

# HESKA® Master Warranty and General Terms and Conditions of Sale or Rental ("MWTC")

## **1. General Terms & Conditions.**

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- 1.1 All Products and Services (as such terms are defined below) furnished by Heska Australia Pty Ltd its subsidiaries and affiliates ("Heska") are delivered pursuant to these Master Warranty and General Terms and Conditions of Sale or Rental ("MWTC") and the terms set forth in any agreement between Heska and the customer specified therein ("Customer") including, but not limited to, Heska's use agreement, rental agreement, or purchase agreement, if any, signed by the Customer and accepted by Heska ("Agreement").
- 1.2 Heska and Customer may be referred to collectively herein as the "Parties." No other terms or conditions in any Customer documentation that conflicts with or adds to the Agreement or these MWTC shall be binding on Heska. Customer's placement of an Order for Products or Services constitutes an offer to Heska by the Customer on the terms of the Agreement and these MWTC ("Order").
- 1.3 Heska reserves the right to conduct credit checks and accept or decline any Orders or Agreements, in its sole discretion. In any Agreement between Heska and Customer, the term or period of time for such Agreement, Customer's promise to use Heska Products and/or Services during such term, and the quantity of Products committed to, if any, is not subject to cancellation, offset, further negotiation, or suspension by the Customer, except as expressly provided in such written Agreement.
- 1.4 Customer acknowledges and agrees that different or additional terms in Customer's Purchase Orders or any other Customer document shall be considered material alterations of the Agreement or these MWTC and are expressly rejected and shall not be effective without the written approval of an authorised Heska officer.

## **2. Products and Services; Definitions.**

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- 2.1 Hardware, such as chemistry, blood gas, hematology, other clinical hardware analysers, instruments, and infusion pumps shall be referred to as "Equipment". The tests, reagents, tips, cups, calibration consumables, control consumables, start-up consumables, slides, panels, cards, and other such consumable items that are used in the normal operation of Equipment and dietary supplements, pharmaceuticals, vaccines, diagnostic tests and related parts, shall be referred to as "Supplies".
- 2.2 Any software provided by Heska is licensed to Customer on a non-exclusive basis and may only be installed and used for the intended purpose with and only with Equipment with which it was delivered ("Software"). Software is not assignable. Any Software provided shall also be subject to the MWTC and any software license provided with the Software or Equipment.
- 2.3 Without waiving any other rights, Heska may terminate a license to Software if Customer fails to comply with these MWTC or any software license.
- 2.4 "Products" include one of any combination of Equipment, Supplies, and Software. Products, where applicable, carry a serial and/or lot control number and expiration date from which a manufacturing history of the Product can be derived.
- 2.5 Customer shall not supplement, modify, reverse engineer, decompile, disassemble or otherwise alter, use for competitive benchmark, make available for competitor evaluation, or expose to such activity, any Product. "Services" are any service provided by Heska, including but not limited to laboratory services, diagnostic services, testing services, pathological services, clinical services and consultation services.

2.6 "ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended.

### **3. Delivery, Inspection and Acceptance.**

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3.1 Equipment delivery, and installation and delivery of Supplies, is included in the shipping and handling charges, defined below.

3.2 Customer agrees to receive Product when it is delivered. Customer shall inspect Product immediately upon receipt. Damage or inconsistencies with an Order shall be reported to Heska in writing within five (5) days of receipt of Product.

3.3 If Customer fails to notify Heska in writing of any such damage or inconsistency in the Product or Order within the applicable time period, such Product and Order is deemed accepted by Customer.

3.4 Customer agrees that its first clinical use of the Equipment or other Product is an unconditional acknowledgement that the Equipment and Product is in proper working order (subject to the statutory guarantees under the ACL and Limited Warranty as defined herein) and such acceptance is irrevocable.

