Metagenics®

Genetic Potential Through Nutrition

Australia and New Zealand – Metagenics

Terms and Conditions of Sale:

A. General

1. These terms and conditions apply to every sale or supply of Products made by Metagenics (Aust) Pty Ltd and Metagenics (NZ) Pty Ltd (**Metagenics/Us/We**) to healthcare Practitioners or to clinics (including In-Store Clinics) where Healthcare Practitioners carry on their business (**Practitioner/You**):
   a. for personal use by the Practitioner;
   b. for on-supply to patients of the Practitioner; or
   c. in circumstances where the Practitioner assists and authorises direct purchases by the patient from the Metagenics website.

These Terms and Conditions are in addition to our Privacy Policy which can be found on our website (together referred to as the **Terms and Conditions**) and form an Agreement between You and Metagenics.

2. For the purposes of these Terms and Conditions, **Practitioner** means either:
   a. a health professional with appropriate qualifications as approved in writing by Metagenics;
   b. a registered member of an association listed in Schedule 1 of the Therapeutic Goods Regulations; or
   c. a health practitioner as defined by the Australian Health Practitioner Regulation Agency (AHPRA); Chinese Medicine Practitioner, Chiropractor, Dental Practitioner, Medical Practitioner, Medical Radiation Practitioner, Nurse, Midwife, Occupational Therapist, Optometrist, Osteopath, Paramedic, Pharmacist, Physiotherapist, Podiatrist and/or Psychologist.

B. Supply of Products – Practitioner Only Products

3. Metagenics is a Practitioner-only range of products (**Products**) that can only be:
   a. acquired by a Practitioner for personal use
   b. supplied to a Practitioner's patients in a consultation situation in person or by virtual consultation, consistent with the Practitioner's professional regulations, association and code of conduct;
   c. acquired through the Metagenics Patient Order System (Metagenics Website) under Practitioner oversight; or
   d. acquired by a patient with a Prescription (as defined in section 4b. below).
4. The Practitioner must only supply the Products if:
   a. the Practitioner:
      i. operates a clinic or store and has a dedicated consultation room or dedicated and defined seated consulting area.
      ii. prescribes Products to a patient in the context of a full consultation, consistent with the Practitioner's professional association, regulations and code of conduct.
   b. a prescription is supplied which must include:
      i. Practitioner's name and clinic details;
      ii. Patient name and date of birth;
      iii. Date of Consultation; and
      iv. Products to be dispensed, dosage, duration and number of repeats (if required).
5. Because Metagenics products are not commercially available for purchase by the general public, Practitioners must ensure that no Metagenics products, or product information are on display in a public walk-in retail environment. Under no circumstances should Metagenics products be displayed on retail shelves, nor should they be sold after a 'shop floor' consultation.
6. Metagenics permits Practitioners to use in clinic and online (via website or social media) brand and Product details as follows:
   a. Public access areas of Practitioner websites and social media may include:
      i. Metagenics Product images and label content (available in an approved form from Metagenics directly); and
      ii. Metagenics logo;
   b. It is the responsibility of the Practitioner that any public facing Metagenics imagery must be in accordance with the Therapeutics Goods Administration Advertising Code and the Practitioner's professional association, regulations and code of conduct.
   c. Pricing should only be made available in a secure log-in section of Practitioner's website for prescribed Products.
   d. Online supply of Products must occur via secure log-in section for patients. Online patients can only access Products that have been prescribed to them and should not have access to non-prescribed Products.

C. Payment

7. Practitioners who have been approved for a credit account must pay all invoices within 30 days in Australia, and 20 days in New Zealand, after the end of the month in which the Products were delivered. If payment is not made within 40 days after the end of the month in which the Products are delivered, then without prejudice to any other remedy available to Metagenics at law, Metagenics will be entitled to an amount, as liquidated damages and not as a penalty, which is equal to 1.5% per month (18% per annum) calculated daily on the outstanding balance. Metagenics reserves the right to withdraw credit facilities at any time at its sole discretion.
8. Practitioners who order on a cash account basis acknowledge that cash payment must be received in full within 5 business days of the order being placed and that Metagenics will only dispatch their order once it has received full payment in cleared funds. If payment has not been received by Metagenics within 5 business days, orders will be cancelled.
9. Where the Practitioner assists and authorises the Practitioner's patients to set up an account with and purchase Products from Metagenics, the Practitioner acknowledges and agrees:
   a. that patients who acquire Products in such circumstances purchase Products directly from Metagenics, not from the Practitioner;
   b. that any payment obligation owed by the patient is owed to Metagenics, not to the Practitioner; and
   c. that at no time in the course of such a transaction does Practitioner acquire any rights or title in or to Products ordered by the patient;
   d. unless the Practitioner has opted out of Patient Order Rebates, once Metagenics has received full payment in respect of patient orders in cleared funds, Metagenics will provide Practitioner with a detailed account of all patient orders made and credit the Practitioner's account for the total difference between wholesale and retail prices for products ordered.
10. In circumstances where the Practitioner must pay Metagenics in relation to Products ordered by the Practitioner's patients, Metagenics will issue an invoice and the Practitioner must pay all such invoices within 10 days after receipt of the invoice. If payment is not made within 20 days after receipt of the invoice, then without prejudice to any other remedy available to Metagenics at law, Metagenics will be entitled to an amount, as liquidated damages and not as a penalty, which is equal to 1.5% per month (18% per annum) calculated daily on the daily outstanding balance.

