

TERMS AND CONDITIONS

1. INTERPRETATION

In these Terms and Conditions -

- 1.1. clause headings are for convenience purposes only and shall not be used in their interpretation;
- 1.2. unless the context clearly indicates a contrary intention –
 - 1.2.1. an expression which denotes any gender includes the other genders, a natural person includes an artificial person (whether incorporated or unincorporated and including the partners of a partnership and the trustees of trust) and vice versa, and the singular includes the plural and vice versa;
 - 1.2.2. where any term is defined within a particular clause, other than this interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in these Terms and Conditions;
 - 1.2.3. the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings –
 - 1.2.3.1. “**Adverse Event**” shall mean, in respect of any of the Products, any hazard, side-effect, unexpected medical occurrence, harmful event, unexpected or unintended response or other unexpected or unintended adverse reaction associated with the use of such Products or to its compounds or to the packaging, labelling or the instructions for use of such Products, including but not limited to (i) any event or complaint resulting from the recall or withdrawal of such Products, (ii) any failure of the expected pharmacological action of such Products, (iii) any malfunction, failure or deterioration in the characteristics and/or performance of such Products, (iv) any inadequacy in the packaging, labelling or the instructions for use of such Products (v) any technical or medical factor in relation to the characteristics or performance of such Products which might lead to a recall or withdrawal of such Products;
 - 1.2.3.2. “**Affiliate**” shall mean, in respect of Coloplast, any entity which controls or is controlled by or is under common control with Coloplast, and the term “control” shall have the meaning given to it in the Companies Act;
 - 1.2.3.3. “**Applicable Law/s**” in relation to a Party, will include all and any -
 - (i) statutes and subordinate legislation and the common law;
 - (ii) regulations;
 - (iii) ordinances and by laws;
 - (iv) circulars, codes of practice, directives, guidance notices, judgments and decisions of any competent authority or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation; and
 - (v) other similar provisions;from time to time, compliance with which is mandatory for that Party;
 - 1.2.3.4. “**Business Day**” shall mean any day other than a Saturday, Sunday or official public holiday in South Africa;
 - 1.2.3.5. “**Coloplast**” shall mean Coloplast A-S External Profit Company, a company incorporated in Denmark under registration number 27.722, and whose registered office is at Holtedam 1, 3050 Humlebaek, Denmark, and which is registered as an external profit company in South Africa in accordance with Section 23 of the Companies Act under registration number 1994/008553/10, and whose registered office address in South Africa is York House, Ground Floor, Epsom Downs Office Park, 13 Sloane Street, Bryanston, Gauteng, 2012, South Africa;
 - 1.2.3.6. “**Companies Act**” shall mean the Companies Act 71 of 2008;
 - 1.2.3.7. “**CPA**” shall mean the Consumer Protection Act 68 of 2008;
 - 1.2.3.8. “**Customer**” shall mean the Party stipulated as such on the Customer Application Form to which these Terms and Conditions are attached;
 - 1.2.3.9. “**Customer Application Form**” shall mean the form titled “Customer Application Form”, to which these Terms and Conditions are attached;
 - 1.2.3.10. “**Delivery Premises**” shall mean, in respect of any Order, the premises in South Africa at which Products are to be delivered to the Customer by or on behalf of Coloplast, being the physical address stipulated in the Order;
 - 1.2.3.11. “**End User**” shall mean the ultimate consumer of the Products, who is or may be supplied with the Products by the Customer;
 - 1.2.3.12. “**Force Majeure**” shall mean any event or circumstance whatsoever which is not within the reasonable control of the Party whose performance is affected thereby which may include *vis maior, casus fortuitus*, strike, fire, explosion, riot, insurrection or other civil disorder and war (whether declared or not) or military operations;
 - 1.2.3.13. “**Invoice**” shall mean, in respect of any Order Response or Varied Order Response, a corresponding written invoice prepared by Coloplast upon receipt of such Order Response or Varied Order Response, which invoice will detail the aggregate purchase price for the Products listed in such Order Response or Varied order Response;
 - 1.2.3.14. “**NCA**” shall mean the National Credit Act of 34 of 2005;
 - 1.2.3.15. “**NHA**” shall mean the National Health Act 61 of 2003;
 - 1.2.3.16. “**Order**” shall mean a signed purchase order issued by or on behalf of the Customer and sent to Coloplast by email to customercaresa@coloplast.com, in terms of which the Customer requests to purchase the Products detailed therein from Coloplast;
 - 1.2.3.17. “**Order Response**” shall mean, in respect of any Order, an email from Coloplast to the Customer, confirming (i) receipt of the Order, and (ii) acceptance of the Order, more specifically confirmation by Coloplast of the description, quantity and purchase price of the Products ordered by the Customer;
 - 1.2.3.18. “**Parties**” shall mean collectively the Customer and Coloplast and “**Party**” shall mean either one of them, as the context may require;
 - 1.2.3.19. “**Price List**” shall mean Coloplast’s price list applicable from time to time to the sale of its Products;
 - 1.2.3.20. “**Products**” shall mean the ostomy care, continence care, wound care and skin care products made supplied by Coloplast from time to time;
 - 1.2.3.21. “**South Africa**” shall mean the Republic of South Africa;
 - 1.2.3.22. “**SAHPRA**” shall mean the South African Health Products Regulatory Authority, established in terms of the Medicines and Related Substances Amendment Act 14 of 2015;
 - 1.2.3.23. “**Special-Order Goods**” shall mean Products that are “Special-Order Goods” as defined in the CPA;
 - 1.2.3.24. “**Terms and Conditions**” shall mean these terms and conditions;
 - 1.2.3.25. “**Varied Order Response**” shall mean, in respect of any Order which Coloplast is only able to partially fulfil, an email from Coloplast to the Customer confirming (i) receipt of the Order, (ii) that quantity of the Products Coloplast is able to supply to the Customer together with confirmation of the description and purchase price of such Products, and/or (iii) a description of alternative Products to the Products specified in the Order Coloplast is able to supply, together with confirmation of the quantity and purchase price of such alternative Products;
 - 1.2.3.26. “**VAT**” shall mean Value Added Tax in terms of the Value Added Tax Act 89 of 1991; and