3.5 ALL SALES ARE FINAL. UNLESS THE PRODUCT IS FAULTY OR DEFECTIVE, HESKA WILL NOT ACCEPT RETURNS OF PRODUCT FOR REFUND OR CREDIT (subject to statutory guarantees or Heska's Limited Warranty).

3.6 Heska shall not bear any liability or responsibility for any delay or for the non-delivery by the carrier. Should Customer have any questions concerning the temperature of Supplies upon receipt, Customer shall immediately notify Heska's Customer Service Center at 1300 HESKA AU.

### **4. Shortage, Damage or Loss in Shipment.**

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4.1 Customer must follow the Defective Product Procedures set forth herein for return requests for defective Product that is not the result of shipping damage. Except as otherwise provided herein and subject to its obligations pursuant to the ACL,

4.2 Heska will not be responsible for any damage to or loss of Product. Customer shall not open containers that are visibly damaged on arrival and shall immediately notify Heska and the carrier of the damage in writing.

4.3 Upon receipt and inspection of the Product by Customer, if the amount of Product is not the amount ordered or if the Product is damaged (not in transit), Customer shall immediately notify Heska at 1300 HESKA AU.

4.4 Any period or date for delivery of Product stated by Heska is an estimate only and not a contractual commitment. Heska will use its reasonable endeavours to meet any estimated dates for delivery of the Product but will not be liable for any loss or damage suffered by Customer or any third party for failure to meet any estimated date.

4.5 If it is shown by documentation that Heska shipped less than the ordered amount, Heska will ship the remaining balance of Product Ordered when available. Heska will replace any Product determined to be damaged at the time of shipping. Customer shall cooperate fully and at no charge to assist Heska in pursuing a claim of damaged Product against the carrier where Heska provided shipping.

### **5. Transportation, Title and Risk of Loss.**

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5.1 Shipping and handling charges for outbound Orders are charged at a rate of twenty dollars (\$20) per shipment for non-Equipment shipments (including refrigerated Supplies) and three hundred fifty dollars

(\$350) for each article of Equipment shipments, unless otherwise agreed to in writing prior to shipment, between the Customer and Heska.

- 5.2 For Orders purchased through or shipped by authorised third parties, the third party's policy regarding transportation charges will apply and the Customer's recourse regarding transportation is solely through the distributor.
- 5.3 Actual costs of any special or expedited shipping and handling requested by the Customer will be invoiced to and paid by the Customer. C.O.D. Orders will be billed at list price plus an additional \$10.00 C.O.D. service fee. Where the standard shipping and handling charges are not applicable, the shipping terms for all sales are Ex Works (EXW), Incoterms 2010, Heska's designated location.
- 5.4 Title to Products (subject to Heska's rights as an unpaid seller) and risk of loss shall pass to Customer upon delivery to the carrier for shipment to Customer, unless shipped pursuant to a use or rental agreement or other agreement accepted by Heska that specifies that Heska shall hold title, in which case Heska shall maintain title. Heska reserves the right to make delivery of Products ordered by Customer in instalments, with each shipment being treated as a separate transaction hereunder.

## **6. Product Handling.**

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- 6.1 Customer must store, handle and use Products in strict compliance with the labelling, package insert instructions, user manuals, industry best practices, applicable laws and regulations, and any other instructions or guidelines Heska may publish or communicate now or in the future.
- 6.2 Customer is responsible for direction, supervision, training, certification, and qualification of Customer staff using Products. Products must be used only under environmental conditions normal and customary in a veterinary hospital, and by trained professionals under Customer's supervision that have knowledge and training to properly and safely use them.

## **7. Quotations and Pricing.**

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- 7.1 Prices are agreed to by the Parties when they are:
- (a) set forth in the Agreement,
  - (b) signed by the Customer, and
  - (c) accepted by Heska.

All prices, including but not limited to prices for Products, Services, shipping and returned checks are in Australian dollars and subject to change solely by Heska, unless otherwise agreed to in prior writing by Heska and the Customer.