D. Ordering and Dispatch

11. The Metagenics ordering department is open to receive orders for Products between 8:00 a.m. and 5:00 p.m. Monday to Friday QLD time, and for New Zealand, 8.00 a.m. to 5.00 p.m. Monday to Friday, Auckland time.
12. For Practitioners on credit account, every reasonable effort will be made to dispatch orders received prior to 2:00 p.m. on the day of receipt of the order. Orders received after 2:00 p.m. will be dispatched the following business day. Orders received after 2:00 p.m. on a Thursday for Products requiring refrigeration will be dispatched the following Monday.
13. For Practitioners on cash account, every reasonable effort will be made to dispatch an order on the day that cleared payment funds are received by Metagenics, where the funds are received prior to 2:00 p.m. Where cleared funds pertaining to an order are received after 2:00 p.m., the order will be dispatched the following business day.
14. Notwithstanding the above, Metagenics will not accept an order if:
   a. a Product ordered is out of stock;
   b. it suspects fraudulent activity or violation by the Practitioner of any warranties, acknowledgements or other obligations under these terms and conditions; or
   c. it identifies a Product or pricing error.
15. If Metagenics does not accept or is unable to fulfil an order, the Practitioner will be notified of this as soon as possible.

E. Title and Risk

16. For Practitioner orders made directly to Metagenics, title in the Products remains with Metagenics, and does not pass to the Practitioner until Metagenics has been paid in full, in cleared funds by the Practitioner. Until ownership of the Products passes to Practitioner, Practitioner must not sell, dispose of, or otherwise part with possession of the Products other than in the ordinary course of business. If the Practitioner sells, disposes of or parts with possession of the Products before ownership has passed, then the Practitioner will hold the proceeds of any such sale, disposal or act on trust for Metagenics and must pay or deliver the proceeds to Metagenics in accordance with the payment terms above.
17. For Practitioner orders, risk in the Products passes to the Practitioner on delivery to the Practitioner's nominated address.

F. Credits and Returns

18. Credit will not be provided in respect of returned Products unless:
   a. the Products were:
      i. supplied in error; or
      ii. damaged in transit; and
   b. a request for credit is lodged with Metagenics within 24 hours of the Practitioner's receipt of the Products; and
   c. the Products are returned in accordance with Metagenics' instructions within 7 days from the date they were originally dispatched by Metagenics to Practitioner, accompanied by an approved Return Authority Number and signed return assessment form issued by Metagenics.

G. Warranties and Acknowledgements

19. By using Metagenics' Patient Order System (Metagenics website) to purchase Products, and/or by continuing to transact with Metagenics, Practitioner warrants that:
   a. it has read and understood these terms and conditions;
   b. the information it provides to Metagenics about itself and its business is current and correct;
   c. the information it provides to Metagenics about any patient of the Practitioner is current and correct and the Practitioner has obtained all required consents and complied with all legal obligations, including under relevant privacy laws, in relation to the disclosure of such information to Metagenics, including but not limited to having obtained the patient's consent to the collection and disclosure to Metagenics of any personal information of the patient; and
   d. it will comply with all of these terms and conditions and all applicable laws, regulations and industry codes of practice and any reasonable instructions regarding Metagenics products as may lawfully be given by Metagenics from time to time.
20. Practitioner understands and acknowledges that the use of the Metagenics Patient Order System (Metagenics website) to order Products on the Practitioner's own account for on-supply to patients and/or to recommend, authorise and assist patients to purchase Products, in no way restricts the pricing at which the Practitioner on-supplies those Products to its patients, for example during a personal consultation. For the avoidance of doubt, the Recommended Retail Prices (RRPs) specified on Metagenics' Patient Order System (Metagenics website) are recommendations only and Practitioner is free to on-supply Products to its patients at such other prices as it deems fit.
21. Products displayed on Metagenics' order form may not be available or be exactly as described. Metagenics will use its best endeavours to ensure that Product details, descriptions, images and prices appearing on its order form are correct at the time the relevant information was included in the order form. However, to the extent permitted by law, Metagenics does not warrant that the Product descriptions, colours or other Product information available on the order form are accurate, complete, reliable, current, or error-free.
22. Legislation, including the *Competition and Consumer Act 2010* (Cth), may imply certain warranties and conditions, where the exclusion of such conditions or warranties from an agreement would contravene a statute or cause part or all of the agreement to be void (**Non-excludable Conditions**). Nothing in these terms and conditions excludes any such Non-excludable Conditions.
23. Unless specified otherwise, and to the extent permitted by law, Metagenics makes no express or implied warranties or representations to Practitioner and expressly excludes all warranties, representations, conditions, terms and guarantees implied by statute, general law, international convention or custom, including, without limitation, any and all implied warranties with respect to acceptable quality, fitness for purpose, title and non-infringement.