- 1.2.4. should any provision in a definition be a substantive provision conferring rights or imposing obligations on either Party, then effect shall be given to that provision as if it were a substantive provision in the body of these Terms and Conditions;
- 1.2.5. any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the signature date of the Customer Application Form, and as amended or replaced from time;
- 1.2.6. when any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a day which is not a Business Day in which case the last day shall be the next succeeding Business Day;
- 1.2.7. any schedule or annexure to these Terms and Conditions shall form part of, and be deemed incorporated in, these Terms and Conditions;
- 1.2.8. the use of the word "including", "includes", "in particular" or the like followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.2.9. the expiry or termination of these Terms and Conditions shall not affect those provisions which expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding the fact that the clauses themselves do not expressly provide this;
- 1.2.10. the use of any expression covering a process or proceeding available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous processes or proceedings under the law of such other jurisdiction;
- 1.2.11. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply, nor shall these Terms and Conditions be construed in favour of or against either Party by reason of the extent to which either Party or its professional advisors participated in the drafting or preparation of these Terms and Conditions;
- 1.2.12. records shall be binding on the Parties and are not merely for information purposes; and
- 1.2.13. any reference to an agreement requiring to be "in writing" or "written" shall mean that such agreement shall be reduced to writing and signed by the parties to such agreement in order to be binding on the Parties.

2. INTRODUCTION

- 2.1. These Terms and Conditions shall govern all transactions concluded between Coloplast and the Customer, whether past, present or future, in relation to the Products supplied by Coloplast to the Customer, including the supply of the Products by Coloplast to the Customer.
- 2.2. In the event of any conflict or inconsistency between these Terms and Conditions and any other terms and/or conditions contained in any other documentation of Coloplast or the Customer, the provisions of these Terms and Conditions shall prevail to the extent of such inconsistency or conflict, save where the Parties expressly agree, in writing, that any other terms and/or conditions contained in any other documentation will prevail.
- 2.3. In the event of any conflict or inconsistency between these Terms and Conditions and the CPA (to the extent that the CPA is applicable to the supply of the Products by Coloplast to the Customer), the provisions of the CPA shall prevail to the extent of such conflict or inconsistency.
- 2.4. The Customer undertakes to notify Coloplast in writing of any changes to the information contained in the Customer Application Form within 5 days of such change occurring. Notwithstanding the provisions of clause 21 below, Coloplast shall only be deemed to have received such notification once it has acknowledged receipt of such notification.

3. NOTICE OF LIMITATIONS AND RELATED MATTERS

The Customer's attention is drawn to those provisions contained in these Terms and Conditions which may -

- a. limit the risk or liability of Coloplast or any other person;**
 - b. constitute an assumption of risk or liability by the Customer;**
 - c. impose an obligation on the Customer to indemnify Coloplast or any other person for any cause; or**
 - d. be an acknowledgement of any fact by the Customer,**
- including those which have been bolded in a manner similar to this clause 3 and the Customer agrees that it has read and understood such provisions and the implications thereof.**

4. ORDERS

- 4.1. Orders must be addressed in writing to Coloplast and sent to the email address specified in **Schedule A** hereto.
- 4.2. Upon receipt of an Order, Coloplast shall, in its sole and absolute discretion, deliver an Order Response or a Varied Order Response.
- 4.3. Following the delivery of an Order Response, the Customer shall notify Coloplast in writing as soon as reasonably possible, but in any event no later than 2 Business Days after delivery of the Order Response, of any error in the description, quantity or price of the Products reflected in the Order Response or that it wishes to cancel or does not accept the Order Response, failing which the Customer shall be deemed to have accepted and be bound by such Order Response. Thereafter, Coloplast shall prepare an Invoice in respect of such Order Response, which it shall send to the email address of the Customer specified in the Customer Application Form.
- 4.4. If Coloplast is unable to supply the Products requested by the Customer in terms of an Order due to such Products being superseded, replaced, unavailable or for any other reason whatsoever, Coloplast shall be entitled to submit a Varied Order Response to the Customer for differing quantities and/or alternative Products to the Products specified in the Order, and the Customer shall have no recourse against Coloplast as a result of its inability to satisfy any Order.
- 4.5. Following the delivery of a Varied Order Response, the Customer shall notify Coloplast in writing as soon as reasonably possible, but in any event no later than 2 Business Days after delivery of the Varied Order Response, whether or not it accepts the Varied Order Response, failing which the Customer shall be deemed to have accepted and be bound by the Varied Order Response. Thereafter, Coloplast shall prepare an Invoice in respect of the Varied Order Response, which it shall send to the email address of the Customer specified in the Customer Application Form.

