



XYTIDE BIOTECH PTY LTD (ABN 81648706914)  
AND XYTIDE BIOTECH PTY LIMITED (8225514) (XYTIDE)

## *Terms and conditions of sale*

### **1. TERMS AND CONDITIONS OF SALE**

- 1.1 These terms and conditions apply to the sale of products by XYTIDE to the Buyer. XYTIDE may vary these terms by notice in writing to the Buyer. A copy of XYTIDE's current terms and conditions of sale is available at [www.xytide.com.au](http://www.xytide.com.au). These terms prevail over any terms in any document of the Buyer and contain the entire agreement between the parties.
- 1.2 If the Buyer places an order, accepts delivery of products and makes any payment under this invoice or performs any of these terms, the Buyer is taken to have accepted these terms.
- 1.3 If XYTIDE and the Buyer have entered into a State Government contract, clause 1.2 does not apply and the terms of that contract prevail over the terms of this document

### **2. PRICE AND GST**

- 2.1 Prices quoted by XYTIDE are those ruling at the date of issue of quotation. A price quotation is not an offer by XYTIDE may alter prices without notice before XYTIDE accepts the Buyer's order. Prices are exclusive of GST.
- 2.2 The Buyer must pay to XYTIDE an amount equal to any GST XYTIDE must pay for any supply by the products under these terms and conditions of sale. The Buyer must pay GST at the same time the Buyer pays the price (under clause 5).
- 2.3 All prices quoted include standard packing for delivery within Australia

### **3. ORDERS**

- 3.1 Subject to clause 3.2, orders for products must be in units of measure (as defined by the Therapeutic Goods Administration or MEDSAFE and manufacturer's certification for the relevant product, as reflected in the XYTIDE catalogue).
- 3.2 Orders for catalogue or non-catalogue products which are not held as a stock line by XYTIDE and which are ordered on the Buyer's request must be for the relevant manufacturers minimum order quantity for that product.
- 3.3 If an order is for less than \$1000 then a \$55 handling and freight charge will apply. XYTIDE may waive this charge where the Buyer exclusively orders products through XYTIDE's electronic ordering system.
- 3.4 Orders for products which are temporarily out of stock will only be placed on backorder automatically.

### **4. DELIVERY**

- 4.1 XYTIDE will use reasonable endeavours to despatch available products ordered for immediate delivery no later than 48 hours after receipt of the order.
- 4.2 Any delivery time XYTIDE gives the Buyer is only an estimate. XYTIDE is not liable to the Buyer for any loss or damage (including consequential loss or damage) arising from late delivery.
- 4.3 The Buyer must still accept and pay for the products even if XYTIDE delivers late.
- 4.4 Products will be delivered during XYTIDE's normal business hours. If XYTIDE agrees to deliver products outside these normal business hours, XYTIDE may impose an additional delivery charge.

