

Terms and Conditions

Biogrund Goods and Services

1. About these Terms

These Terms and Conditions (**Terms**) govern the purchase of Goods or Services by the Customer. By submitting a Request and/or accepting a Quote, the Customer agrees to be bound by these Terms.

2. Definitions

In these Terms unless the contrary intention appears:

ARTG means the Australian Register of Therapeutic Goods maintained by the TGA;

Background IP means the Intellectual Property Rights of Biogrund or Customer (as applicable) which:

- (a) are in existence prior to or at the date of these Terms; or
- (b) come into existence after the date of these Terms otherwise than in connection with these Terms;

Blanket Order has the meaning given in clause 5.2(a);

Blanket Quantity has the meaning given in clause 5.2(a);

Biogrund means Biogrund Australia Pty Ltd ABN 18 673 648 103 of Level 5, 23-25 O'Connell Street, Sydney, NSW 2000;

Biogrund Formula means a formula for the manufacture of a Good which exists as at the date these Terms are entered into, or which is developed by Biogrund in the course of providing Services to the Customer;

Business Day means any day other than a Saturday, Sunday or public holiday in Victoria, Australia;

Confidential Information means these Terms and all commercial, technical and other information in any form whatsoever in the possession or knowledge of a party which is disclosed to the other party at any time in connection with these Terms which is confidential in nature, including any information of that sort which is provided verbally to a party by any Personnel of the other party;

Customer means the entity which makes a Request to Biogrund under these Terms;

Customer Formula means the formula supplied by the Customer for the manufacture of a Good;

Customer Property means any Equipment, Intellectual Property Rights (including Customer Formula) or other property and items that the Customer provides to Biogrund to enable it to perform its obligations under these Terms;

Delivery Date means (where relevant) the date requested by the Customer for delivery of the Goods or the completion of the Services as specified in an Order;

Developed Material means all material in whatever form including documents, reports, products, equipment,

diagrams, plans, formula and data developed or created in connection with an Order.

Equipment means the plant, equipment, tools, machinery, vehicles, appliances, items, consumables and other property for the purpose of providing the Products;

Excluded Loss means loss of revenue and profit (or anticipated profit); loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; increased overhead costs; any failure to achieve any actual or anticipated saving in respect of any cost or expense, whether or not such losses, damages, costs, expenses or liabilities were foreseeable at the date of these Terms; and all other loss which is indirect, remote or unforeseeable loss;

Expenses means the actual and reasonable expenses incurred by Biogrund in connection with the Product, as agreed in an Order.

Fees means the fees as agreed in the relevant Order (including as amended under clause 9.1(b));

Force Majeure means any event or circumstance beyond the control of the party claiming Force Majeure and which by the exercise of a standard of care and diligence consistent with that of a reasonable and prudent operator, the affected party could not reasonably have been expected to have prevented, avoided or overcome. Notwithstanding the foregoing, it is expressly agreed that the following matters do not constitute Force Majeure:

- (a) lack of or inability to use funds for any reason; or
- (b) any occurrence which results from the wrongful act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with Good Industry Practice;

Good Industry Practice means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced professional contractors engaged in the same type of undertaking under the same or similar circumstances and conditions and in accordance with generally accepted industry and professional standards and practices, including current good manufacturing practice for medicines in Australia as adopted by the Therapeutic Goods Administration as applicable to the manufacture of the Goods;

Goods means the tablet coatings to be manufactured and delivered by Biogrund, using either a Biogrund Formula or a Customer Formula, as set out in an Order;

GST has the same meaning as in the GST Law;

GST Law has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency and **Insolvent** has the meaning given to it in the *Corporations Act 2001* (Cth);

Intellectual Property Rights means all intellectual and industrial property rights and interests of whatever nature throughout the world, whether registered, unregistered or unregistrable, and includes copyright and analogous rights, and rights in respect of, or in connection with, trade marks, designs, patents, inventions, circuit layouts, trade secrets, know-how and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967, whether now existing or created after the date of these Terms, and all rights to apply for any of the above, but does not include moral rights that are not transferable;

Latent Defect means a defect in a Product that it exists at the time the Product is delivered to the Customer, that the Customer is not reasonably able to discover during its inbound control, inspection or examination;

Legislation means:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary:
 - (i) in the case of Biogrund, for the release for supply of Goods and/or performance of Services under these Terms; and
 - (ii) in the case of the Customer, for the release to market of the Goods;

Minimum Lead Time means, for each Good, the minimum time for Biogrund to manufacture and deliver the Good as advised from time to time on a prospective basis only;

Minimum Quantity means, for each Good, the minimum quantity that must be purchased under an Order, as advised by Biogrund from time to time on a prospective basis only;

Nominated PO Period has the meaning given in clause 5.2(a);

Non-Conforming Product means a Product that does not conform to the relevant Specifications as at the time of delivery to the Customer;

Order means a Quote that has been accepted by the Customer;

Personnel means in relation to a party, any of its directors, officers, employees, contractors, agents,

representatives or subcontractors involved with these Terms;

Product means a Good or the results and proceeds of a Service.

