

New Account Application Form

To qualify for an account with Nutrisearch, you must be a practicing health-care professional or student (section E and F).

Account Registration Form *(Please Print Clearly)*

(A)

First Name _____ Surname _____

Qualifications/Studies in Progress _____

Relevant Professional Membership/s _____ No. _____

Full Legal Name of Business _____

Physical Address for Product Delivery _____

Suburb _____ City _____ Post Code _____

Delivery Instructions _____

Clinic Phone _____ Mobile _____

Email _____

Administration Contact _____

Business Details: Sole enterprise Partnership Company Trading trust

For Companies, Partnerships & Trading Trusts please list full name and address of Proprietors/Directors/Partners:

Credit References

(B)

Company _____ Phone _____

Company _____ Phone _____

Signature

(C)

I have read and agree to Nutrisearch's (trading as Nutrisearch and Nutriscript) Terms and Conditions (Terms of Trade) as set out on pages 3, 4, 5 and 6.

Name _____

Position _____

Date _____

Signed _____

(Must be Director or Authorised Officer)

Additional Information

(D)

Any specific areas you would like support with? _____

How did you hear about Nutriscience? _____

Which companies' products or testing do you currently use? _____

Areas of Interest _____

Fill in this section E and F if you are a student

(E)

As a student, you have access to ordering supplements for personal use only. Our products are not to be used to prescribe/treat patients unless under guidance of a tutor in your final year or your qualifications are completed and sent through to us here at Nutriscience.

The terms of gaining access as a student to Nutriscience/NutriScript are as follows. Please tick and sign below if you agree to the terms.

- I agree to use this account for personal use only during my first and second year of study.
- I understand that I am only able to order supplements for patients under the guidance of my tutors in my third year.
- I understand that I am only able to order testing under the guidance of my tutors in my third year.
- I understand that I do not have access to patient ordering until I have finished my studies and am fully qualified.
- I understand that if I do violate any of the above terms that Nutriscience Ltd will terminate my Nutriscience/NutriScript account.

Nutriscience accepts no liability for any loss, damage or consequence resulting directly or indirectly from the abuse of these terms of use.

Name _____

Signature _____ Date _____

Tutor Details

(F)

Please provide the name and contact details of your Tutor.

Name _____

Phone _____

Qualification(s) _____

Ordering

(G)

We accept orders via Nutriscript only

- To access Nutriscript please go to: nutriscript.co.nz and login using your Nutriscript login details and password.
- For support: Call our Customer Service Department on +64 (6) 8777230 or Freephone 0800 884 433

Nutriscript is the Industry Leading Practitioner Only Cloud based Platform and includes the following:

- Digital Technical Practitioner Only Online Catalogue (over 1100 Nutritional Products and supporting technical product data sheets)
- Practitioner Education Hub
- Online Wholesale Ordering & Send Direct to Patient Orders
- Build a Script, Add Dose Instructions and other Patient Lifestyle Suggestions, then Send the Script Directly to Patients for Online Payment & Product Fulfilment by Nutriscience (**Never Touch a Physical Product**).



NUTRITIONAL EXCELLENCE

Nutriscience Ltd

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New Zealand

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PHONE: +64 (6) 877 7230

FAX: +64 (6) 877 7240

EMAIL: info@nutriscience.co.nz

www.nutriscience.co.nz

Application to prescribe the 'CLINICIAN ONLY' Range

Print, sign, scan or select checkboxes and e-sign and email to admin@nutrisearch.co.nz

By ticking and signing this form, you agree to comply with the conditions of supply for the INTEGRA NUTRITIONALS product range.

PLEASE NOTE THAT THIS APPROVAL IS GRANTED TO INDIVIDUAL CLINICIANS, NOT TO THE PRACTICE.

Approval is Non-Transferable: If a clinician leaves a practice, he or she must notify Cell-Logic of the new address.

