

## TERMS AND CONDITIONS

### 1 Definitions & Interpretation

1.1 In this Supply and Sale Agreement, the following words and expressions will have the meanings assigned to them below unless the context, subject matter or content is inconsistent or contrary with such meanings –

|                                   |   |
|-----------------------------------|---|
| <b>Agreed Delivery Time</b>       | has the meaning given to it in Clause 4.1 (c);  |
| <b>Calibration Roll</b>           | means a 50 metre roll of dummy Meditag™ used to calibrate labelling machines for application of Meditag™;   |
| <b>Confidential Information</b>   | Includes the material, data, communications and information of a Party which is confidential or relates to the subject matter of this Supply and Sale Agreement and includes, but is not limited to the terms and conditions of this Supply and Sale Agreement;                                     |
| <b>Customer</b>                   | means the Party whose name and particulars are set out in the Meditag™ Order Form;  |
| <b>Government</b>                 | means the Government of Malaysia;   |
| <b>Invoice</b>                    | means the invoice issued pursuant to Clause 4.1 (c) (iii);  |
| <b>Malaysian Meditag™ Design</b>  | means the design used on the Meditag™ and which contains, amongst other things, the emblem or insignia of the Government of Malaysia and includes any modifications thereto;  |
| <b>Mediharta</b>                  | means Mediharta Sdn. Bhd. (Company No. 595702-U);   |
| <b>Meditag™</b>                   | means the Meditag™ label supplied by Mediharta to the Customer which has the following features – <ul style="list-style-type: none"> <li>(a) a running serial number;</li> <li>(b) a design which has been approved by the Government; and</li> <li>(c) holographic security technology;</li> </ul> |
| <b>Meditag™ Requirements Form</b> | means the form provided by Mediharta to the Customer in order to record the Customer's forecasted requirements for Meditag™;  |
| <b>Meditag™ Order Form</b>        | means the form to be used by the Customer to order the Meditag™ which appears on the reverse of this document, or in the case of on-line orders, the form that appears on Mediharta's website ( <a href="http://www.mediharta.com.my">www.mediharta.com.my</a> );                                   |

|                                  |  |
|----------------------------------|--|
| <b>Party</b>                     | means either the Customer or Mediharta, as applicable, and <b>Parties</b> means the both of them;  |
| <b>Proforma Invoice</b>          | means the proforma invoice issued by Mediharta in accordance with Clause 4.1 (c) (i);  |
| <b>Registered Companies</b>      | means the companies under the purview of the Sale of Drugs Act 1952 which are the companies specified in the –<br>a) List of Licensed Manufacturers; and<br>b) List of Licensed Importers,<br>as stated on the website of the National Pharmaceutical Control Bureau and/or such other medium as may be notified by the Government to Mediharta; |
| <b>Sales Order Number</b>        | means the serial number issued by Mediharta to the Customer upon Mediharta’s receipt of the Customer’s order and which is more particularly described in Clause 4.1(b);  |
| <b>Supply and Sale Agreement</b> | means this agreement entered into between the Customer and Mediharta;  |
| <b>Working Day</b>               | means Mondays to Fridays (inclusive) but excludes national and state public holidays in the Federal Territory of Kuala Lumpur.   |

1.2 The clause headings and table of contents used in this Supply and Sale Agreement are for convenience of reference only and will not enter into the interpretation of this Supply and Sale Agreement.

- 1.3 As used in this Supply and Sale Agreement, unless otherwise expressly provided to the contrary –
- (a) any reference to a “Clause” is a reference to a Clause of this Supply and Sale Agreement ;
  - (b) all references to days, months or years are references to calendar days, months or years;
  - (c) a reference to a party to a document includes that party’s successors and permitted assigns;

## 2 Consideration

In consideration of the Customer’s order and purchase of the Meditag™, Mediharta will supply and sell the Meditag™ to the Customer.