5. RISK AND OWNERSHIP

- 5.1. Risk in and to the Products shall pass to the Customer on delivery of the Products at the Delivery Premises.
- 5.2. Notwithstanding the transfer of risk as contemplated in clause 5.1, ownership in the Products shall remain vested in Coloplast until the Customer has made payment therefor in full to Coloplast.
- 5.3. While any amount is owed by the Customer to Coloplast in respect of any Products, the Customer shall be obliged to keep the Products concerned free of any lien, hypothec, encumbrance and/or attachment.
- 5.4. The Customer shall take all such steps as may be necessary to notify interested third parties and inform the owner or landlord (as applicable) of the premises at which the Products are kept of Coloplast's ownership of such Products and that such Products are therefore not subject to any landlord's hypothec.
- 5.5. The Customer shall fully insure all Products delivered to the Delivery Premises against loss or damage for the full aggregate purchase price until it has made full payment for such Products to Coloplast.
- 5.6. Coloplast shall be entitled to repossess, remove and/or otherwise recover the Products from the Customer or any third party placed in possession of the Products through the Customer, at the Customer's cost and expense, in the event of non-payment of any amount owed by the Customer to Coloplast in respect of such Products. To this end, the Customer irrevocably authorises and

empowers Coloplast to repossess, remove and/or otherwise recover such Products and **the Customer indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising which the Customer may suffer, incur or be subject to, resulting from, arising out of or relating to the aforesaid actions.**

6. DELIVERY

- 6.1. The Parties agree that time is not of the essence and dates for the delivery of the Products are approximate dates only and subject, *inter alia*, to the availability of the Products.
- 6.2. Coloplast shall endeavour to deliver, or have delivered via its delivery agent, the Products to the Delivery Premises within 3 Business Days after the delivery of the Order Received Response.
- 6.3. On delivery of the Products at the Delivery Premises, the Customer shall be responsible for receiving, off-loading and inspecting the Products in the presence of Coloplast's representative or delivery agent (as applicable).
- 6.4. Only Invoices for Products in excess of R1 000.00 (including VAT) in aggregate will enjoy free delivery by Coloplast or its delivery agent to the Delivery Premises. Invoices for Products less than R1 000.00 (including VAT) in aggregate will be subject to a charge equal to the amount charged by Coloplast's delivery agent and shall be payable by the Customer to Coloplast (as detailed in the Invoice).
- 6.5. Notwithstanding the provisions of clause 6.4, in the event that the Customer requests delivery of the Products (i) urgently, or (ii) earlier than the 3 Business Day period referred to in 6.2, Coloplast may (but shall not be obliged to) arrange delivery of the Products by its delivery agent on an urgent or earlier delivery basis and any delivery costs, associated therewith, will be for the Customer's account, irrespective of the aggregate purchase price for such Products as detailed in the applicable Invoice.
- 6.6. The Products shall be supplied by Coloplast in its standard, original packaging unless otherwise agreed by Coloplast in writing.
- 6.7. If the CPA applies to any supply of Products by Coloplast to the Customer –
 - 6.7.1. the Customer shall, on delivery at the Delivery Premises, have a reasonable opportunity to inspect the Products;
 - 6.7.2. the Customer shall be deemed to have accepted delivery of the Products at the Delivery Premises on the earliest of the following times -
 - 6.7.2.1. when the Customer expressly or implicitly communicates to Coloplast or its delivery agent (as applicable) that it has accepted delivery of the Products; or
 - 6.7.2.2. when the Products have been delivered to the Customer, and –
 - 6.7.2.2.1. the Customer does anything in relation to the Products that would be inconsistent with Coloplast's ownership of the Products; or
 - 6.7.2.2.2. after the lapse of a reasonable time, but in any event no later than 3 Business Days after delivery at the delivery Premises, the Customer retains the Products without intimating to Coloplast that it has rejected delivery thereof, subject to the Customer having a reasonable opportunity to examine the Products for the purpose of ascertaining whether (1) the Customer is satisfied that the Products are of the type and quality reasonably contemplated in the Order Response or Varied Order Response (and subject to any other criteria prescribed by the CPA), and (2) in the case of Special-Order Goods, reasonably conform to the material specifications of such Special-Order Goods.
 - 6.7.3. in the event –
 - 6.7.3.1. of delivery of Products that are of the incorrect quantity, type and/or quality, the Customer shall endorse Coloplast's copy of the Invoice, specifying details of incorrect quantity, type and/or quality and, within 3 Business Days of delivery, the Customer shall lodge a claim with Coloplast in relation to such incorrect type and quality, failing which the Customer shall be deemed to have accepted delivery of the Products;
 - 6.7.3.2. that Products are delivered in a defective or damaged state, the Customer shall endorse Coloplast's copy of the Invoice detailing the damage or defects, and, within 3 Business Days of delivery, the Customer shall notify Coloplast of such damage or defects in the Products delivered, failing which the Customer shall be deemed to have accepted delivery of the Products;
 - 6.7.4. on compliance by the Customer with clauses 6.7.3.1 and 6.7.3.2 above, and should Coloplast agree with the information provided, Coloplast will either correct the delivery of Products, as to quantity, type and/or quality, or replace the damaged or defective Products, as the case may be;
 - 6.8. If the CPA does not apply to any supply of Products by Coloplast to the Customer -
 - 6.8.1. the Customer shall, on delivery of the Products at the Delivery Premises, have a reasonable opportunity to inspect the Products;
 - 6.8.2. the Customer shall be regarded to have accepted delivery once the Products are delivered at the Delivery Premises, subject to the provisions of clause 6.8.3;
 - 6.8.3. at the time of delivery or as soon as possible thereafter, and by no later than 2 Business Days after delivery of the Products at the Delivery Premises, the Customer shall inspect the Products to determine whether the Products are of the correct quantity, type and/or quality detailed in the Order Response or Varied Order Response, and to determine whether any of the Products delivered are damaged or defective as at the time of delivery;
 - 6.8.4. the Customer shall notify Coloplast in writing if any of the Products are found to be of incorrect quantity, type and/or quality, or if any of the Products were damaged or defective, which notice shall be delivered to Coloplast in writing immediately upon detection but in any event no later than 2 Business Days after delivery of the Products. Failing such inspection and notice in during this period, the Customer shall be deemed to have accepted such Products;
 - 6.8.5. on compliance by the Customer with clauses 6.8.1 to 6.8.4 above, and should Coloplast agree with the information provided, Coloplast will either correct the delivery of Products, as to quantity, quality and/or type, or replace the damaged or defective Products, as the case may be, and the Customer will have no other recourse against Coloplast in respect of the Products delivered pursuant to such Order Response or Varied Order Response.
 - 6.9. The Customer acknowledges that it is aware that the Products may require specialised handling and/or storage on delivery (as indicated in the packaging or labels instructions for use) and that **Coloplast shall not be responsible for any deterioration of or damage to the Products that may occur as a result of the Customer's failure to follow the handling and storage instructions precisely.**