PROFESSIONAL QUALIFICATIONS An applicant requesting I.N. supply must:

- Be a *registered* health professional **able to demonstrate** qualifications in nutrition, dietetics, biochemistry, nutrigenomics or equivalent
- OR if a member of a non-registered health profession, be a current financial member of a professional association representing health professionals practising any of the above disciplines and/or naturopathy and/or herbal medicine. (Nursing and health coaching not accepted)
- OR as an Educator in the health professions, you may purchase the I.N. range on behalf of your institution's training clinic. OR as a pharmacist dispensing on behalf of a clinician who must also be approved to prescribe I.N products. Please contact our office to obtain further information and conditions of purchase.

CLINIC PREMISES

- The premises, whether for *face-to-face* or online consultations must be an enclosed, quiet and private area. A retail outlet staffed by qualified clinicians but without an appropriate consulting area as described above is not eligible for I.N. supply.

THE CONSULTATION Eligibility for I.N. supply requires that the clinician conducts a full consultation according to the following criteria:

- The nature of the consultation, the content, the allocated timeframe and the generation of an appropriate management plan must meet professional standards as required by the relevant professional association. A questionnaire may form part of the consultation process but is not an adequate substitute.
- The clinician must keep detailed dated case notes, including prescription and dosage notations for each patient; changes to prescription and dosage must be recorded at the relevant consultation. Such records must be stored securely and retained according to legal requirements of the relevant jurisdiction.
- In recommending I.N. products, the clinician must issue a written/typed prescription which details the name of the formulation and the dosage. No I.N technical data or promotional materials marked as 'Clinician Only', may be provided/supplied to the patient.

DISPENSING PRODUCTS IN THE 'I.N.' RANGE:

- Products in the I.N. range classified 'for clinician dispensing' may be dispensed in smaller and appropriately-labelled containers as per professional guidelines.
- Products in the I.N. range may not be openly displayed to the patient or others in the waiting area (prior to dispensing).
- At no time should any I.N. product appear online in a non-password protected area, nor may it be sold in any non-clinical environment.
- In a pharmacy, the Pharmacist agrees to treat I.N. products similarly to S4 medication and only dispense them upon receipt of a prescription from a qualified practitioner.

Title:	First name:	Last name:
<hr/>		
Email:		
<hr/>		
Clinic website:		
<hr/>		
Clinic name and address:		
<hr/>		
<hr/>		
Clinic Phone Number:	Personal Phone Number:	
<hr/>		
Professional Association:	Member Number:	Expiry:
<hr/>		
Qualifications (Institution in brackets)		
<hr/>		
<hr/>		
Preferred Distributor/s name:		Date:
<hr/>		

I, _____, whose particulars appear above, accept the Terms & Conditions listed in this document. I understand that any breach of these Terms & Conditions on my part may result in cessation of supply of the I.N. product range.

Signature: _____

Sign with your Adobe e/Signature or print, sign and scan

Approved by: _____

(Cell-Logic Representative)



TERMS OF TRADE – NUTRISearch LIMITED (PRACTITIONER ONLY)

This document sets out the Terms of Trade of Nutrisearch Limited (trading as Nutrisearch and Nutriscript). These Terms apply to every sale made by Nutrisearch Limited (“Nutrisearch”) to the Customer, and any variation should be signed on behalf of Nutrisearch. Nutrisearch reserves the right to change these Terms at any time.

1. Definitions

- 1.1. “Customer” means the Practitioner or Practitioner entity Ordering the Products as specified in any invoice, document, or order, and if there is more than one Customer is a reference to each Customer jointly and severally. Such definition expressly excludes the Customer’s Patients.
- 1.2. “Customer’s Patient” means any person or entity of which the Customer directs Products to be directly supplied or shipped, no matter whether the Customer or the Customer’s Patient makes payment.
- 1.3. “Ordering” means the request for Products either by way of a script, Patient Recommendation or online (website or email), written or verbal order.
- 1.4. “Price” means the Price payable for the Products as agreed between the Supplier and the Customer in accordance with clause 4 below.
- 1.5. “Products” means the Supplier’s products and services as provided by the Supplier to the Customer including Patient Recommendation and Products and Services provided to the Customer’s Patient at the Customer’s request from time to time.
- 1.6. “Supplier” and “Nutrisearch” means Nutrisearch Limited and its trading entity Nutriscript and any other online portal services being supplied on or on behalf of Nutrisearch Limited. It includes successors and assigns or any person or entity acting on behalf of and with the authority of Nutrisearch Limited.
- 1.7. “Terms” means this Terms of Trade and any subsequent and/or updated Terms of Trade available on the Suppliers website from time to time.