Quality Agreement has the meaning given it in clause 6.2(a).

Quote has the meaning given it in clause 5.1(b);

Recall means the removal or correction of a Product that the local regulatory authority considers to be in violation of the laws it administers and against which such regulatory authority would initiate legal action, e.g., seizure.

Representative means, in respect of a party, the person appointed by that party to act on its behalf in relation to these Terms as notified to the other party from time to time;

Request has the meaning given it in clause 5.1(a);

Services means the services of Biogrund to develop a new Biogrund Formula as set out in an Order, and such other services to be supplied by Biogrund as agreed by the parties from time to time;

Specifications means, in respect of the Goods, the Biogrund Formula or the Customer Formula (as relevant) and such other specifications as agreed by the parties in a Quality Agreement or an Order (subject always to any requirements of a regulatory authority);

Tax Invoice has the same meaning as in the GST Law;

Term has the meaning given in clause 3; and

TGA means the Australian Therapeutic Goods Administration.

3. Contract and Term

3.1 Formation of contract

These Terms apply to, and are incorporated into, each Order agreed under clause 5.1(c) and form a separate contract between the parties. Except where expressly agreed to by both parties, and subject to clause 5.3, any additional terms and conditions in respect of an Order are of no legal effect and will not constitute part of these Terms.

3.2 Duration of contract

Subject to clause 5.2(a), these Terms continue in full force and effect until the earlier of:

- (a) the date an Acceptance Notice is received by Biogrund in respect of the Order, provided that the Customer's obligations under these Terms are completed; and
- (b) termination of these Terms in accordance with clause 11.

4. No exclusivity

Nothing in these Terms grants the Customer any exclusivity in respect of the Products.

5. Orders

5.1 Process

- (a) The Customer must request by email an order of Product(s) or the supply of Services by providing details of the Product, the date, place and method of delivery, the relevant Specifications, the Formula (if required), the Customer's legal name, registered address, ABN or ACN (if applicable), and other relevant company details, and such other information as reasonably required by Biogrund (**Request**).
- (b) In response to a Request, Biogrund will promptly provide a quote in respect of that Product (**Quote**).
- (c) The Customer may accept or reject a Quote within 10 Business Days of receipt of the Quote by email or in such other method as agreed by Biogrund, at which point the Quote is binding on both parties (each, an **Order**). A Quote expires if not accepted during the period set out in this Clause.
- (d) Notwithstanding clause 5.1(c), where a statutory or regulatory approval requirement applies to the export of Goods or Services and such approval is not received, Biogrund will be entitled to rescind the Order.

5.2 Blanket Orders

- (a) Where an Order covers a minimum quantity of Goods to be supplied by Biogrund and purchased by the Customer (**Blanket Quantity**) within an agreed period specified in the Order (**Nominated PO Period**) (which cannot exceed 12 months) (each, a **Blanket Order**), then these Terms continue in full force and effect until the earlier of the expiry of the Nominated PO Period and termination in accordance with clause 11.
- (b) During the Nominated PO Period:
 - (i) Biogrund must maintain the relevant Blanket Quantity of the Good (less the cumulative quantity delivered to the Customer) in stock in Australia at all times;
 - (ii) at the beginning of each calendar month during the Term, the Customer must give Biogrund a non-binding rolling forecast of total Products that the Customer expects to order within the next 60 days;
 - (iii) notwithstanding the process in clause 5.1, the Customer may from time to time issue draw-down Orders for the Good up to the cumulative amount of the Blanket Quantity within that Nominated PO

Period, which draw-down Order must be accepted by Biogrund; and

- (iv) notwithstanding the process in clause 9.1(a)(i), the Fee for Goods purchased under a Blanket Order is only due when a draw-down Order is placed under clause 5.2(b)(ii), provided that, at the end of each Nominated PO Period, if the Customer has not placed draw-down Orders for the full relevant Blanket Quantity, the Customer must pay Biogrund an amount equal to the Fee for all unpurchased Goods.