- 7.2 Where Heska proposes to increase its price, it must provide 30 days notice to the Customer; however the Customer may accept the change in price within this 30 day period, and continue under the Agreement.
- 7.3 Prices of any type do not include applicable Taxes and Fees (as defined below).

## **8. Orders.**

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- 8.1 Customer may submit Orders for Supplies via email, on-line, fax, or phone by referencing the Supplies part number, the applicable Price to be paid by Customer, as set forth and represented by Customer as in a valid, paid-up, in force Agreement, or List Price, as applicable, indicating the quantity, requested delivery date that is at least 10 business days in the future, and terms consistent with the Agreement.

- 8.2 Heska will verbally or in writing confirm with Customer Purchase Order details. Heska will ship and bill Customer for the Supplies in the quantity identified on the Purchase Order, according to the terms of the Agreement and these MWTC.
- 8.3 Heska will make commercially reasonable efforts to deliver to Customer Ordered Supplies using industry standard methods, refrigeration, and carriers. Each shipment of Supplies will incur a shipping charge as provided herein.
- 8.4 Heska may make partial shipments of Supplies against a single Purchase Order, but Heska will not charge an extra shipping fee for additional shipments required to fulfill that Purchase Order.

## **9. Taxes/Fees.**

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- 9.1 Any sales tax, excise tax, use tax, GST, assessment, inspection or testing fee, transportation costs, shipping fees, customs, export compliance, insurance or any other tax, fee, or charge of any nature whatsoever imposed currently or in the future on Heska or by any federal, state, local or other governmental authority, upon or with respect to the sale, rental, possession, purchase, delivery, shipment, storage, processing, use, or consumption of any of the Products or Services covered by the Agreement and these MWTC, including taxes, fees or charges including those measured by the receipts from the sale of such Products or Services (individually or collectively, "Taxes and Fees") shall be paid by Customer.
- 9.2 Except as expressly provided to the contrary in the Agreement, in addition to the prices quoted or invoiced all Taxes and Fees shall be the Customer's responsibility. Customer agrees to pay, without delay, and to hold Heska harmless from all of the Taxes and Fees and any penalties for Customer's failure to timely pay Taxes and Fees. Customer hereby indemnifies on a net after-tax basis, against the loss of (including recapture), inability to claim, or disallowance or deferral of, as determined in good faith by Heska, any Equipment ownership or lease or rental related income tax benefits anticipated by Heska at the effective date ("Tax Benefit"), if such Tax Benefit loss results from any of Customer's acts or omissions or any inaccuracy of Customer's statements or information. In the event Heska is required to pay any Taxes and Fees, the Customer shall upon demand immediately reimburse Heska for any such amount paid by Heska.
- 9.3 Where applicable, Customer must provide Heska with a current tax exemption certificate, a resale certificate and any other documentation required by the appropriate taxing authority.

## **10. Resale and Export; No Conflict.**

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- 10.1 Customer agrees that the purchase of the Products is solely for Customer's use and benefit for the normal and ordinary use and intended purpose and Customer acknowledges and agrees that Customer shall not sell, rent, lease, loan, or export any Product to any other person including distributors.
- 10.2 Customer represents and warrants to Heska that its execution and delivery of the Agreement will not conflict with or result in a breach of, constitute a default, or require any notice under any contract or other arrangement to which Customer is a party or by which it is bound.

## **11. Terms of Payment.**

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- 11.1 Unless otherwise defined in the Agreement, the following terms of payment shall apply:
- (a) Heska will generate and mail or otherwise deliver to Customer an invoice upon shipment of each Order.
  - (b) Payment is due from Customer thirty (30) days from the invoice date.