2. Acceptance

- 2.1. The Customer on Ordering or acceptance of provision of Products has exclusively accepted, and is immediately bound, jointly and severally, by these Terms.
- 2.2. These Terms may only be amended with the Supplier’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.
- 2.3. Electronic signatures shall be deemed to be accepted provided that the parties have complied with the provisions of Part 4 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1. The Customer must notify the Supplier in writing prior to Ordering any Products:
 - a. of any proposed or actual change of ownership of the Customer, and/or
 - b. any other change in the Customer’s contact details or those of the Customer’s Patient.The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1. Subject to clause 4.2, the Price for the Products shall be the Supplier’s Price as advertised on the Supplier’s website on the date of Ordering by the Customer.
- 4.2. The Supplier reserves the right to change the Price if a variation to the Products is requested.
- 4.3. At the Supplier’s sole discretion, a non-refundable deposit and/or full payment may be required to be paid by the Customer prior to the Supplier shipping the Products.
- 4.4. If alternative arrangements are not made for payment, the Price will be payable on the 20th day of the month following the date of any invoice given to the Customer by the Supplier.
- 4.5. Payment may be made by electronic/online banking, credit card (plus a surcharge of three and a half percent (3.5%) of the Price), or by any other method as agreed to between the Customer and the Supplier.
- 4.6. Unless otherwise stated the advertised Price does not include GST and this will be added at the time of purchase.
- 4.7. The Supplier reserves the right to withdraw credit facilities at any time at its sole discretion.
- 4.8. The Supplier reserves the right to refuse to provide Products to any Customers for any reasons at the Supplier’s sole discretion.

5. Provision of the Products

- 5.1. The Supplier will provide the Products to the Customer as per the Customer’s order.
- 5.2. Any delivery time or date given by the Supplier to the Customer is an estimate only. The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Supplier to provide the Products (or any part of them) promptly or at all, due to circumstances beyond the reasonable control of the Supplier.

6. Supply Policy/Practitioner Disclaimer

- 6.1. The Supplier has an obligation to adhere to national regulatory requirements for the distribution of specialised healthcare products. The following conditions must be met in order to obtain and maintain a “Practising Health Practitioner” account and have access to “practitioner-only” products and services, as well as any materials pertaining to them (such as technical manuals, product information, access to training seminars and any other associated material).
 - a. Products must be prescribed to patients by a fully qualified and Practising Health Practitioner in the context of a private consultation.
 - b. To be recognised as a Qualified Healthcare Practitioner, completion of ‘tertiary equivalent’ education in an ‘ingestible’ clinical modality, that includes training in clinical nutrition, from a recognised education institution must be evidenced.

- c. The Supplier’s practitioner-only product range should not be displayed in a retail setting.
- d. The Supplier reserves the right to remove Products and refuse future sale when displayed or sold inappropriately.
- e. Qualifications must be approved by the Supplier to qualify as a Practitioner.
- f. Nutrisearch Products are Practitioner only and may be sold online provided the following criteria are met:

- i. The Product name, Product shot, but not pricing, can be shown publicly, but Product commentary, supplement facts, Product pricing, and suggested use (and any other information) need to be behind a Customer login (a login that is provided to the Customer’s Patient only after a consultation).
- ii. All Products need to be sold in conjunction with at least a mini consultation by a Practitioner or Pharmacist. A form that is viewed and signed off by the Practitioner before the sale is completed is acceptable, as is a verbal or written conversation.
- iii. It is the Practitioner’s responsibility to ask all questions relevant to the Product being sold with regards to Customer and the Customer’s Patient safety.