5.3 Inconsistency

If there is any inconsistency between these Terms and an Order (including any special conditions agreed in the Order):

- (a) any conditions identified as 'special conditions' in that Order will prevail over these Terms to the extent of any inconsistency; and
- (b) in all other respects, these Terms will prevail.

6. Supply

6.1 Supply of Services

Where applicable, the Customer agrees that the Services are experimental in nature and that, subject to Biogrund's compliance with these Terms, Biogrund does not guarantee or commit to the achievement of a result, including the ability to formulate a Biogrund Formula that meets the Customer's requirements.

6.2 Supply of Goods

- (a) Where applicable, the parties will negotiate and agree in good faith a quality agreement in respect of each Good (**Quality Agreement**). Where the parties have agreed a Quality Agreement in respect of a Good, then both parties will comply with the terms of that Quality Agreement in respect of that Good.
- (b) Biogrund will use reasonable endeavours to supply the Goods specified in each Order to the Customer in accordance with these Terms.
- (c) Biogrund will ensure that:
 - (i) the Goods are manufactured in accordance with the Specifications;
 - (ii) the Goods are in the appropriate packaging and in a condition that is safe for handling, upon collection by the Customer; and
 - (iii) the packaging for the Goods displays the correct batch number corresponding to the relevant Order.

- (d) Unless otherwise agreed in the Order, the Goods will be delivered ex-works (Incoterms) from Biogrund's warehouse as advised from time to time.

6.3 Regulatory requirements

Unless otherwise agreed in writing with the Customer in the Order, the Customer is solely responsible for compliance with legal provisions and government requirements to import (including duties and taxes), transport, store, and use of the Goods.

6.4 Delivery dates

- (a) The Customer agrees that delivery dates in an Order are best estimates and that Biogrund will use commercial reasonable efforts but cannot guarantee that agreed delivery dates will be met. Biogrund will not be liable in any way for any loss of trade or profit occurring to the Customer if delivery of the Goods is frustrated or delayed by a third party supplier, Force Majeure or by any other cause not within the control of Biogrund.
- (b) If Biogrund believes that delivery of a Good is likely to be delayed, Biogrund will promptly notify the Customer of this fact, the reasons for the delay, the remedial actions Biogrund is taking, and the revised delivery date.
- (c) If Biogrund cannot deliver a Good within the revised delivery date due to Force Majeure, Biogrund may cancel the Order and reimburse the Customer all amounts paid in respect of undelivered Goods.

6.5 Storage

- (a) At Customer's request, or where the Customer does not take delivery of the Goods, Biogrund will store the Goods in an appropriate facility at the risk of Biogrund, provided that the Customer is responsible for the expiry of any Goods and any retesting required by the Customer.
- (b) In such case, Biogrund will charge the Customer a reasonable fee for such storage services. This fee does not apply in respect of Blanket Orders.

6.6 Risk and title

- (a) Title in the Goods will pass upon payment in full by the Customer.
- (b) Risk in the Goods passes to the Customer upon delivery of the Goods to the Customer, its representatives or agents.

6.7 Acceptance of Product

- (a) Within ten (10) business days of the Customer's receipt of the Product, the Customer must provide Biogrund with written notice of (i) its acceptance of the Product (the

"**Acceptance Notice**") or (ii) rejection of the Product, including sufficient detail to justify the rejection (the "**Rejection Notice**").

- (b) In the case of a Latent Defect, the Customer must provide Biogrund with a Rejection Notice within 10 business days of discovery of the Latent Defect by the Customer.
- (c) If the Customer fails to provide Biogrund with notice under clause 6.7(a), the Product will be deemed to be accepted by Customer, except in the case of Latent Defects, in which case Product is deemed accepted unless it is rejected within the period of time referred to in clause 6.7(b) after discovery of the Latent Defect.
- (d) Where the Customer provides a Rejection Notice, the parties will work together to determine the reason for the rejection, the cause of that reason, and the appropriate actions to resolve the matter as set out in clauses 6.7(e) and (f).
- (e) If Biogrund accepts the Customer's rejection of the Product, Biogrund will at its election replace the Product at its own expense or refund or credit the Customer any amounts paid for such Product. Such replacement, refund or credit will be the Customer's sole remedy for rejection under clause 6.7(a).
- (f) If Biogrund does not agree with the Customer's rejection of the Product, the parties may submit a sample of the Product to a mutually agreed independent third-party expert to determine the existence, and cause of any defect in the Product, in which case:
 - (i) the parties agree to cooperate promptly with such independent expert as necessary to complete such determination;
 - (ii) the independent expert's results will be final and binding in the absence of manifest error;
 - (iii) the costs of engaging the independent expert will be borne by the parties equally, unless the independent expert issues an alternative ruling; and
 - (iv) where the independent expert determines that the Customer's rejection of such Deliverable:
 - (A) was improper, the Deliverable will automatically be deemed to have been accepted by Customer; and
 - (B) was reasonably rejected, clause 6.7(e) will apply.