### 3 Obligations of the Customer

- 3.1 The Customer agrees that it will affix the Meditag™ on the packages within the purview of the Ministry of Health and it shall not:
- (a) sell, distribute, loan to third parties, exchange or otherwise deal with the Meditag™ in a manner not authorised in this Supply and Sale Agreement;
  - (b) assist any person to do any of the aforementioned acts in sub-clause (a) above;
  - (c) misuse, abuse, reproduce, tamper or alter the Meditag™ or any part of the Meditag™;
  - (d) assist any person to do any of the aforementioned acts in sub-clause (c) above.
- 3.2 The Customer must keep the Meditag™ which it purchases from Mediharta safe from damage, theft, counterfeiting and unauthorised use in accordance with the storage guide that is stated in the delivery order of the Meditag™.
- 3.3 The Customer must notify Ministry of Health, Mediharta and cause a police report to be lodged as soon as possible if the Customer has reasonable grounds to believe that any of the Meditag™ are stolen, counterfeited or have become the subject of unauthorised use.

### 4 Orders for the Meditag™

- 4.1 The Parties agree to use the following procedure in ordering the Meditag™:
- (a) The Customer must submit a written order through a duly completed Meditag™ Order Form to Mediharta;
  - (b) Mediharta will issue the Customer with a Sales Order Number within 3 Working Days of its receipt of the Customer's order; the Sales Order Number does not constitute Mediharta's acceptance of the Customer's order but only operates to confirm Mediharta's receipt of the Customer's order and to assist the Customer to track the progress of the delivery of the Meditag™ from Mediharta;
  - (c) Subject to Clauses 4.2 and 4.3 below:
    - (i) within 5 Working Days of verifying that the Customer is a Registered Company and upon obtaining all information required to process the order, Mediharta will provide the Customer with a Proforma Invoice for the Customer's order;
    - (ii) upon receipt of full payment from the Customer (in the case of payment by cheque by the Customer, when the Customer's cheque is honoured), Mediharta shall, within 7 Working Days of such payment ("**Agreed Delivery Time**"), make available the Meditag™ so ordered at Mediharta's designated delivery centre.
    - (iii) upon collection of the Meditag™, the Customer will be given a delivery order and Invoice.

- 4.2 The Customer agrees that Mediharta shall not be required to accept an order for Meditag™ if:
- (a) it can be shown that the Customer is not a Registered Company at the time the order is received by Mediharta;
  - (b) in Mediharta' sole opinion, the Customer regularly delays or defaults in making payments or any part of the payments due to Mediharta notwithstanding that the Customer is a Registered Company;
  - (c) Mediharta has reason to believe that the Customer is selling, distributing, counterfeiting, misusing or abusing the Meditag™; or
  - (d) Mediharta has been prohibited from accepting orders from or delivering the Meditag™ devices pursuant to a regulatory, governmental or court instruction notwithstanding that the Customer is a Registered Company.
- 4.3 Notwithstanding the quantity of Meditag™ specified in the Customer's order, Mediharta has the right to effect partial delivery of the quantities of Meditag™ ordered by the Customer. If Mediharta effects partial delivery of the quantities of Meditag™ ordered by the Customer, the Customer now hereby agrees to accept such revised quantity of Meditag™.

**Forecasts**

- 4.4 The Customer shall from time to time, via the Meditag™ Requirements Form, notify Mediharta in writing its forecast order for the next 1 year ("**Forecast Order**"). The Customer agrees that Mediharta will not be liable in any manner if Mediharta is unable to supply the quantity of Meditag™ forecasted if the information in the Forecast Order is inaccurate, false or incomplete.
- 4.5 It is agreed that for security purposes, only authorised personnel of the Customer named in the Meditag™ Requirements Form shall be permitted to place orders and forecasts on behalf of the Customer.

**Minimum Order Requirement**

- 4.6 The Customer agrees to fulfil the minimum order requirement specified below for each order made by the Customer:

| <b>Format</b> | <b>Minimum Order Requirement</b> | <b>Quantity of Meditag™ per item</b> |
|---------------|----------------------------------|--------------------------------------|
| Roll; or      | 1                                | 15,000                               |
| Sheet         | 2                                | 100                                  |

If the Customer wishes to purchase a Calibration Roll, the minimum order requirement is 1 roll.

