

## Agreement to sell goods

This agreement is dated the date the order is placed by the Buyer

between:

CDM Alive Pty Ltd (ACN 137 894 681) trading as Probiotic Power of Murrays Beach in the State of New South Wales, Australia (**Seller**)

and:

(**Buyer**).

### BACKGROUND

- A. The Seller is a supplier of the goods described in item 0 of 0 (**Goods**).
- B. The Buyer wishes to buy Goods from the Seller by order(s) placed on the website <http://www.probioticpower.com.au>.
- C. The Seller has agreed to sell and the Buyer has agreed to buy Goods on the terms and conditions set out in this agreement.

### OPERATIVE PROVISIONS

#### **1 Agreement to buy and sell**

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In return for payment of the price specified in relation to each of the Goods by the Buyer to the Seller, the Seller sells and the Buyer buys the Goods on the terms of this agreement.

#### **2 Placement of orders**

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- (i) The Buyer must order Goods from the Seller on the website <http://www.probioticpower.com.au>.
- (ii) Each order must specify the quantity and description of the Goods ordered.

#### **3 Acceptance of orders**

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The Seller may decline any order received from the Buyer by written notice to the Buyer within 2 business days of receipt of the order by the Seller. Any order not declined under this clause binds the Seller.

#### **4 Delivery of orders**

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The Seller must use its best endeavours to arrange delivery of the order to the location specified by the Buyer.

## **5 Packing of orders**

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The Seller will ensure the order is safely and securely packed for transportation to the Buyer having regard to:

- (i) the fragility and perishability of the Goods;
- (ii) the distance the Goods are likely to travel; and
- (iii) the method of transportation used to transport the Goods.

## **6 Payment**

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Unless stated otherwise, the Price is exclusive of GST. The Buyer must pay the Price, plus the requisite GST, in relation to the order to the Seller at the time the Buyer places the order.

## **7 Passing of title**

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Title to the Goods constituting an order passes to the Buyer free of encumbrances and all other adverse interests upon receipt by the Seller of payment in full of the Price. Until title to the Goods constituting an order passes to the Buyer, the Seller holds a security interest in the Goods and all proceeds from the sale of the Goods as contemplated under the Personal Property Security Act 2009 (Cth).

## **8 Rights in relation to Goods**

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- (i) The Seller reserves the rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid. These are rights:
  - (a) to ownership of the Goods;
  - (b) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
  - (c) subject to, and in accordance with, the Personal Property Securities Act 2009 (Cth), to keep or resell any Goods repossessed pursuant to paragraph 8(i)(b) above.
- (ii) If the Buyer resells the Goods, the Buyer must hold part of the proceeds of any such sale, as represents the invoice price of the Goods sold, in a separate identifiable account as the beneficial property of the Seller. The Buyer must pay this amount to the Seller upon request. Despite these provisions, the Seller is entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods must pass to the Buyer upon delivery.
- (iii) Prior to title in the Goods passing to the Buyer under the terms of this agreement, the Buyer agrees that:
  - (a) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer;
  - (b) the Buyer cannot claim any lien over the Goods;
  - (c) the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and

- (d) where the Buyer is in actual or constructive possession of the Goods:
  - (A) the Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Seller; and
  - (B) it is in possession of the Goods as a bailee of those Goods and owes the Seller the duties and liabilities of a bailee.
- (iv) In connection with the Goods, the Seller states to the Buyer that the Seller has the right to supply the Goods to the Buyer;
- (v) The Seller and the Buyer agree that:
  - (a) the property of the Seller in the Goods remains with the Seller until the Seller has been paid in full for the Goods under all individual contracts for the supply of the Goods;
  - (b) the Buyer is a bailee of the Goods until property in them passes to the Buyer and this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
  - (c) pending payment in full for the Goods, the Buyer:
    - (A) must not supply any of the Goods to any person outside of its ordinary or usual course of business; and
    - (B) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- (vi) If the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller, the Buyer agrees that:
  - (a) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or are received;
  - (b) it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received, or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
  - (c) any accessory or item which accedes to any of the Goods by an act of the Buyer, or of any person at the direction or request of the Buyer, becomes and remains the property of the Seller until the Seller is paid in accordance with paragraph 8(v)(a); and
  - (d) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Seller to the Buyer, subject to, and in accordance with, the Personal Property Securities Act 2009, the Seller may recover possession of the goods at any site owned, possessed or controlled by the buyer and the buyer agrees that the seller has an irrevocable licence to do so.

## **9 Passing of risk**

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Risk in each order passes to the Buyer upon delivery of that order to the Buyer or collection of that order by the Buyer's agent or courier as the case may be.

## **10 Term**

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This agreement commences on the date it is made and ends when terminated in accordance with any express right of termination set out in this agreement.