7. Obligations

7.1 Obligations on Biogrund

Biogrund will:

- (a) obtain and maintain all applicable permits, licences, exemptions, consents and approvals required for Biogrund to manufacture the Goods in accordance with these Terms, including by registering Goods as 'proprietary ingredients' with the TGA if required;
- (b) provide the Customer with such information in respect of the Goods as required for the Customer to comply with its legal obligation to register any finished therapeutic good incorporating the Good, as set out under clause 7.2(a)(iii)(B);
- (c) except where otherwise set out in the Order, supply all Equipment necessary or required to provide the Products;
- (d) assist the Customer with any complaints in relation to any Good and the investigation of any adverse drug reactions or medical events reported to the Customer related to the Goods in the Territory;
- (e) perform its obligations under these Terms with due care and skill to the best of its knowledge and expertise; and
- (f) notify the Customer as soon as practicable of becoming aware of any faults or deficiencies in the Product.

7.2 Obligations on Customer

- (a) The Customer must:
 - (i) perform its obligations as set out in these Terms and any Order; and
 - (ii) promptly provide Biogrund with all Customer Property specified in the Order, including the Customer Formula (if any);
 - (iii) obtain, and comply with, all regulatory and licensing approvals and registrations required under relevant Legislation:
 - (A) for the Customer to store, use, market and sell the Goods; and
 - (B) to manufacture, store, market and sell therapeutic goods incorporating the Goods including registering such finished product on the ARTG (if required).
- (b) The Customer warrants that its performance of its responsibilities under these Terms and its use of the Product (including the storage, use and sale of the Goods, and the incorporation of the Goods into finished

therapeutic goods) comply with all relevant Legislation.

7.3 Mutual pharmacovigilance obligations

Each party must promptly (and within one business day of becoming aware) notify the other party of any adverse drug reaction, medical event or similar adverse incident related to the Products that it becomes aware of and must keep adequate records thereof.

8. Representations and Warranties

8.1 Biogrund representations and warranties

Biogrund represents and warrants that:

- (a) the Product will be:
 - (i) manufactured in conformance with the Specifications and Good Manufacturing Practice;
 - (ii) of merchantable quality;
 - (iii) subject to payment in full by the Customer, free from any encumbrance, lien, mortgage, security or charge in favour of a third party or any other third party interest, from the time of delivery; and
- (b) except to the extent they include the Customer's Background IP, the use of the Products by the Customer in accordance with these Terms will not infringe the Intellectual Property Rights of any third party.

8.2 Customer representations and warranties

The Customer represents and warrants to the other that:

- (a) all Customer Property provided to Biogrund in the course of these Terms will be in safe working condition and complies with all Legislation; and
- (b) the Customer will provide Biogrund all information in its possession and control regarding the known hazards and properties (including the appropriate material safety data sheets, if any) of all substances and materials it provides to Biogrund involved in the performance of these Terms.

8.3 Mutual representations and warranties

Each party represents and warrants to the other that:

- (a) it will perform its obligations:
 - (i) in a competent and professional manner, and with due care and skill and to the best of its knowledge and expertise;
 - (ii) in accordance with these Terms, the Order, and Quality Agreement, if any;

(iii) in accordance with all relevant Legislation.

- (b) where it provides or licenses any Intellectual Property Rights (including Background IP and Developed Material) to the other party under these Terms, it owns or has the right to license those Intellectual Property Rights, and the use of such Intellectual Property Rights in accordance with these Terms by the other party will not breach any law or infringe any third party rights;
- (c) it has full power, authority and legal capacity to execute and to perform its obligation(s) under these Terms; and
- (d) it has not entered into any agreement and there are no assignments, licenses, encumbrances or rights held by other parties, private or public, inconsistent with the provisions of these Terms.