- (c) Payments shall be made by check, money order, credit card or electronic funds transfer in Australian dollars, provided however that under certain programs or agreements for use or rental, selection of non-EFT methods may incur an additional convenience fee to the Customer.
- 11.2 If a Customer's account becomes delinquent, Heska, at its sole option, will stop shipments until the account is brought current, charge Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2% for the period from the due date until the date of payment in full and/or change any credit terms provided to Customer or require prepayment on Orders.
- 11.3 Non-payment of any invoice for over thirty (30) days constitutes Customer's breach of this Agreement, accelerates the amounts due by Customer pursuant to any Agreement, and relieves Heska of the responsibilities defined herein including for delivery.
- 11.4 The Customer indemnifies Heska against, and must pay Heska an amount equal to, any loss or liability suffered or incurred by Heska in connection with retaining a collection agency and/or attorney to collect overdue amounts, all collection costs, including all attorney's fees and court costs.
- 11.5 Once all amounts due have been brought current, Heska reserves the right, at its sole option, to make the account C.O.D. or require pre-payment on Orders for one full year from last collection payment received. Customer will pay all additional costs for C.O.D. shipment. Payments shall be remitted to the address shown on the statement or invoice, including Customer account number and/or invoice number to ensure appropriate application. A thirty-five dollar (\$35.00) fee will be charged for all returned checks.
- 11.6 Heska shall have no liability or other responsibility to Customer for any financing arrangements (including, but not limited to, loans or lease arrangements) made by Customer with third party lenders to purchase Products from Heska.
- 11.7 Please submit written billing disputes to: Heska Corporation, Attention: Accounts Receivable, at the address specified on the invoice. For questions about remitting payment or written billing disputes, Customer should contact Heska's Accounts Receivable department at 1300 HESKA AU.

## **12. Limited Warranty.**

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- 12.1 Heska warrants that, subject to the exclusions and limitations below, all Equipment and Supplies supplied by it will conform to the manufacturer's general standards of quality of materials and workmanship under normal use and service, and will be free from defects in materials and workmanship for the Term of the Agreement.
- 12.2 If a defect appears in Heska's supply, manufacture or assembly of the Equipment and Supplies before the end of the Warranty Period and Heska finds the Equipment or Supplies to be defective in materials or workmanship, Heska will, in its sole discretion, either:
- (a) replace or repair the Equipment or Supplies or the defective part of the Equipment or Supplies free of charge; or
  - (b) cause the Equipment or Supplies or the defective part of the Equipment or Supplies to be replaced or repaired by a qualified repairer free of charge (together referred to as Warranty Work).
- 12.3 Heska reserves the right to replace defective parts of the Equipment or Supplies with parts and components of similar quality, grade and composition where an identical part or component is not available.
- 12.4 Equipment or Supplies presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Equipment or Supplies.

### **13. Defective Products Return and Warranty Claims Procedure.**

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- 13.1 Customer must inspect the Equipment or Supplies immediately upon delivery. The Customer must inspect the Equipment immediately after the Equipment is commissioned.
- 13.2 Within fourteen days from the date of delivery of the Supplies or the commissioning of the Equipment, the customer must give written notice to Heska of any defect claim or allegation that the Equipment or Supplies is not in compliance with the terms of the agreement with Heska.
- 13.3 Any warranty claim must be accompanied by:
- (a) proof of contract; and
  - (b) full details of the alleged defect.
- 13.4 Customer must make the Equipment or Supplies available to Heska or its authorised repair agent for inspection and testing. If such inspection and testing finds no defect in the Equipment or Supplies, the Customer must pay Heska's reasonable costs of service work and testing.
- 13.5 The Customer must, if requested by Heska, send any defective part/s, freight paid, to the location nominated by Heska.
- 13.6 Heska will return the refurbished or replaced part to the customer's location, freight forward.
- 13.7 Unless otherwise agreed, all Warranty Work will be carried out only during Heska's normal working hours, being 9.00am - 5.30pm, Monday to Friday excluding public holidays. All Warranty Work outside of metropolitan areas of capital cities are subject to the customer incurring reasonable travel and accommodation charges.
- 13.8 The warranty will not apply where:
- (a) the Equipment or Supplies has been repaired, altered or modified by someone other than Heska or an authorised repair agent;
  - (b) the alleged defect in the Equipment or Supplies is within acceptable industry variances;
  - (c) Heska cannot establish any fault in the Equipment or Supplies after testing and inspection;
  - (d) The Equipment was not installed, used, operated, maintained or serviced in accordance with Heska's instructions, recommendations or specifications;
  - (e) the Equipment or Supplies were used for purposes other than stated in the quotation or used for purposes other than which the Equipment or Supplies was designed;
  - (f) the defect in the Equipment or Supplies occurred due to the Customer's request to customise the Equipment or Supplies;
  - (g) the Equipment or Supplies has been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure, stress or similar; or
  - (h) the defect has arisen due to abuse, misuse, neglect or accident; or unauthorised parts or accessories have been used on or in relation to the Equipment or Supplies.