7. PAYMENT

- 7.1. The Customer shall be liable to pay Coloplast the aggregate purchase price for Products set out in the Invoice.
- 7.2. The Customer shall effect payment to Coloplast without set-off, deduction, bank or other charges, commissions or withholding of any nature –
 - 7.2.1. if the Customer does not have an account facility, by way of electronic funds transfer, in cleared funds, which funds must clear in Coloplast's bank account, prior to delivery of the Products; or
 - 7.2.2. if the Customer does not have an account facility, in cash at the time of delivery of the Products; or
 - 7.2.3. if the Customer has a valid account facility with Coloplast and such account facility has not been cancelled or withdrawn by Coloplast or the Customer, in accordance with the payment terms communicated in writing to the Customer by Coloplast pursuant to acceptance by Coloplast of the application made in terms of the Customer Application Form.
- 7.3. The Customer shall pay Coloplast any taxes and/or levies applicable to Products which are the subject of an Invoice at the then prevailing rate. If any payments due to Coloplast are subject

to withholding tax, the Customer shall pay Coloplast an additional amount equal to such taxes so that Coloplast receives the full payment that is due to it.

- 7.4. Coloplast shall be entitled to set-off any amounts that it owes to the Customer against any amounts that the Customer owes to Coloplast and such set-off shall be effective as soon as Coloplast notifies the Customer in writing of the set-off.
- 7.5. **The Customer carries all risk associated with and arising from the method elected to effect payment to Coloplast.**
- 7.6. Coloplast may allocate any payments from the Customer to any such outstanding amounts as it in its sole discretion deems fit.

8. BREACH

- 8.1. If the Customer breaches any provision of these Terms and Conditions, or suffers any civil judgment being taken or entered against it, or commits an act of insolvency, or is placed under sequestration, liquidation (whether provisional or final, voluntary or compulsory) or takes steps or steps are taken against it to commence business rescue proceedings, or makes or attempts to make any offer of compromise with its creditors generally or sells its business, Coloplast shall, without prejudice to any other remedies that it has available to it in law or in terms of these Terms and Conditions, and without prejudice to any accrued rights, be entitled to -
 - 8.1.1. terminate any account facility which the Customer may have (if applicable); and/or
 - 8.1.2. suspend or cease performance of its obligations to the Customer until the Customer's breach has been remedied to Coloplast's satisfaction; and/or
 - 8.1.3. summarily cancel any Order Response or Varied Order Response in relation to which Coloplast has not yet performed; and/or
 - 8.1.4. repossess any Products which have not been paid for; and/or
 - 8.1.5. and/or claim specific performance of all the Customer's obligations whether or not such obligations have fallen due for performance, in all events without prejudice to Coloplast's right to claim damages.

9. GUARANTEE

Notwithstanding anything else contained herein to the contrary, Coloplast reserves the right, prior to submitting an Order Response, Varied Order Response, Invoice, delivering any Products to the Customer and/or entering into any transaction with the Customer, to request the Customer, who shall be obligated, to provide a guarantee to secure the fulfillment of the Customer's obligations, including but not limited to the Customer's obligation to pay any amounts due to Coloplast in respect of any Products. The identity of the guarantor shall be subject to acceptance of Coloplast, and the guarantee shall be on terms acceptable to Coloplast.