8.4 No other warranties

The warranties set forth in clauses 8.1, 8.2 and 8.3 are the sole and exclusive warranties made by the parties under these Terms and, to the extent permitted by law, there are no other warranties of any kind whatsoever, either express or implied under these Terms.

9. Payment

9.1 Fees

- (a) Biogrund will charge the Fees in respect of:
 - (i) Goods on delivery to the Customer; and
 - (ii) Services, on completion of the Services.
- (b) The Customer acknowledges and agrees that the Fees in respect of Services in an Order are an estimate only and that the Service Fees are charged on a time and materials basis.

9.2 Fee update

After the first twelve (12) months of these Terms, Biogrund may once in each twelve (12) month period adjust the Fees by giving the Customer at least 30 days' notice in writing.

9.3 Invoicing and Payment

- (a) All amounts are due and payable within 30 days from the date of invoice. However, Biogrund reserves the right to request an advance payment in respect of an Order in whole or in part. Biogrund will make such request no later than on acceptance of the Order.
- (b) Biogrund will submit a Tax Invoice to the Customer after delivery of the relevant Product.

- (c) The Tax Invoice must set out particulars of all Products the subject of that Tax Invoice and the amount payable by the Customer under these Terms in respect of those Products, how that amount was calculated and relevant evidence to establish that amount.
- (d) Except in the case of a dispute, the Customer must pay all Tax Invoices submitted by Biogrund within 30 days of receipt of the Tax Invoice. In the case of a dispute in respect of a Tax Invoice, the Customer must:
 - (i) notify Biogrund of the dispute within this time frame;
 - (ii) promptly give Biogrund all known details of the dispute; and
 - (iii) pay all undisputed amounts in accordance with this clause.
- (e) All payments made under these Terms are to be made in Australian dollars by electronic transfer to an account nominated by the recipient of the payment. Any bank fees and charges in respect of the payment are to be the responsibility of the payer.
- (f) If GST has application to any supply made by Biogrund under or in connection with these Terms, Biogrund may, in addition to the consideration payable, and subject to issuing a Tax Invoice, recover from the Customer an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Customer for the supply by the prevailing GST rate.

9.4 Late payment

- (a) If an undisputed invoiced amount has not been paid on the due date, Biogrund:
 - (i) is entitled to claim default interest calculated at the then applicable statutory rate calculated from the due date until the amount is paid in full; and
 - (ii) must promptly provide notice to the Customer of the default.
- (b) If the Customer has not paid the undisputed invoice amount within a further ten (10) business days from its receipt of the notice under clause 9.4(a)(ii), the Customer will be in default by the mere expiry of that period. In that case, in addition to the default interest under clause 9.4(a)(i), Biogrund will be entitled to be reimbursed the actual and reasonable collection costs, that cannot exceed ten percent (10%) of the invoiced amount.

10. Representatives

Each party acknowledges and agrees that, during the Term:

- (a) its Representative will represent and act for it at all times during the Term;
 - (b) it is bound by the actions of its Representative; and
 - (c) matters within the knowledge of its Representative are deemed to be within its knowledge.
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11. Termination

11.1 Mutual right to terminate

Either party may terminate these Terms with immediate effect by giving written notice to the other party:

- (a) where the other party breaches or is alleged to have breached a material term of these Terms for any reason and either the breach is not capable of remedy or is not remedied within fourteen (14) days after being given notice to do so;
- (b) where the other party is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for that party to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager, or an administrator under part 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of that party's property;
 - (iii) a scheme of arrangement (other than for the purpose of restructuring); and
 - (iv) any assignment for the benefit of creditors; or
- (c) where the other party ceases or threatens to cease to conduct its business in the normal manner.

11.2 Consequences of expiry or termination

- (a) Termination of these Terms or an Order under clause 11.1(a) does not affect any other Order, unless otherwise stated.
- (b) Where a party terminates these Terms under clause 11.1(b) or 11.1(c), then by notice in writing it may also terminate any current Order.
- (c) Without prejudice to any other rights under these Terms, the Customer must pay to Biogrund:
 - (i) the Fees for Products provided to the Customer prior to the effective date of

- termination and not included in any previous payment by the Customer; and
 - (ii) except in the case of termination by the Customer under clause 11.1(a), the cost of materials reasonably ordered by Biogrund for the purpose of providing the Products prior to the date of termination, which Biogrund is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of the Customer upon payment.
 - (d) On the expiration or earlier termination of these Terms, each party must within 14 days after termination or expiration, return to the other party (or if requested, erase and/or destroy) all copies in any form of the Intellectual Property Rights and Confidential Information of that other party in its possession or control.
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12. Insurance

