proof of delivery is required. After this period, no liability will lie with Harker Herbal's for proof of delivery.
- 5.6 The customer agrees to notify Harker Herbal's within 5 days of invoice date of any variation between the goods ordered and what was received and if the customer does not notify Harker Herbal's they are deemed to have accepted the order as delivered.

## 6 PRIVACY ACT 1993

- 6.1 The Customer authorises Harker Herbal's to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes:
  - (a) assessing the Customers creditworthiness
  - (b) disclosing to a third party details of this application and any subsequent dealings it may have with Harker Herbal's for the purpose of recovering amounts payable by the Customer and providing credit references.
  - (c) Marketing goods and services provided by Harker Herbal's to the Customer.
- 6.2 The Customer, if an individual, has a right of access to information about the Customer held by Harker Herbal's. The Customer may request correction of that information and may require that the request be stored with that information. Harker Herbal's may charge reasonable costs for providing access to that information.

## 7 INTELLECTUAL PROPERTY

- 7.1 All information prepared by Harker Herbal's including, without limitation, customised pricing, proposals, electronic catalogues, details of improvements and cost reductions, is the intellectual property of Harker Herbal's and cannot be copied, altered or distributed without Harker Herbal's prior written consent. Harker Herbal's will not be responsible for any alterations made by you.

## 8 RETURN OF GOODS

- 8.1 Harker Herbal's will not accept the return of goods for credit or any other purpose unless Harker Herbal's agrees to accept the return of goods and advise the Customer a return advice number prior to the return of goods. Return of goods will only be accepted for credit within 14 days of delivery, unless due to Harker Herbal's error. Return freight will be at Harker Herbal's cost only when there has been an error on Harker Herbal's part.
- 8.2 No returned goods shall be accepted by Harker Herbal's if they have been tampered with by you or any other person, if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 8.1. Where goods are returned to Harker Herbal's but not accepted as above they shall be returned to you at your expense.
- 8.3 Receipt by Harker Herbal's or by any of our agents or representatives of any goods returned other than in accordance with clauses 8.1 and 8.2 shall not constitute nor be deemed to constitute Harker Herbal's acceptance for credit or any other purpose.
- 8.4 Goods returned without notification to the seller will incur a 15% re-handling fee.
- 8.5 Goods returned damaged due to poor packaging by the buyer, or shop soiled, or with any form of defacement such as price labels, shall incur a 40% penalty fee.
- 8.6 Consumer contact details must be supplied with any product returned due to a customer reaction, in order to receive a credit.

## 9 RISK

- 9.1 Risk in the goods shall pass to the customer upon delivery as per clause 5.

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(continued)

## 10 PERSONAL PROPERTY SECURITY ACT—SECURITY INTEREST

- 10.1 The Customer grants to Harker Herbal's a Security Interest in the goods and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to Harker Herbal's under this contract (together "the Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the Customers present and after acquired herbal products and supplies, of which the goods form part, to the extent required to secure the indebtedness.
- 10.2 As and when required by Harker Herbal's the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Harker Herbal's to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce Harker Herbal's Security Interest in respect of goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").
- 10.3 The Customer shall not change its name without first notifying Harker Herbal's of the new name not less than 7 days before the change takes effect.
- 10.4 The Customer warrants that the goods are not purchased for use primarily for personal, domestic, or household purposes.
- 10.5 Notwithstanding any reference to a particular invoice/order, where any sums remains outstanding by the Customer on more than one occasion, any payments received from the Customer shall be deemed to be made by the Customer and applied by Harker Herbal's in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Harker Herbal's applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.
- 10.6 Until the Customer has paid all the money owing to Harker Herbal's the Customer shall at all times ensure that:
- the goods supplied by Harker Herbal's, while in the Customer's possession, can be readily identified and distinguished; and/or
  - all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily identifiable and traceable.
- 10.7 Where goods are purchased by the Customer for sale in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Harker Herbal's, the Customer shall not sell or grant a Security Interest in the goods without Harker Herbal's written consent.
- 10.8 The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that the Section 107 applies for the benefit of, and does not pose a burden on, Harker Herbal's. The Customer waives its right to receive a Verification Statement in respect of the Security Interest created by these terms and conditions of trade.
- 10.9 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in context of, the PPSA.