10. RETURN OF PRODUCTS

- 10.1. If the CPA applies to any supply of Products by Coloplast to the Customer -
 - 10.1.1. subject to the provisions of clauses 10.1.4 and 10.1.5 below, if the Customer is entitled in terms of the CPA to return any Products delivered to it, it shall ensure such Products are returned to Coloplast within 10 Business Days of the date of delivery of such Products to the Customer, against which any consideration paid by the Customer for such Products shall be refunded;
 - 10.1.2. subject to the provisions of clause 10.1.4 below, the Products referred to in clause 10.1.1 must be returned to Coloplast at Coloplast's risk and expense;
 - 10.1.3. notwithstanding anything in these Terms and Conditions to the contrary, the Customer may, without penalty and at Coloplast's risk and expense, within 6 months of the date of delivery of any Products, return failed, unsafe or defective Products to Coloplast and request that Coloplast either replace such Products or refund to the Customer the price paid for such Products, if Coloplast has delivered Products that fail to meet the implied warranty of quality as contemplated in the CPA;
 - 10.1.4. the Customer may rescind that transaction with Coloplast if it resulted from direct marketing by Coloplast (as contemplated in

the CPA), on written notice to Coloplast, within 5 Business Days after the later of the date on which -

- 10.1.4.1. the date on which the transaction was concluded; or
 - 10.1.4.2. the Products that were the subject matter of the direct marketing were delivered to the Customer,
- in which event the Customer must return such Products to Coloplast, at the Customer's risk and expense, by no later than 10 Business Days after such Products were delivered to the Customer, and Coloplast will refund the proceeds received from the Customer for such Products less any amounts charged as may be allowable in terms of the CPA; and
- 10.1.5. notwithstanding anything in these Terms and Conditions to the contrary, subject to the CPA, Coloplast reserves the right to charge a handling fee for the return of any Products of an amount of up to 10% of the aggregate purchase price (excluding VAT) of the returned Products, which fee is payable by the Customer on demand. The Customer agrees that such fee constitutes a reasonable fee as contemplated in the CPA.
 - 10.2. Notwithstanding clause 10.1, if the CPA applies to the supply of any Products by Coloplast to the Customer, Products delivered to the Customer may not be returned by the Customer if -
 - 10.2.1. for reasons of public health or otherwise, a public regulation (as defined in the CPA) prohibits the return of those Products to Coloplast once they have been delivered to, or at the direction of, the Customer, including where relevant, the End User; or
 - 10.2.2. after having been supplied to, or at the direction of, the Customer, such Products have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.
 - 10.3. If the CPA does not apply to any supply of Products by Coloplast to the Customer:
 - 10.3.1. save for Products found to be damaged or defective on delivery (which will be dealt with in accordance with the provisions of clause 6.8), Coloplast may, in its sole discretion and only after providing written confirmation to the Customer, accept return of such Products, provided that such Products -
 - 10.3.1.1. are in a saleable condition;
 - 10.3.1.2. have a remaining shelf life of no less than 6 months from the expiry date of the relevant Products;
 - 10.3.1.3. have been stored in accordance with prescribed procedures;
 - 10.3.1.4. are in their original, complete and unbroken packaging;
 - 10.3.1.5. are returned to Coloplast within 10 Business Days of the delivery date of such Products; and
 - 10.3.2. notwithstanding anything in these Terms and Conditions to the contrary, Coloplast reserves the right to charge a handling fee for the return of any Products of an amount of up to 10% of the aggregate purchase price (excluding VAT) of the returned Products, which fee is payable by the Customer on demand.
 - 10.4. Notwithstanding clause 10.3 above, if the CPA does not apply to the supply of any Products by Coloplast to the Customer, Products delivered to the Customer, may not be returned by the Customer if -
 - 10.4.1. the Products are not in a saleable condition;
 - 10.4.2. the Products have deteriorated because of improper storage, damaged due to fire, water or other such elements;
 - 10.4.3. for reasons of public health or otherwise, a public regulation (as defined in the CPA) prohibits the return of those Products to Coloplast once they have been delivered to, or at the direction of, the Customer, including where relevant, the End User;
 - 10.4.4. after having been delivered to, or at the direction of, the Customer, including where relevant, the End User, the Products have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property (to the extent applicable); or
 - 10.4.5. the Customer is unable to submit satisfactory proof of purchase of the Products from Coloplast.

11. ACCOUNT FACILITY AND CREDIT RECORD

- 11.1. The Customer acknowledges that the granting of an account facility to it by Coloplast to purchase Products on account is at the sole discretion of Coloplast.
- 11.2. If the Customer has applied in the Customer Application Form for an account facility, Coloplast's decision in this regard will be communicated to the Customer in writing.
- 11.3. Coloplast reserves the right to cancel, suspend, withdraw, vary or amend the Customer's account facility at any time if the Customer has breached any of these Terms and Conditions.
- 11.4. Whatever limit is granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to Coloplast.
- 11.5. In the event that the Company withdraws or cancels the Customer's account facility, all amounts owing by the Customer to Coloplast shall immediately become due, owing and payable.
- 11.6. The Customer acknowledges that a certificate signed by a director or manager of Coloplast as to the existence and amount of the balance outstanding on the indebtedness and as to the fact that such amount is due and payable and as to any other terms relating to the indebtedness of the Customer to Coloplast, shall be prima facie proof of the contents and correctness thereof and of the amount of and terms of the indebtedness of the Customer to Coloplast and shall be sufficient for the purposes of provisional sentence or summary judgment or any other litigation proceedings and shall be valid as a liquid document for such purposes. Such a certificate shall be deemed to be of sufficient particularity for the purpose of pleading or trial in any action or other proceedings instituted by Coloplast against the Customer.
- 11.7. The Customer hereby consents to Coloplast, or a third party acting on behalf of Coloplast, obtaining a credit report in respect of the Customer from any recognised credit agency from time to time, which report may include personal information of the Customer and its credit record and history. The Customer agrees and undertakes to cooperate and provide such reasonable assistance which Coloplast may require in order to obtain such reports from time to time.
- 11.8. The Customer agrees and consents that Coloplast shall be entitled to record any adverse credit record with any recognised credit agencies. The Customer further agrees and consents that any application for an account facility with Coloplast may be reported to and recorded by any recognised credit agencies, and details of the conduct of the account holder (being the Customer) may be given to and duly recorded by and shared with recognised credit agencies. **The Customer hereby indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising, which the Customer may suffer, incur or be subject to resulting from, arising out of or relating to the aforesaid actions.**