## 5 Supply & Delivery of Meditag™

- 5.1 Mediharta will deliver the Meditag™ to the Customer as soon as practicable and subject to availability of stock provided:
- (a) Mediharta has accepted the Customer's order in accordance with Clause 4.1(c); and
  - (b) the Customer has paid the price for that order of Meditag™ devices in full.
- 5.2 While Mediharta will use its best efforts to ensure that the quantity of Meditag™ ordered meet the quantity of Meditag™ delivered, the Customer agrees that Mediharta is allowed a variance of plus-minus two percent ( $\pm 2\%$ ) in the quantity of Meditag™ delivered to the Customer. Notwithstanding this, the Customer will only pay for the actual quantity of Meditag™ delivered pursuant to this Clause 5.

### Delivery

- 5.3 The Customer has the discretion to choose between 2 of the following options for the delivery of the Meditag™ from Mediharta:
- (a) delivery by one of the courier companies specified by the Customer in the Meditag™ Order Form; or
  - (b) self-collect by the Customer or the Customer's servants or agents.
- 5.4 Title and risks to the Meditag™ will pass to the Customer upon collection from Mediharta's premises by the courier company chosen by the Customer and for Meditag™ which are collected by the Customer or the Customer's servants or agents. It is agreed that only persons authorised in writing by the Customer shall be permitted to collect the Meditag™ on behalf of the Customer.
- 5.5 Where the Customer has opted for delivery by way of a courier company, the Meditag™ will be delivered to the Customer's address specified in the Meditag™ Order Form between the hours of 9.00am and 5.00pm on Working Days.
- 5.6 The Customer agrees that it shall be the Customer's responsibility to obtain and at all times maintain suitable insurance coverage to insure against any loss or damage to the Meditag™ from the time the Meditag™ are collected from Mediharta's designated delivery centre to the Customer's premises.

## 6 Finality of orders

No cancellation of orders is permitted after payment has been made to Mediharta.

## 7 Defects & Returns

- 7.1 The Parties agree that while Mediharta will use its best efforts to ensure that the Meditag™ are supplied are not defective, Mediharta is allowed a defect margin of no more than 2% for each batch of Meditag™ delivered.
- 7.2 The Customer may reject any Meditag™ which the Customer discovers to be defective which are in excess of the defect margin in Clause 7.1, no later than 7 days after the Meditag™ are delivered to the Customer, failing which the Customer is deemed to have accepted the Meditag™ in all respects.

- 7.3 If the Customer rejects any Meditag™ in accordance with Clause 7.2 above, the Customer must:
- (a) provide Mediharta with a written report (together with pictures where applicable) specifying the reasons for such rejection;
  - (b) provide the Customer's original copy of Mediharta's Proforma Invoice, delivery order and Invoice for the order of Meditag™; and
  - (c) return the alleged defective Meditag™ to Mediharta at the Customer's sole cost and risk,
- within 7 days from the date of delivery of the Meditag™.
- 7.4 The Customer acknowledges and understands that in determining whether a Meditag™ is defective or not, Mediharta is unable to disclose the technical specifications of the Meditag™ to the Customer due to Mediharta's duty of confidentiality owed to Mediharta's supplier for the Meditag™ in relation to such information.
- 7.5 Mediharta, in dealing with the Customer in relation this Supply and Sale Agreement and in particular, in relation to allegations of defective Meditag™, agrees to do so in the spirit of mutual trust and confidence and in good faith. The Customer agrees that Mediharta's sole opinion on whether a returned Meditag™ is defective or otherwise shall be conclusive.
- 7.6 If Mediharta is of the opinion that the Meditag™ are not defective, Mediharta shall inform the Customer in writing accordingly.
- 7.7 If Mediharta is of the opinion that the Meditag™ are defective due to a cause directly attributable to Mediharta, Mediharta may at its sole option either :
- (a) replace the defective Meditag™ at no cost to the Customer within 60 days of the date of the Customer's notice of rejection of the defective Meditag™ to Mediharta; or
  - (b) pay the Customer compensation of RM0.056 for each Meditag™ which is defective within 60 days of the date of the Customer's notice of rejection of the defective Meditag™ to Mediharta; or
  - (c) reimburse the Customer for the price of each defective Meditag™ within within 60 days of the date of the Customer's notice of rejection of the defective Meditag™ to Mediharta.
- All costs, including delivery, insurance and handling charges, incurred in replacing or reimbursing the Customer shall be borne by the party responsible for the defects.
- 7.8 Meditag™ which are damaged, defective or are otherwise unusable caused by the Customer's negligence, acts, omissions or defaults shall not be replaced, exchanged or compensated by Mediharta.
- 7.9 The Customer shall inform Mediharta in writing of the serial numbers of any damaged, defective or otherwise unusable Meditag™ to enable Mediharta to cancel such serial numbers from its database.