- (a) Biogrund must, before commencing the supply of any Product, effect and maintain at its expense:
 - (i) Workers Compensation insurance that complies with all statutory requirements;
 - (ii) Public and Product Liability insurance to a limit not less \$10,000,000 in respect to any one occurrence arising out of the same or original cause and unlimited in the aggregate for public liability as to the number of claims but limited in the aggregate to \$10,000,000 for products liability; and
 - (iii) any other insurances required by Legislation.
 - (b) Biogrund will provide evidence of the currency of insurance to the Customer upon reasonable request.
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13. Liability and Indemnities

13.1 Biogrund's liability

Biogrund will indemnify and hold harmless the Customer from and against any loss, cost, expense, claim or liability whether arising in respect of:

- (a) the gross negligence or wilful misconduct of Biogrund;
- (b) any breach of a material term of these Terms, including any representation or warranty;
- (c) personal injury, illness, disability or death of any and all persons whomsoever;
- (d) loss or destruction of or damage to any and all property real and personal;

to the extent arising out of Biogrund's performance of these Terms.

connection with the supply of Products by Biogrund; or

13.2 Customer's liability

Customer will defend, indemnify, and hold harmless Biogrund from any liability or expense (including reasonable attorney's fees) arising out of any suit, demand or action by any third party arising out of or resulting from:

- (a) the gross negligence or wilful misconduct of the Customer in connection with these Terms; or
- (b) any breach of a material term of these Terms, including any representation or warranty;
- (c) personal injury, illness, disability or death of any and all persons whomsoever;
- (d) loss or destruction of or damage to any and all property real and personal;

to the extent arising out of the Customer's performance of these Terms.

13.3 Exclusion of liability

(a) Subject to clause 13.3(b), neither party will be liable to the other (including under clause 13.1 or 13.2 as relevant) for:

- (i) any Excluded Loss; or
- (ii) any liability under these Terms for any reason whatsoever, including its indemnity obligations, in excess of the total aggregate amounts paid by the Customer to Biogrund under these Terms in the 12-month period prior to the occurrence of the circumstances giving rise to the liability;
- (iii) to the extent the liability arises due to a breach by the other party (as Indemnitee) of clause 13.4; or
- (iv) to the extent that a loss, cost, expense, claim or liability arises from any negligent act or omission of, or breach of these Terms by, the other party.

(b) The exclusion of liability in clauses 13.3(a)(i) and (ii) does not apply in relation to liability of:

- (i) a party in respect of the loss or destruction of, or injury or damage to, or loss of use of any real or personal property, or any personal injury to or death of any person, in each case arising out of, or caused by that party or its Personnel under these Terms;
- (ii) a party for any act or omission of fraud, wilful misconduct or gross negligence of that party and/or its Personnel;
- (iii) the Customer to pay the Fees;
- (iv) Biogrund in respect of any penalty imposed for breach of Legislation in

(v) a party for breach by that party of clause 14, 15 or 15.3.

13.4 Indemnity procedure

A party (**Indemnitee**) which intends to claim indemnification under clause 13.1 or 13.2 (as relevant):

- (a) must promptly notify the other party (**Indemnitor**) in writing of any action, claim or other matter in respect of which the Indemnitee intends to claim such indemnification.
- (b) must permit the Indemnitor, at its discretion, to settle any such action, claim or other matter, and the Indemnitee agrees to the complete control of such defense or settlement by the Indemnitor. Notwithstanding the foregoing, the Indemnitor must not enter into any settlement that would adversely affect the Indemnitee's rights hereunder or impose any obligations on the Indemnitee in addition to those set forth herein, in order for it to exercise such rights, without Indemnitee's prior written consent, which will not be unreasonably withheld or delayed. No such action, claim or other matter will be settled without the prior written consent of the Indemnitor, which must not be unreasonably withheld or delayed;
- (c) must fully cooperate with the Indemnitor and its legal representatives in the investigation and defense of any action, claim or other matter covered by the indemnification obligations; and
- (d) has have the right, but not the obligation, to be represented in such defense by counsel of its own selection and at its own expense.

14. Product recalls

14.1 Regulatory actions

Each party must promptly notify the other party of:

- (a) any actions taken by a regulatory authority in relation to the Product, including if a regulatory authority notifies a party of any safety concerns in relation to the Product; and
- (b) any fact which comes to the attention of that party which would, or is likely to, justify a recall of a Product.