Heska makes no express warranties or representations other than set out in this warranty.

- 13.9 The repair or replacement of the Equipment or Supplies or part of the Equipment or Supplies is the absolute limit of Heska's liability under this express warranty.
- 13.10 Where the Customer is a "consumer" as defined in the Australian Consumer Law, then Heska also provides the following information:

**Mandatory warranty statement:** Our Goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

The benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of goods and services which cannot be excluded, restricted or modified.

#### CONTACT

Heska Australia Pty Ltd  
68/31-39 Norcal Road  
Nunawading VIC 3131  
Phone: 1300 HESKA AU

### **14. Limit of Liability.**

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- 14.1 Except as the MWTC specifically state, or as contained in any express warranty provided in relation to the Equipment or Supplies, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Equipment, Supplies or any contractual remedy for their failure.
- 14.2 If the Customer is a consumer nothing in the MWTC restricts, limits or modifies the Customer's rights or remedies against Heska for failure of a statutory guarantee under the ACL.
- 14.3 Except as where specifically agreed, the Customer acknowledges that Heska is not responsible for the installation, use or incorporation of the Equipment and Supplies.
- 14.4 In the event that the Customer amends, manipulates, adapts or otherwise uses the Equipment or Supplies in a manner that is contrary to the designed purpose as specified by Heska, the Customer:
- (a) immediately releases Heska from any liability howsoever arising in connection to the Equipment; and
  - (b) to the extent permitted by law, is barred from bringing any claim against Heska in connection with the Equipment.

Heska is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

14.5 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Heska in relation to the Equipment or its selection, use, application or location; and
- (b) it has not made known, either expressly or by implication, to Heska any purpose for which it requires the Equipment and it has the sole responsibility of satisfying itself that the Equipment is suitable for the Customer's use.

To the extent permitted by law, the Customer will indemnify Heska and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs) arising from or in connection with the Equipment or as a result of its selection, use, application or location.

14.6 In circumstances where a consumer guarantee under the ACL applies to the supply of the Equipment or Supplies, to the extent Heska is permitted to do so under the ACL, Heska limits its liability for any failure to comply with that consumer guarantee, to the resupply of the Equipment or Supplies (or at its discretion the payment of the cost of the Equipment or Supplies).

14.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the lease of Equipment which cannot be excluded, restricted or modified.

## **15. Term and Termination.**

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The Term is set forth in the Agreement. The Agreement is not cancellable by Customer. Heska may terminate the Agreement as specified in the Agreement or on default.

## **16. Default.**

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16.1 Customer shall be in default of the Agreement if any of the following occurs during the Term:

- (a) Customer fails to pay any Payment or other sum when due under the Agreement or any other agreement with Heska;
- (b) Customer breaches any warranty, representation, or other obligation or term of these MWTC, the Agreement or any agreement with Heska;
- (c) Subject to any statutory stay of proceedings, Customer becomes insolvent or unable to pay Customer's obligations when due; Customer stops doing business as a going concern; Customer merges, consolidates, or transfers all or substantially all of its assets; Customer makes an assignment for the benefit of creditors; or Customer undergoes a substantial deterioration in Customer's financial condition; or
- (d) Subject to any statutory stay of proceedings Customer, any guarantor, or any partner or member voluntarily files or has filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief, or a trustee, receiver, or liquidator is appointed for Customer.