## 8 Pricing & Payment

### Pricing

- 8.1 The Customer shall pay the price of the Meditag™ as specified in the Proforma Invoice in Ringgit Malaysia (RM).
- 8.2 The price of the Meditag™ is exclusive of any taxes, withholdings, duties, and transport, insurance, handling and other administrative charges (collectively "**Other Charges**"). It is acknowledged that the Other Charges are subject to change and accordingly the amount stated in the Proforma Invoice and Invoice may differ. If:
- a) the amount stated in the Invoice is greater than that of in the Proforma Invoice, the Customer will be issued a debit note which will be payable by the Customer to Mediharta in accordance with the terms stated therein;
  - b) the amount stated in the Invoice is less than that of in the Proforma Invoice, the Customer will be issued a credit note which will be payable in accordance with the terms stated therein.

### Payment

- 8.3 The Customer will pay Mediharta for the Meditag™ in the manner chosen by the Customer in the Meditag™ Order Form. The Customer must provide Mediharta with at least 3 Working Days notice if the Customer wishes to change the mode of payment.
- 8.4 The Customer must pay Mediharta the full amount in Mediharta's Proforma Invoice within 3 days of the date of the Proforma Invoice. Unless the Customer disputes any amount invoiced within 3 days of the Proforma Invoice, the Customer is deemed to have accepted that the amount invoiced by Mediharta is payable to Mediharta.
- 8.5 Mediharta may, at its sole discretion, impose an interest charge for any delayed payment at the rate of 1.5% per month until the date of receipt of full payment.

## 9 Termination

### Termination by Mediharta

- 9.1 If Mediharta loses the right, consent or authorisation to sell or distribute the Meditag™, this Supply and Sale Agreement shall immediately terminate.

### Consequences of Termination

- 9.2 The termination of this Supply and Sale Agreement shall not affect any rights, remedies and liabilities of either Party which arose prior to such termination.

## 10 Intellectual Property Rights

- 10.1 The Customer acknowledges and agrees that it acquires no rights or interests whatsoever in any intellectual property rights which subsist in the Meditag™.

- 10.2 The Customer acknowledges that "Meditag™" and the Malaysian Meditag™ Design are trade marks which belong to Mediharta and all other intellectual property rights subsisting in the Meditag™ have been licensed to Mediharta. Mediharta grants the Customer a non-exclusive and royalty-free licence for the term of this Supply and Sale Agreement to use the Meditag™ in any public awareness campaign or promotional materials for the use of the Meditag™ in relation to the pharmaceutical and healthcare industry in Malaysia and in accordance with any directions from Mediharta.
- 10.3 The Customer agrees not to infringe or otherwise adversely affect the enforceability or validity of any intellectual property which subsist in the Meditag™ nor assist any person to do any of the aforementioned acts.

## 11 Indemnity

- 11.1 The Customer agrees to indemnify and keep indemnified Mediharta from and against all actions, suits, claim or demands proceedings, losses, damages, compensation, costs (legal cost) charges and expenses whatsoever to which Mediharta shall or may be or become liable in respect of or arising from either one or both of the following –
- (a) the negligent use, misuse, abuse, theft or counterfeiting of the Meditag™ by the Customer or its personnel, servants, agents or sub-contractors; or
  - (b) any loss, damage or injury from any cause whatsoever to property or persons affected by this Supply and Sale Agreement to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Customer or its personnel, servants, agents or sub-contractors.
- 11.2 The obligations under Clause 11.1 shall continue after the expiry or termination of this Supply and Sale Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Supply and Sale Agreement.