12. USE OF THE PRODUCTS

The Customer shall ensure that the Products are used in accordance with the instructions for use supplied with the Products. The Customer further undertakes that all warnings displayed on the Products and/or their packaging, at the time of delivery, shall not under any circumstances be removed, defaced or obscured. **The Customer hereby indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising, which the Customer may suffer, incur or be subject to resulting from, arising out of or relating to any non-compliance with the aforesaid.**

13. QUALITY AND SAFETY

- 13.1. The Products are certified under the "CE Mark", which signifies that the Products have been assessed to satisfy stringent EU safety, health and environmental protection requirements. In addition, as the Products are registered with SAHPRA, which signifies that the Products meet requirements for quality, safety and performance as determined in accordance with the Medicines and Related Substances Act 101 of 1965 ("MRSA").
- 13.2. Notwithstanding clause 13.1 above, as with any medical device (as defined in the MRSA), the effectiveness of the Products supplied pursuant to these Terms and Conditions depend on various factors including, but not limited to –

- 13.2.1. the health status of the Customer, or the Customer's client (including the End User);
 - 13.2.2. the way the Products are used;
 - 13.2.3. the extent to which the instructions for use and warnings, as indicated on the packaging, are followed and considered respectively;
 - 13.2.4. the extent to which instructions issued by a healthcare provider are not followed by the Customer; and
 - 13.2.5. the extent to which the Products have been altered in any manner whatsoever.
- 13.3. In terms of the NHA, a person receiving treatment in a health establishment (as defined in the NHA) is required to be informed by a healthcare provider (as defined in the NHA) of (i) the range of diagnostic procedures and treatment options generally available, (ii) the benefits, risks, costs and consequences generally associated with each option. If –
- 13.3.1. the Customer is a healthcare provider (as defined in the NHA), the Customer warrants that it has informed its ultimate customer, an End User, of the aspects referred to in clause 13.3 and has obtained the End User's informed consent to supply the End User with the Products;
 - 13.3.2. the Customer is an End User, the Customer warrants that it has been informed by his/her healthcare provider on the aspects referred to in clause 13.3 and has provided his/her informed consent to be supplied with the Products;

the Customer hereby indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising, which the Customer may suffer, incur or be subject to resulting from, arising out of or relating to any non-compliance with the aforesaid.

14. NO REPRESENTATION OR WARRANTY

- 14.1. Save as otherwise expressly provided for herein, and subject to the CPA (if applicable) –
 - 14.1.1. all performance figures or results in relation to the Products furnished by or on behalf of Coloplast to the Customer from time to time are based on general experience and expectations, and Coloplast makes no representation and gives no warranty as to the accuracy thereof or the suitability or use of the Products for any purpose whatsoever and shall accordingly only be bound to the extent specifically guaranteed by Coloplast in writing to the Customer; and
 - 14.1.2. any recommendation or assistance provided by Coloplast concerning the use, design or application of the Products shall not be construed as representation or warranty of any kind and such information is accepted by the Customer at the **Customer's own risk and without any obligation or liability to Coloplast. It is the Customer's sole responsibility to determine the suitability of the Products for the use in the Customer's application(s). Failure by Coloplast to make recommendations or aid shall not give rise to any liability on the part of Coloplast.**

15. INDEMNITY

- 15.1. **Without derogating from the generality of any of the provisions herein, and subject to the CPA (where applicable), Coloplast shall not at any time be liable for any claims of whatsoever nature and howsoever arising for direct, indirect or consequential loss or damage which may be sustained by the Customer or any of the Customer's clients (being the End User) in connection with the use of the Products and the Customer hereby indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising, which the Customer may suffer, incur or be subject to, resulting from, arising out of or relating to the use of the Products.**
- 15.2. The Products are sold subject to Coloplast's specifications, recommendations and instructions for use. **Failure to adhere to these may result in damage, injury or harm.**

16. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

- 16.1. The Customer acknowledges and agrees that –

- 16.1.1. Coloplast or its Affiliates is/are the owner/s of all intellectual property rights in respect of the Products, including, without limitation, all trademarks, patents, designs, goodwill, trade secrets, know-how, copyright and logos, whether registered or not ("**Coloplast IP**");
- 16.1.2. its only right in respect of any of the Coloplast IP is to access and use same for such purposes as may be contemplated in these Terms and Conditions; and
- 16.1.3. no ownership or other rights whatsoever is granted to the Customer in respect of any of the Coloplast IP, other than as may be expressly set out herein.
- 16.2. The Customer shall -
- 16.2.1. not do or omit to do anything or permit any act or omission by which the validity, goodwill and reputation associated with any of the Coloplast IP might be diminished or jeopardised;
- 16.2.2. not challenge Coloplast or any of its Affiliates' ownership of and/or other rights to any of the Coloplast IP in any manner whatsoever;
- 16.2.3. sign and execute any additional waivers or confirmations as Coloplast may require from time to time in order to confirm the ownership of the Coloplast IP; and
- 16.2.4. not do or permit any act or omission which may in any way adversely affect the continued validity and/or enforceability of any of Coloplast's rights in respect of any of the Coloplast IP.
- 16.3. The Customer agrees and undertakes not to use, exploit or disclose any of Coloplast's confidential information as to the methods of manufacture, plans, drawings, price lists, documents or any other information relating to the Products.

17. FORCE MAJEURE

Neither Party shall be in breach of these Terms and Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Terms and Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

18. MONITORING AND RECALL

- 18.1. The Customer undertakes to report product failures, defects and any Adverse Events to Coloplast without delay. Such reports must be sent in writing to customercaresa@coloplast.com.
- 18.2. Coloplast may recall Products for purposes of replacement, and upon written notice of a recall of any Products, the Customer shall immediately (i) cease using such Products, (ii) cease supplying such Products to End Users (to the extent applicable) and (iii) shall immediately notify its customers (End Users) not to use such Products and to make immediate arrangements for the return of such Products.
- 18.3. In the event that Coloplast recalls any Products as contemplated in clause 18.2, Coloplast shall either replace the Products, or refund the Customer for such Products, at the Customer's election.

19. DATA PRIVACY

- 19.1. Coloplast and the Customer undertake that to the extent that either of them shall be collecting, using and/or processing the personal information of one another or any End User or any other third party/parties retained by either Coloplast or the Customer, Coloplast and the Customer shall do so in accordance with all Applicable Laws.

20. ANTI-BRIBERY AND ANTI-CORRUPTION

- 20.1. The Customer represents and warrants to Coloplast that it, and to the extent applicable its owners, directors, officers, employees, sub-contractors and agents will at all times act in full compliance with any applicable anti-corruption laws and regulations, industry and professional codes of conduct and will not offer, promise or pay or arrange for payment or giving of a bribe or any benefit, advantage or anything of value to any public official, individual, entity or any other third party in exchange for an improper advantage in any form either directly or indirectly.

- 20.2. Any violation of this clause 20 by the Customer shall constitute a material breach of these Terms and Conditions and will allow Coloplast to terminate any Order with immediate effect.
- 20.3. The Customer shall report any violation or potential violation of this clause 20 to Coloplast immediately upon the Customer becoming aware thereof.
- 20.4. **The Customer hereby indemnifies Coloplast against any and all claims, liabilities, damages, costs and expenses of any kind and howsoever arising which Coloplast may suffer, incur or be subject to resulting from, arising out of or relating to a breach by the Customer of this clause 20.**

21. DOMICILIUM

- 21.1. The Customer chooses as their address/details where they will receive service of all legal process, notices and communications in respect of these Terms and Conditions, the Customer's physical address and the Customer's email address as set out in the Customer Application Form.
- 21.2. Any notice or communication required or permitted to be given pursuant to these Terms and Conditions shall be valid and effective only if in writing, provided that it shall be competent to give notice by way of email.
- 21.3. A Party may change its domicilium (its physical address or email address) by furnishing the other Party with 7 days' written notice of its new physical address, provided that the change will only become effective from the 7th Business Day from the deemed receipt of notice by the other Party.
- 21.4. A party will be deemed to have received a notice at its domicilium on -
- 21.4.1. the 7th day after posting if sent by prepaid registered post in a correctly addressed envelope to its domicilium;
- 21.4.2. the date day of delivery, if delivered by hand to a responsible person at its domicilium;
- 21.4.3. the date of despatch, if sent by email to its chosen mail address.
- 21.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by the Customer shall be adequate and valid, notwithstanding that it was not sent or delivered at its chosen domicilium.

22. DISPUTE RESOLUTION

- 22.1. These Terms and Conditions and all transactions between the Customer and Coloplast which are subject to these Terms and Conditions shall be governed by and be decided upon in accordance with the laws of South Africa.
- 22.2. Any dispute arising from or in connection with these Terms and Conditions shall, in the first instance, be referred for mediation in accordance with the Arbitration Foundation of Southern Africa ("**AFSA**") mediation guidelines, the place of the mediation of the dispute shall be Johannesburg. Each Party undertakes to cooperate in good faith with the mediator in the conduct of the mediation of the dispute.
- 22.3. If a settlement is not reached in the mediation of a dispute -
- 22.3.1. the submission of the dispute to mediation shall not prejudice any of the Parties' rights; and
- 22.3.2. the dispute (or such part thereof which is not settled pursuant to the mediation) shall, if so requested by either Party, be finally resolved in terms of clause 22.4 below.
- 22.4. Any dispute arising from or in connection with these Terms and Conditions or its termination which has not been resolved pursuant to clauses 22.2 or 22.3 above shall, if so requested by either Party, be finally resolved by an arbitrator agreed to between the Parties and, failing such agreement, within 3 days of a request therefor by either Party, appointed by the chairman for the time being of the Johannesburg Bar Council (or such other person as may be agreed to by the Parties). The arbitration shall be conducted in accordance with the AFSA Rules for Expedited Arbitrations or such other rules as may be determined by the arbitrator, alternatively agreed to by the Parties, with no right of appeal. The arbitration shall be held in Johannesburg.
- 22.5. The Parties agree that the written demand by either Party in terms of this clause 22 that the dispute be submitted to arbitration is to be

deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act 68 of 1969, as amended or re-enacted from time to time.