## **11 Termination**

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- (i) In the absence of any breach of this agreement, this agreement terminates when the Buyer has paid the Seller the Price in full and the Buyer has received the Goods.
- (ii) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
- (iii) Either party may terminate this agreement if:
  - (a) the other party is in material breach of any of its obligations under this agreement; and
  - (b) the breach is capable of remedy fails to remedy the breach for a period of 30 days after receipt of a written notice by the other party requiring rectification of the breach.
- (iv) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (v) The obligations of the parties that by their nature could reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

## **12 Privacy**

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The website privacy policy that applies to this agreement is contained in Schedule 2.

## **13 Entire Agreement**

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Upon placement of the Buyer's purchase order, the Buyer accepts the terms and conditions of this agreement and the provisions hereof shall constitute the entire agreement between the parties and supersede all prior offers, negotiations and agreements relating to the subject matter hereof. The agreed deletion of any clause or of any part of this agreement by the Seller shall not affect the validity of the remaining terms and conditions of sale.

## **14 Amendment**

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This agreement is not to be amended except in writing signed by each of the parties.

## **15 Personal Property Securities Act 2009 (Cth) (PPSA)**

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- (i) This agreement is a security agreement.
- (ii) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.

- (iii) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.
- (iv) Until title in the Goods has passed to the Buyer as contemplated by clause 7, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business.
- (v) The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- (vi) The Seller and Buyer agree that this agreement and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (vii) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:
  - (a) any requirement for the Seller to give the Buyer a notice of removal of accession;
  - (b) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the Goods;
  - (c) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
  - (d) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
  - (e) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
  - (f) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.
- (viii) Expressions defined in the PPSA have the same meaning when used in this agreement.

## **16 Proper law**

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This agreement is subject to the law of New South Wales, Australia in which this document is issued.

Executed as an agreement

# Schedule 1

## 1 Description of goods

As listed in the order on the website <http://www.probioticpower.com.au>

## 2 Price

As listed in the order on the website <http://www.probioticpower.com.au>

## Schedule 2

This Privacy Policy applies to all personal information collected by CDM Alive Pty Ltd via the website located at <http://www.probioticpower.com.au>.

### **(a) What is "personal information"?**

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- (i) The Privacy Act 1988 (Cth) currently defines "personal information" as meaning information or an opinion about an identified individual or an individual who is reasonably identifiable:
  - (a) whether the information or opinion is true or not; and
  - (b) whether the information or opinion is recorded in a material form or not.
- (ii) If information do not disclose your identity or enable your identity to be ascertained, it will in most cases not be classified as "personal information" and will not be subject to this privacy policy.

### **(b) What information do we collect?**

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The kind of personal information that we collect from you will depend on how you use the website. The personal information which we collect and hold about you may include your email address and credit card details.

### **(c) How we collect your personal information**

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- (i) We may collect personal information from you whenever you input such information into the website.
- (ii) We also collect cookies from your computer which enable us to tell when you use the website and also to help customise your website experience. As a general rule, however, it is not possible to identify you personally from our use of cookies.

### **(d) Purpose of collection**

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- (i) The purpose for which we collect personal information is to provide you with the best service experience possible on the website.
- (ii) We customarily disclose personal information only to our service providers who assist us in operating the website. Your personal information may also be exposed from time to time to maintenance and support personnel acting in the normal course of their duties.
- (iii) By using our website, you consent to the receipt of direct marketing material. We will only use your personal information for this purpose if we have collected such information direct from you, and if it is material of a type which you would reasonably expect to receive from us. We do not use sensitive personal information in direct marketing activity. Our direct marketing material will include a simple means by which you can request not to receive further communications of this nature.

**(e) Access and correction**

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Australian Privacy Principle 12 permits you to obtain access to the personal information we hold about you in certain circumstances, and Australian Privacy Principle 13 allows you to correct inaccurate personal information subject to certain exceptions. If you would like to obtain such access, please contact us as set out below.

**(f) Complaint procedure**

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If you have a complaint concerning the manner in which we maintain the privacy of your personal information, please contact us as set out below. All complaints will be considered and we may seek further information from you to clarify your concerns. If we agree that your complaint is well founded, we will, in consultation with you, take appropriate steps to rectify the problem. If you remain dissatisfied with the outcome, you may refer the matter to the Office of the Australian Information Commissioner.

**(g) Overseas transfer**

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Your personal information will not be disclosed to recipients outside Australia unless you expressly request us to do so. If you request us to transfer your personal information to an overseas recipient, the overseas recipient will not be required to comply with the Australian Privacy Principles and we will not be liable for any mishandling of your information in such circumstances.

**(h) How to contact us about privacy**

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If you have any queries, or if you seek access to your personal information, or if you have a complaint about our privacy practices, you can contact us via our website.