14.2 Decision to conduct a Recall

- (a) Each party must reasonably cooperate with the other party in connection with the assessment of any Recall or potential Recall that is notified under clause 14.1 in deciding whether to conduct a Recall.

- (b) If a Recall is required by any regulatory authority, the parties must cooperate in accordance with recognised regulatory requirements and requirements of the relevant regulatory authority, provide all reasonable assistance in respect of the Recall and where a party initiates a Recall under this clause 14.2(b), the other party must comply with the first party's reasonable directions in effecting that Recall.
- (c) Where a Recall is initiated, whether by one or both parties or a regulatory authority, each party must:
 - (i) comply with all relevant Legislation and instructions of any regulatory authority in connection with such Recall;
 - (ii) do all things reasonably required to diminish the risk to the public from the relevant Products; and
 - (iii) take such reasonable action to minimise the damage to the goodwill in the Products, Biogrund and the Customer and their names and reputations generally (but nothing in this clause obliges a party to pay money, provide consideration, or otherwise to undertake or agree to anything that is commercially onerous or unreasonable in the context of the terms of these Terms).

14.3 Costs

- (a) Except as set out in clause 14.3(b), the Customer is responsible for any liabilities, costs and expenses arising from a Recall.
- (b) To the extent that the Recall was caused by a breach of these Terms by Biogrund or was due to the negligence of Biogrund, Biogrund:
 - (i) is responsible for any liabilities, costs and expenses arising from a Recall, and
 - (ii) must refund to the Customer the Fee paid by the Customer for the Products the subject of a Recall;
 - (iii) must pay to the Customer the cost of other materials contained in the recalled finished product that cannot be shipped or finished due to the condition requiring the Recall.
- (c) Each party will use its reasonable efforts to mitigate any loss from a Recall.

14.4 Announcements

Neither party will make any press or other announcement or release any information in respect of a Recall without the other party's prior written approval as to the content, form and manner of the announcement or release, except to the extent otherwise required by law.

14.5 Paramountcy of Applicable Law

Nothing in this 14 overrides any relevant Legislation in respect of any Recall or potential Recall and each party must comply with any such Legislation. In particular, nothing in this 14 prevents either party from notifying the relevant regulatory authority of all relevant facts in respect of the Recall or potential Recall at any time.

15. Intellectual Property Rights

15.1 Licence of IP

Each of the parties grants the other a non-exclusive, royalty free licence to use:

- (a) its Background IP it provides to the other party; and
- (b) the Developed Material it owns,

in each case, to the extent necessary to enable the other party to perform its obligations under these Terms.

15.2 Developed Material

- (a) Immediately from creation, the Customer will own all Intellectual Property Rights in Developed Material that constitutes an improvement to a Customer Formula provided that such improvements are not sufficiently distinctive to the Customer Formula so as to result in a new product, and includes where the improvements:
 - (i) incorporate substantially new elements, or demonstrate substantially new features not present in the Customer Formula;
 - (ii) are capable of being used independently of the Customer Formula; or
 - (iii) represent a significant departure from the original nature and scope of the Customer Formula.
- (b) Other than as set out in clause 15.2(a), immediately from creation, Biogrund will own all Intellectual Property Rights in Developed Material.
- (c) Each party:
 - (i) unconditionally assigns all Intellectual Property Rights to all Developed Material (including as a present assignment of future copyright); and
 - (ii) agrees to do all further things necessary in each case, to give effect to clauses 15.2(a) and 15.2(b) as relevant.

15.3 Title and rights

Each party must not, at any time, do or cause to be done any act or thing contesting or in any way impairing or tending to impair, or affecting the

validity of, any part of the other party's Intellectual Property Rights in its Background IP or Developed Material.