## 12 Exclusion & Limitation of Liability

### **Exclusion of liability**

- 12.1 Mediharta shall not be liable in contract, tort or any other theory or principle of law for any loss or damage, even if advised of the possibility of such loss or damage, including but not limited to any loss or damage caused by:
- (a) the negligence of Mediharta, its employees, agents and assigns (excluding Mediharta's liability for death or any personal injuries occasioned by Mediharta) while performing its obligations to the Customer under this Supply and Sale Agreement; and
  - (b) the misuse, abuse of or damage to the Meditag™ which is suffered by the Customer or the Customer's clients.

### Limitation of liability

- 12.2 To the extent permitted by law and unless otherwise excluded pursuant to Clause 12.1, the aggregate liability of Mediharta whether in respect of Meditag™ sold, for any defect in the Meditag™ and whether in contract, tort or otherwise for any direct, indirect or consequential loss or damage (other than death or personal injury) sustained by the Customer or others shall be limited to the total amount paid for all of the Meditag™ purchased (excluding any taxes) by the Customer from Mediharta under this Supply and Sale Agreement.
- 12.3 Notwithstanding Clauses 4.1 and 5.1, the Customer shall not have any claims against Mediharta for failure to deliver the Meditag™ within the Agreed Delivery Time unless such failure results in a delay that exceeds 5 Working Days from the Agreed Delivery Time.
- 12.4 The Parties expressly recognise that the above exclusions and/or limitations of liability are reasonable in the circumstances of this Supply and Sale Agreement and are intended to reflect the allocation of risks between the Parties given the context of this Supply and Sale Agreement.

### 13 Force Majeure

- 13.1 Except for the obligations of confidentiality in this Supply and Sale Agreement, neither Party will be deemed to be in default under this Supply and Sale Agreement, or will be liable to the other, for failure to perform any of its non-monetary obligations under this Supply and Sale Agreement for any period and to the extent that such failure results from any event or circumstance beyond that Party's reasonable control (each, a **Force Majeure Event**), including –
- (a) war (whether war be declared or not), hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism;
  - (b) natural catastrophes including but not limited to earthquakes, floods, subsidence, lightning or any operation of the forces of nature;
  - (c) riot and disorders, strike, lockout, labour unrest or other industrial disturbances (which directly affect the performance of this Supply and Sale Agreement) which is not the fault of the Party claiming the Force Majeure Event;
  - (d) failure or fluctuation in telecommunications or network equipment and which could not have been prevented reasonable precautions or could not have remedied by the exercise of reasonable efforts, provided that the exercise of such reasonable precautions or reasonable efforts will not require the incurrence of any additional cost or expense; and
  - (e) any Force Majeure Event affecting Mediharta's supplier of the Meditag™.
- 13.2 Each Party must immediately notify the other in writing of the occurrence of any Force Majeure Event, the potential length of delay which has arisen as a result of such Force Majeure Event and the steps taken to remedy or circumvent such delay, if possible. If either Party does not agree that a Force Majeure Event has occurred then the dispute must be dealt with pursuant to Clause 15.

## 14 Confidential Information

- 14.1 The Parties agree that Confidential Information exchanged between them in any form, marked or indicated in any way as proprietary and/or confidential, shall be kept confidential and shall not be disclosed or given to any third party during the term of this Supply and Sale Agreement and after the expiry or termination of this Supply and Sale Agreement, unless with the prior written consent of the disclosing party. This obligation does not apply to:
- (a) information already known or obtained by the receiving party by independent means through no breach of any obligation of confidentiality;
  - (b) information in the public domain; and
  - (c) information required to be disclosed under written law or pursuant to an order of Court, or at the direction of a government or regulatory authority.

## 15 Governing Law & Dispute Resolution

This Supply and Sale Agreement will be governed by and construed in accordance with the laws of Malaysia. The Parties agree to be bound by the exclusive jurisdiction of the Courts of Malaysia.