- 4.5 The products will be delivered using methods and carriers selected by XYTIDE.
- 4.6 If the Buyer requests other arrangements, the products will be transported at the Buyer's cost and risk where:
- (a) the Buyer does not take delivery when the products are ready; or
  - (b) the Buyer orders the products for collection and does not collect within 10 business days after the specified collection date, XYTIDE is entitled to store the products (or deliver them to one of the Buyer's addresses) without liability and at the Buyer's cost and risk.
- 5. PAYMENT**
- 5.1 Products will be invoiced on dispatch.
- 5.2 The Buyer must pay all invoices in full (without set-off or deduction, including for any claims for credit) within 30 days after the date of the invoice.
- 5.3 If the Buyer fails to pay an amount due:
- (a) XYTIDE may charge interest on the overdue amounts calculated daily at 2% per annum above the maximum overdraft rate charged by XYTIDE bankers;
  - (b) XYTIDE may cancel or suspend further delivery of products to the Buyer until full payment of all money due from the Buyer to XYTIDE; and
  - (c) XYTIDE may vary or withdraw credit at its discretion.
- 5.4 The Buyer must pay all expenses incurred by XYTIDE in the recovery of overdue amounts.
- 6. RISK AND TITLE**
- 6.1 Risk in the products passes to the Buyer at the time of delivery to the Buyer, its carrier or agent. Title to and property in the products does not pass from XYTIDE to the Buyer until the Buyer pays in full all monies owing to XYTIDE.
- 6.2 Until title to a product passes to the Buyer:
- (a) the Buyer must hold the product as fiduciary and bailee for XYTIDE and store the product properly and separately as to be identifiable as the property of XYTIDE;
  - (b) the Buyer must fully insure the product against loss or damage, ensuring that XYTIDE's interest as owner is noted on the policy; and
  - (c) the Buyer may only sell the product as fiduciary (but not agent) of XYTIDE, in the ordinary course of the Buyer's business and must:
    - (i) hold all proceeds separately in trust for XYTIDE and account to XYTIDE for the proceeds; and
    - (ii) assign to XYTIDE any book debt or claim against the third party acquirer of the product for the proceeds.
- 7. CLAIMS AND RETURNS**
- 7.1 Within 7 days after delivery of any product, the Buyer must notify XYTIDE if any product has a short shelf life, has been damaged or spoiled before delivery, has been incorrectly sent or has been short delivered or has been incorrectly invoiced (a **Product Claim**).
- 7.2 XYTIDE may, in its absolute discretion, (but is not obliged to) accept returns of products which the Buyer has incorrectly ordered (a **Product Credit**), provided that the Buyer requests the Product Credit within 7 days after delivery of the product. If XYTIDE accepts a Product Credit, XYTIDE will charge the Buyer a restocking fee equal to the higher of \$50 or 10% of the price of the returned items.
- 7.3 Products being returned must comply with the following conditions:
- (a) They must be returned using a carrier nominated by XYTIDE.
  - (b) They must be unopened, in their unit of measure and in their original manufacturer's packaging which has not been marked, defaced, damaged or interfered with in any way (other than prior to delivery to the Buyer).
  - (c) They must be returned with a XYTIDE credit returns advice (which can be obtained from XYTIDE by emailing XYTIDE on info@XYTIDE.com.au):
    - (i) itemises the products being returned and explains the reasons for return;
    - (ii) confirms that the products have been stored at all times according to the label conditions and other applicable requirements imposed by law, regulation or recommendation by XYTIDE or the manufacturer; and

- (iii) attaches a copy of the original signed and dated invoice for the returned products.
- 7.4 Products returned without the prior consent of XYTIDE may be returned to the Buyer at the Buyer's cost.
- 7.5 The Buyer acknowledges that the following products cannot be returned under any circumstances:
  - (a) buy to backorder lines; and
  - (b) any "cold chain" products which are required to be stored between 2 and 8 degrees Celsius.
- 8. COMPLIANCE WITH LAWS, REQUIREMENTS AND GUIDELINES**
- 8.1 The Buyer must hold all necessary licences and comply with all law and product manufacturer requirements relating to the purchase, storage, sale, marking or use of the products, including complying with all relevant adverse event reporting requirements, Therapeutic Goods Administration and/or Medsafe regulations and guidelines and information issued by product manufacturers from time to time.
- 8.2 If the Buyer is directed to assist in any suspension of supply or recall of products for any reason by XYTIDE, the Therapeutic Goods Administration or a health authority (MEDSAFE), the Buyer will cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall. To the extent that XYTIDE is entitled to recover the costs of the suspension or recall from the relevant product manufacturer or supplier, XYTIDE will reimburse to the Buyer any reasonable and necessary costs incurred by the Buyer in connection with the suspension or recall.
- 9. PRODUCT ADVICE AND USAGE**
- 9.1 Any description of products used by XYTIDE is for identification purposes only and not a description with which the products must comply.
- 9.2 The Buyer acknowledges and agrees that any representation or advice given by or on behalf of XYTIDE (or any of its employees or agents) in respect of the operation or use of a product is offered for information purposes only and should not be relied upon. XYTIDE assumes no obligation or liability whatsoever in respect of any such representation or advice.
- 9.3 The Buyer acknowledges and agrees that it is responsible for advising its customers or patients about the operation, application, appropriateness and use of the products.
- 10. PRODUCT WARRANTIES**
- 10.1 XYTIDE will use reasonable endeavours to enforce, at the cost and for the benefit of the Buyer, any product warranties, guarantees and representations made to XYTIDE by manufacturers and suppliers of products sold by XYTIDE to the Buyer.
- 10.2 XYTIDE does not represent or warrant that any product (including, in particular, any imported product) does not infringe any intellectual property rights (including those protected by an Australian registered patent) of any third party.
- 11. LIMITATION OF LIABILITY**
- 11.1 Implied warranties and conditions as to the quality or fitness of the products or as to the accuracy of information, advice or other services concerning the products are expressly excluded to the maximum extent allowed by law.
- 11.2 XYTIDE's liability for a breach of this document or for a breach of any implied warranty or condition is limited to, at XYTIDE's election:
  - (a) replacing the products (or supplying equivalent products); or
  - (b) paying the cost of replacing the products (or supplying equivalent products).
- 11.3 XYTIDE, its employees and agents shall not be liable for any loss or damage (including consequential loss or damage) of any kind whatever, even if due to the negligence of XYTIDE, its employees or agents.
- 11.4 The Buyer agrees that the products are not of a kind ordinarily acquired for personal, domestic or household use or consumption.