- 22.6. Notwithstanding anything to the contrary contained in this clause 22, neither Party shall be precluded from instituting any injunctive or mandatory or similar proceedings in any appropriate court of competent jurisdiction and, if successful, being granted appropriate injunctive or mandatory relief.
- 22.7. For the purposes of clause 22.5 above, for the purposes of having any award made by the arbitrator being made an order of court and for any other purpose relating to these Terms and Conditions, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 22.8. This clause 22 -
- 22.8.1. is severable from the rest of the Terms and Conditions and shall, notwithstanding the termination, cancellation, invalidity or alleged invalidity of any of the provisions hereof or any part of it for any reason, remain in full force and effect;
- 22.8.2. constitutes an irrevocable consent by the Parties to any proceedings in terms hereof and neither Party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause 22. For the purposes of this clause 22 "proceedings" shall include proceedings referred to in clause 22.5.
- 22.9. Notwithstanding clauses 22.2 to 22.7, if the CPA applies to a transaction between Coloplast and the Customer, the Customer may refer any dispute arising out of these Terms and Conditions to a dispute resolution agent (as defined in the CPA) as provided for in the CPA.
- 22.10. Notwithstanding what is stated in 22.2 to 22.8 above, any legal proceedings which arise out of or in connection with these Terms and Conditions may, at the election of Coloplast, be instituted in the Magistrate's Court notwithstanding that the amount may otherwise exceed the jurisdiction of the Magistrate's Court. Notwithstanding the consent to the jurisdiction of the Magistrate's Court, Coloplast reserves the right to approach the High Court of South Africa.

23. GENERAL

- 23.1. These Terms and Conditions, as read with the Customer Application Form, shall be the sole record of the agreement between the Parties in relation to its subject matter and supersedes all prior agreements or understandings between the Parties relating to the subject matter hereof.
- 23.2. Neither Party shall be bound by any representation, warranty, promise or the like not recorded in this document.
- 23.3. Nothing contained herein shall place any obligation on Coloplast to deliver an Order Response or a Varied Order Response and/or to supply Products to the Customer following the receipt of an Order, and similarly nothing contained herein shall place any obligation on the Customer to submit Orders to Coloplast from time to time.
- 23.4. The Customer shall ensure that the terms and conditions under which it on-sells the Products to End Users (if applicable) are no better, as to title, than those contained in these Terms and Conditions and warrants that its terms and conditions in terms of which the Customer on-sells to End Users comply with the provisions of the CPA (to the extent applicable).
- 23.5. Neither Party shall be entitled to cede its rights or delegate its obligations contained in these Terms and Conditions, nor shall it be entitled to otherwise assign its rights and obligations or enter into any sub-contract with any other party, without the prior written consent of Coloplast.
- 23.6. All provisions in these Terms and Conditions are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of these Terms and Conditions which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, including where a term is found to be unfair, unjust, unreasonable or unenforceable, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of these Terms and Conditions shall be of full force and effect. The Parties declare that it is their intention that these Terms and Conditions would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 23.7. No addition to or variation or novation of these Terms and Conditions shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 23.8. A certificate issued by any manager of Coloplast whose authority, appointment and signature it shall not be necessary to prove, that certifies any indebtedness of the Customer to Coloplast, delivery of Products to the Customer or any other fact shall be accepted as proof of such indebtedness or delivery or such other fact, unless the Customer proves otherwise.
- 23.9. No relaxation or indulgence by either Party shall prejudice or be deemed to be a waiver of that Party's rights in terms hereof.
- 23.10. No suspension of a right to enforce any term of these Terms and Conditions and no *pactum de non petendo* shall be of any force or effect unless in writing and duly signed by or on behalf of the Parties.
- 23.11. No provision of these Terms and Conditions constitutes a stipulation for the benefit of any Person who is not a Party to these Terms and Conditions unless the provision in question expressly provides otherwise.
- 23.12. A Party that successfully enforces or defends its rights contained in these Terms and Conditions shall be entitled to recover from the other Party all legal costs incurred by the successful Party on the scale as between attorney and own client, including tracing agents costs and collection commission.
- 23.13. No remedy conferred by these Terms and Conditions is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a Party shall not constitute a waiver by such Party of the right to pursue any other remedy available at law.

COLOPLAST A-S DETAILS

Full Name	Coloplast A-S External Profit Company
Registration Number	1994/008553/10
Physical Address	Coloplast A/S, 61 Katherine Street, Sandton, 2196
Postal Address	Coloplast A/S, 61 Katherine Street, Sandton, 2196
Switchboard Telephone Number:	+27 700 5000 +27 0861 265 675 +27 0861 COLOPLAST
Orders	customercaresa@coloplast.com
Queries	customersupportsa@coloplast.com
Medical Aid Consumers	dtcsa@coloplast.com
Coloplast Care	+27 0861 612 273
Accounts	debtors.za@coloplast.com