16.2 Upon Customer's default, Heska may pursue any and all remedies available at law or in equity and/or as specified in the Agreement.



## **17. Indemnification.**

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- 17.1 Customer agrees that it shall indemnify, protect, defend, and hold harmless Heska, its officers, directors, employees, customers, and agents from and against any and all claims, losses, liabilities, damages, expenses, and costs (including reasonable attorneys' fees and court costs) related to Customer's or its agents' or employees' acts or omissions, use or misuse of the Products or Services, non-compliance with applicable laws and regulations, and Customer's breach of or default under the Agreement, the Order, or these MWTC.
- 17.2 Customer agrees that in connection with Customer's obligations, Heska may, in its sole and absolute discretion, engage legal counsel at Customer's expense.

## **18. Insurance Requirements.**

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- 18.1 Customer agrees to maintain worker's compensation and liability insurance in amounts sufficient to protect the financial security of Customer and to provide copies of the policies or satisfactory insurance certificates upon request by Heska.
- 18.2 Without limiting the generality of the foregoing, Customer shall, at its own expense, maintain in force with reputable insurers policies of commercial general liability insurance with policy limits of at least Two Million Australian Dollars (AUD \$2,000,000.00) each occurrence including without limitation for bodily injury and blanket contractual liability, Two Million Australian Dollars (AUD \$2,000,000.00) each occurrence for damage to property, or, alternatively, Two Million Australian Dollars (AUD \$2,000,000.00) combined single limit each occurrence for injury and property damage combined.
- 18.3 Heska shall be named as an additional insured on Customer's liability insurance and Customer's insurance shall be primary for any claim made by a third party. Customer's insurer shall waive any and all subrogation rights against Heska or its insurers. The fact that Customer maintains such insurance shall not limit Customer's other obligations under this Agreement, including without limitation its indemnification obligations.

## **19. Trademarks.**

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- 19.1 Customer agrees that the trademarks and any other intellectual property of Heska are and will remain the sole and exclusive property of Heska and Customer agrees not to do anything, or allow any other party to do anything, inconsistent with such ownership or to contest Heska's ownership of its trademarks.
- 19.2 Except as expressly set forth herein, Customer shall have no right, title or interest in any intellectual property, including but not limited to patents, trademarks, trade names, or trade dress, relating to the Products or Services sold hereunder.
- 19.3 Customer shall not tamper with any Products or remove, cover or alter, any trademarks, insignia, markings, or serial number or any configuration that identifies the origin of Products or allows Equipment to use Supplies from anyone other than Heska.

## **20. Confidential Information.**

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- 20.1 Customer shall maintain as confidential and not disclose to others without Heska's prior written consent the existence of or the terms of the Agreement, Orders or any trade secrets, processes, techniques, designs, know-how or other Confidential Information obtained from Heska.
- 20.2 "Confidential Information" shall include all information that Heska designates in writing to be "CONFIDENTIAL" and all other information Customer knows, or should reasonably know, is considered by Heska to be confidential, including the terms of any Agreement and the associated pricing.

- 20.3 Customer agrees that a breach of this obligation to protect Confidential Information will result in irreparable and continuing damage to Heska for which there may be no adequate remedy at law, and Heska is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.
- 20.4 These terms of Confidential Information shall survive any expiration or termination of the Agreement, are in addition to and shall not supersede or replace any confidentiality, non-disturbance or similar agreement between the Parties executed previously.

## **21. Force Majeure.**

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- 21.1 Neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war.
- 21.2 If an event of force majeure occurs, either party may suspend or terminate the Agreement by written notice to the other party.