16. Confidential Information

Each party must ensure that all Confidential Information of the other party is kept confidential and is not disclosed directly or indirectly to a third party without prior written approval of the other party, unless the Confidential Information:

- (a) is used for the purposes of fulfilling the party's obligations under these Terms;
 - (b) is disclosed to the party's professional advisers who are bound by an obligation of confidentiality;
 - (c) is disclosed to any current or prospective banker or debt or equity financier of the party or its Related Bodies Corporate who are bound by an obligation of confidentiality; or
 - (d) is disclosed to direct or indirect investors, limited or general partners, or potential direct or indirect investors, limited or general partners of the party or its Related Bodies Corporate, who are bound by an obligation of confidentiality;
 - (e) was in the party's possession prior to the date of these Terms (other than any information that was provided directly or indirectly by the other party or which is separately the subject of a confidentiality obligation);
 - (f) becomes generally available to the public or is in the public domain through no fault of the party;
 - (g) is required to be produced by order of a court or under the requirements of any Legislation or stock exchange listing rule; or
 - (h) was obtained from a third party without an obligation of confidentiality.
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17. Force Majeure

- (a) If a party is prevented from carrying out the whole or any part of its obligations under these Terms by reason of Force Majeure, that party must immediately give written notice to the other party. A notice must:
 - (i) specify the obligations Biogrund cannot fulfil;
 - (ii) fully describe the Force Majeure;
 - (iii) estimate the period during which the Force Majeure will continue; and
 - (iv) specify the measures Biogrund proposes to adopt to remedy or mitigate the Force Majeure.
- (b) The affected party must keep the other party informed of any changes in the circumstances

causing the Force Majeure or the effects of the Force Majeure.

- (c) The obligations of the affected party, so far as they are affected by Force Majeure, will be suspended for the period that the Force Majeure persists and the affected party will not be in default under these Terms. The affected party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under these Terms.
 - (d) Notwithstanding any provision of these Terms, if the Force Majeure causes the suspension of Biogrund's obligations for a continuous period of 60 days or a cumulative period of 60 days in any 120 day period, either party may terminate these Terms by written notice to the other party.
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18. Dispute Resolution

- (a) Where a dispute arises between the parties, either party may give to the other party a dispute notice specifying the nature of the dispute and requiring its resolution under this clause 18.
 - (b) The parties must promptly meet and negotiate in good faith with a view to resolving the dispute. If the dispute has not been resolved within 14 days after the notice of the dispute is given to the other party, each party must nominate one representative from its senior management to negotiate and try and settle the dispute, who must negotiate in good faith with a view to resolving the dispute.
 - (c) If the dispute has not been resolved within 30 days after the date of receipt of the dispute notice, either party may commence legal proceedings in connection with that dispute.
 - (d) Nothing in this clause prevents either party from applying to a court for urgent interlocutory, injunctive or declaratory relief.
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19. Notices

- (a) Any notice under these Terms must be in writing, signed by the party sending it (or on that party's behalf) and sent to the address for service specified at the top of these Terms, or such other address as notified by a party from time to time.
- (b) A notice is taken to be received by the addressee:
 - (i) upon actual receipt, when hand delivered;
 - (ii) in the case of email, 4 hours after the date of sending provided that a transmission error report is not received

by the sender within 24 hours of sending the email; or

- (iii) in the case of posting, five Business Days after posting to an address within Australia and on the tenth Business Day after the date of posting by airmail to an address outside of Australia,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of the next Business Day in that place.

20. Other Matters

- 20.1 **Survival** – Clauses 1, 3.1, 5.3, 6.7(b) to 6.7(f), 7.2(b), 7.3, 8, 9.1, 9.3, 9.4, 11, 13, 14, 15, 15.3, 18, 19, and this clause 20 survive the expiry or termination of these Terms (provided that clause 15.3 only survives for a period of five years from expiry or termination).
- 20.2 **Agreement terms** – These Terms may only be varied by a document signed by or on behalf of each party.
- 20.3 **Subcontracting** – Biogrund may subcontract any part or the whole of its obligations under these Terms, provided that Biogrund remains liable for the acts and omissions of any subcontractor as if they were acts and omissions of Biogrund.
- 20.4 **Severance** - If any provision or part of a provision of these Terms is held or found to be void, invalid

or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

- 20.5 **Waiver** – Waiver of any right arising from a breach of these Terms must be in writing and executed by the party granting the waiver. Failure by a party to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of these Terms as a whole.
- 20.6 **Governing law and jurisdiction** – The parties accept the laws of the state of Victoria, Australia as the governing law of these Terms submit to the exclusive jurisdiction of the Courts of that state.
- 20.7 **Entire agreement** – These Terms as amended or varied from time to time represents the entire agreement between the parties and supersedes all prior arrangements whether written or oral in relation to its terms.
- 20.8 **Relationship between the parties** – The Customer and Biogrund are independent contracting parties and nothing in these Terms will make either party an agent or legal representative of the other for any purpose whatsoever. Nor does these Terms grant either party any authority to assume or to create an obligation on behalf or in the name of the other party.