## 11 GUARANTEES, LIMITATIONS AND DISCLAIMERS

- 11.1 Where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract.
- if any of the goods fail to comply with any guarantee in the Consumer Guarantees Act, Harker Herbal's will repair or replace those goods.
  - without excluding Harker Herbal's obligations under the Consumer Guarantees Act 1993, the customer acknowledges that Harker Herbal's does not provide any Express Guarantee (as defined in that act) other than those expressly confirmed by Harker Herbal's in writing.
  - if the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply.
  - if the customer supplies the goods in trade to a person acquiring them for business purposes, it is a term of the Customers contract that the Consumer Guarantees Act 1993 does not apply in the respect of goods; and
  - if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without Harker Herbal's prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as Harker Herbal's requires, and the Customer agrees to indemnify Harker Herbal's against any liability or cost incurred by Harker Herbal's under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.
- 11.2 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993.
- Defective goods or goods which do not comply with the contract may at Harker Herbal's discretion be replaced, or the price refunded.
  - Any right which the Customer may have to reject non-conforming or defective goods will only be effective if:
    - the Customer notifies Harker Herbal's in writing within fourteen days following delivery and Harker Herbal's is given the opportunity to inspect the goods.
    - the goods are returned unused, re-saleable and/or in the condition the Customer received them.
  - Harker Herbal's will not replace or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
  - Harker Herbal's accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
    - Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
    - Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Harker Herbal's in writing; or
    - Any service forming part of the supply of the goods which have been performed by any third party;
 And the Customer agrees to indemnify Harker Herbal's against any claim.
  - In any event, Harker Herbal's liability under any claim shall not exceed the price of the goods.
  - While Harker Herbal's will make reasonable efforts to provide reliable Information (as defined in clause 11.3), Harker Herbal's gives no representation or warranty (express or implied) that: the Information is accurate, complete and/or up-to-date; the Information complies with any laws, rules, regulations, procedures, codes or governmental directives in any country other than New Zealand; use of any Harker Herbal's product will have any particular effect and/or result; or that Harker Herbal's product formulations will not change.
- 11.3 Information provided by Harker Herbal Products Limited about any Harker Herbal's product or more generally in relation to herbal remedies, nutrition and health including information on or in product labelling and/or packaging, on the Harker Herbal's website or in Harker Herbal's product literature ("Information") is provided for education and information purposes only. The Information is not intended as a substitute for medical advice or care from a doctor or other qualified health care professional. The Harker Herbal's products are not intended to be used to treat, cure or prevent any health problems or disease, and are manufactured for nutritional purposes only.
- 11.4 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumers Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## 12 CUSTOMER'S LIABILITY & DEFAULT

- 12.1 If the Customer shall:
- fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
  - suffer execution under any judgement; or
  - commit an act of bankruptcy; or
  - make any composition with any creditor; or
  - being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it, Harker Herbal's (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right Harker Herbal's may otherwise possess.

## 13 VARIATIONS TO TERMS AND CONDITIONS OF TRADE

- 13.1 Harker Herbal's may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer PROVIDED THAT Harker Herbal's shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 10.1 without the written agreement of the Customer, Harker Herbal's may notify the Customer by delivering an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.

## 14 GOVERNING LAW

- 14.1 These terms of trade are governed by the laws of New Zealand.
- 14.2 Harker Herbal's and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.

Payments can be made either by Credit Card or (preferred) Internet Banking.

**Paying by Internet Banking:**

Pay to the following account:

Harker Herbal Products Ltd

ASB Bank

Account Number: 12-3109-0148440-00

Particulars: Your business name that you use with Harker Herbal Products Ltd

Reference: Invoice number (preferred) or your Account number

**Paying by Credit Card:**

Contact Office (09) 432 0965 to record your Credit Card details.