H. Termination of Supply

24. Metagenics reserves the right in its absolute discretion to suspend or cancel a Practitioner's account at any time. This includes in circumstances where the Practitioner is in the employ of a competitor of Metagenics.

I. Limitation of Liability

25. To the extent permitted by law:
   a. Metagenics' liability for breach of any Non-excludable Condition will be limited at Metagenics' option to the supply of the Product again or payment of the cost of supplying the Product again.
   b. In any event, Metagenics' liability to Practitioner for any loss or damage shall not exceed the total amount Metagenics actually received from Practitioner for the Product which gave rise to the loss or damage.
   c. Metagenics will not be liable in any event for any consequential, indirect, incidental, special, punitive or exemplary damages, or any loss of profits or loss or corruption of data, damage to a computer system, loss of anticipated savings, loss of goodwill or economic loss, even if Metagenics has been advised of the possibility of such loss or damage.
26. Practitioner agrees that Metagenics' liability to it at law will be reduced by the extent to which it contributed to any loss it has incurred.

J. Other

27. Any failure by Metagenics to insist upon Practitioner's performance of any of these terms and conditions shall not affect its full right to require such performance at any time thereafter, nor shall its waiver of a breach of any of these terms and conditions be taken or held to be a waiver of future breaches of these terms and conditions. No failure to exercise and no delay by Metagenics in exercising any right, remedy, power or privilege under these terms and conditions and no course of dealing, shall be construed or operate as a waiver of these terms and conditions.
28. Metagenics may, at any time and at its discretion, vary these Terms by publishing the varied terms on the Metagenics website. Metagenics recommends that the Metagenics website is checked regularly to ensure you are aware of our current terms.
29. These terms and conditions shall be construed in accordance with and be governed by the laws applicable in the State of Queensland. Each of the parties hereby agrees that any legal action or proceedings with respect to its obligations hereunder shall be brought in the State of Queensland and each of the parties submits to such jurisdiction.

Privacy Disclosure Statement

Metagenics respects your privacy. Metagenics will store your personal information (including credit information) securely and in the strictest compliance with the Privacy Act 1988 (Cth) and the Privacy Act 1993 (NZ) and other applicable privacy laws.

Metagenics is collecting your details for the purpose of managing your Product orders and supplying Products and services to you from time to time. Your information is confidential and will not be disclosed to other organisations without your consent unless required or permitted by law.

Please note that Metagenics may disclose certain credit information about you to credit reporting bodies (CRBs), for example if you fail to meet payment obligations. The CRB may include such information in reports provided to credit providers to assist them in assessing your credit worthiness. We disclose information to the following CRB:

Dun and Bradstreet
DBCC Pty Ltd
Website: http://dnb.com.au/

By providing us with your personal information, you expressly consent to our collection, holding, use and disclosure of credit information about you for a credit-related purpose. Please note that you have the right to request the above CRB not to use your credit information for the purposes of pre-screening for direct marketing by a credit provider or if you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud. If you would like more information about how the above CRB manages credit related information, please contact them directly.

If you would like to contact us to request access to, correction or deletion of any of your personal information that we have collected, if you have any questions or complaints in relation to the handling of your personal information, or if you do not wish to receive information from Metagenics, please contact our Privacy Officer on 1800 777 648 or write to us at Privacy Officer, Metagenics Ltd, 741 Nudgee Road, Northgate QLD 4013, Australia. Further details of our Privacy Policy are available on our website.

MET7442 - 11/22