## **22. Governing Law; Venue.**

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- 22.1 Except as otherwise expressly provided in the Agreement, the Agreement, including any personal guaranty, related Purchase Orders, and these MWTC shall be governed by and construed in all respects with the laws of Victoria, Australia.
- 22.2 In the event it becomes necessary to institute any legal proceedings to enforce this Agreement or any of its provisions, the parties shall submit themselves to the exclusive jurisdiction of the courts of Victoria, Australia, the Federal Court of Australia, and the courts entitled to hear appeals from those courts

## **23. Waiver; Severability.**

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- 23.1 Heska's waiver of any term or breach herein or in the Agreement shall not be deemed a waiver of Heska's right to seek compliance of that term or any other term thereafter.
- 23.2 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

## **24. Counterparts; Amendments.**

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- 24.1 These MWTC supersede all prior agreements and understanding, written or oral, between the Parties that relate to the subject matter.
- 24.2 Any change or modification to the MWTC specified herein must be in writing and signed by an authorised officer of Heska.
- 24.3 Except as expressly specified herein, any other terms or conditions, including any documents provided by Customer, or any verbal assurances by sales representatives or distributors, shall not serve to vary any term or condition specified herein and shall be expressly rejected.

## **25. Independent Contractors.**

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The relationship of the Parties established under the Agreement is that of independent contractors and neither Party is a partner, employee, agent or joint venture of or with the other and nothing in the Agreement or these MWTC shall preclude Heska from contracting to provide Products or Services to others.

## **26. Survival.**

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The provisions of the Agreement and these MWTC that, by their sense and context, are intended to survive performance by either or both Parties shall also survive the completion, expiration, termination or cancellation of the Agreement.

## **27. Customer Authorisation.**

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- 27.1 Customer authorises Heska to supply missing information, correct obvious errors in the Agreement and associated documentation, correct typographical errors in Customer's name, and/or modify Customer's name to reflect Customer's true and correct legal name.
- 27.2 Customer agrees to execute revisions, prepared in good faith by Heska, to the Agreement to correct any errors or deficiencies.
- 27.3 CUSTOMER REPRESENTS THAT CUSTOMER IS AUTHORISED TO ENTER INTO THIS AGREEMENT AND THAT IT IS NOT SUBJECT TO ADDITIONAL NEGOTIATION, CONSENT, DELAY, INTERFERENCE, OR CANCELLATION AND SHALL NOT CONSTITUTE A BREACH OR VIOLATION OF ANY OTHER AGREEMENT TO WHICH CUSTOMER MAY BE A PARTY.

## **28. No Assignment.**

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- 28.1 Customer agrees not to transfer, sell, sublease, assign, pledge, or encumber any rights under the Agreement or an Order without Heska's prior written consent. Any such attempted assignment shall be void and of no effect.
- 28.2 Customer agrees that Heska may sell, assign or transfer the Agreement and/or Orders for any part of the Term, and if Heska does, the new owner will have the same rights and benefits that Heska has now or in the future, but will not have to perform any of Heska's obligations; provided, however, if Heska assigns the Agreement, Heska will meet its remaining obligations directly or by assignment. The rights of the new owner will not be subject to any claims, defenses or set-offs that Customer may have against Heska.

## **29. Notices.**

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Any notice, demand or request required or permitted under the Agreement shall be in writing and shall be sent as specified in the Agreement; provided, however, notices to Heska shall be sent by a nationally recognized overnight courier service or prepaid certified or registered mail return receipt requested and delivery confirmed to: Heska Australia Pty Ltd, 68/31-39 Norcal Road, Nunawading VIC 3131.

## **30. Modification of MWTC.**

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- 30.1 Heska reserves the right to modify, amend, alter and change these MWTC of Sale or Rental at any time, upon reasonable notice to Customer.
- 30.2 Customer's authorisation for, or acceptance of, use of, or delivery of Product or Services hereunder shall be deemed acceptance of the MWTC in effect at such time.