- 11.5 The Buyer indemnifies XYTIDE for all liabilities, losses, damages, costs or expenses suffered or incurred by XYTIDE as a result of any act or omission of the Buyer, including (without limitation) loss incurred as a result of the Buyer:
- (a) cancelling any order or part of any order;
  - (b) unloading, storing or handling the products;
  - (c) failing to comply with any manufacturer instructions regarding the products or with any laws relating to the storage, handling, sale, marking or use of the products;
  - (d) making, or allowing to be made, any statement in respect of the operation, application, appropriateness and use of the products; or
  - (e) breaching any of the Buyer's obligations under these terms and conditions of sale.
- 12. FORCE MAJEURE**
- 12.1 XYTIDE is not liable to the Buyer for any failure to comply with this document if the failure (directly or indirectly) arises out of any circumstances which are not within XYTIDE's reasonable control (including, for example, an act of war or terrorism, natural disaster, industrial action or failure of a supplier, public utility or common carrier) (a **Force Majeure Event**).
- 12.2 If a Force Majeure Event occurs, XYTIDE's obligations under these terms and conditions of sale are suspended to the extent they are affected by the relevant event as long as the event continues. Neither XYTIDE nor the Buyer may terminate these terms and conditions of sale as a consequence of any Force Majeure Event.
- 13. CANCELLATION AND TERMINATION**
- 13.1 The Buyer may not cancel any order once lodged with XYTIDE, unless XYTIDE, in its absolute discretion, agrees otherwise. XYTIDE will not agree to any cancellation unless the Buyer compensates XYTIDE against all loss or damage arising from the cancellation.
- 13.2 XYTIDE reserves the right to accept or decline in whole or in part any order. XYTIDE may discontinue supply of any product without notice, unless otherwise required by legislation.
- 13.3 XYTIDE may cancel any order and terminate these terms and conditions of sale if
- (a) any invoice due is unpaid;
  - (b) the Buyer becomes insolvent or XYTIDE obtains an unfavourable credit report on the Buyer's financial standing, in which case, the Buyer must indemnify XYTIDE for any costs and expenses incurred prior to cancellation and must pay any reasonable cancellation charges fixed by XYTIDE. In these circumstances, XYTIDE may require the Buyer to provide prepayments or other security as a condition of XYTIDE resuming delivery of products to the Buyer.
- 13.4 The Buyer has no claim against XYTIDE for any damage, loss, cost or expense arising from any cancellation by XYTIDE.
- 14. GENERAL**
- 14.1 No conduct of XYTIDE (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right of XYTIDE or otherwise prejudices or prevents the exercise of a right of XYTIDE.
- 14.2 The Buyer may only assign, dispose of or otherwise create an interest in its rights under these terms and conditions of sale with the consent of XYTIDE may assign its rights under these terms and conditions of sale without the consent of the Buyer.
- 14.3 Any provision of these terms and conditions of sale which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms and conditions of sale enforceable, unless this would materially change the intended effect of this document.
- 14.4 These terms and conditions of sale are governed by the law in force in New South Wales.