Nutrisearch provides some retail branded Products, these are clearly marked on printed price lists and online portals. These can be sold online without a login being required.

- g. There are separate guidelines for rules around online and store front sales for Integra Nutritional Products. Such policy is available upon request. Integra Nutritional Products shall not be advertised online at all.
- h. Nutrisearch Products are Practitioner only and may be sold in retail stores that have a Practitioner in-store responsible for the sale of Practitioner only Products, provided the following criteria are met:
 - i. Products may be visible, but in an area where they cannot be picked up by the Customer’s Patient. For example, behind the counter or in a locked cabinet in front of the counter. Exception can be made for stores that are entirely Practitioner only. For example, herbal dispensaries, naturopath clinics.
 - ii. All Product needs to be sold in conjunction with at least a mini in-store consultation with the Practitioner or Pharmacist, or a longer consultation on a professional setting. This can be verbal. It is the Practitioner’s responsibility to ask all questions relevant to the product being sold with regards to the Customer’s Patient safety.
 - iii. Brands that are exempt from requiring a consultation are those clearly marked “retail” on the Supplier’s printed price lists and online portals.

7. Ordering and Dispatch

- 7.1. All Products can be purchased in any available quantity.
- 7.2. Every reasonable attempt will be made to dispatch orders on the same day, if such order is received prior to 1pm on a working day. Those placed on a non-business day will be dispatched on the following working day.
- 7.3. Orders received damaged in transit must be left intact as found with packaging and reported immediately to the Supplier.
- 7.4. The current freight price lists for NZ and Australia are those advertised. The Customer agrees to these charges by Ordering.

8. Credits and Returns

- 8.1. No credit will be processed for returned goods unless:
 - a. The goods were supplied in error, incorrectly addressed, or were damaged in transit and immediately reported to the Supplier, and
 - b. A request for credit is lodged within 2 days of receipt of Product, providing invoice reference and date of order, and
 - c. The goods are returned within 7 days.
 - d. Any customer labels must be removed before Products are returned.
 - e. Products arriving at Nutrisearch which are damaged due to improper packing will not be credited.
 - f. Products must be unopened and tamper-evident device intact otherwise no refund will be given.

9. Out of Stock Items

- 9.1. The Supplier operates a backorder system. Out of stock items will be backordered and advice given as to expected delivery date. Any backordered items will be forwarded freight-free as soon as they are available.

10. Technical Support

- 10.1. Technical support relating to any individual Customer’s Patient or Practitioner’s health status or test result provided via verbal or written form by Nutrisearch or anyone contracted to Nutrisearch is provided as a general guide only, given Nutrisearch does not know all the encompassing information on the health status and health history of the individual. Nutrisearch can only be considered as providing general guidance to Practitioners. Any final nutritional prescription, lifestyle change, diet or exercise regime suggested to Customer’s Patients by Customers and Practitioners are the full and final responsibility of the Customer and Nutrisearch does not take responsibility for any liability whatsoever.

11. Pathology Results

- 11.1. The Supplier does not operate its own laboratories. It utilises third party laboratories for all its pathology testing. All pathology results are provided to practitioners and/or patients independent of the Supplier. The Supplier shall do everything possible to ensure that the laboratory partners are reliable laboratories, however the Supplier does not accept liability for any particular laboratory result of any prescription based on any result. The Customer agrees that final advice provided to Patients must take the Patient’s full medical history into account and not just a pathology result

12. Title

- 12.1. The Supplier and the Customer agree that the Customer’s obligations to the Supplier for ownership of the Products shall not pass until:

- a. the Customer has paid the Supplier all amounts owing to the Supplier; and
 - b. the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.
- 12.2. Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised, and until then, the Supplier's rights and ownership in relation to the Products, and this agreement, shall continue.
- 12.3. It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 12.1:
- a. the Customer is only a bailee of the Products and, unless the Products have become fixtures, must return the Products to the Supplier on request.
 - b. the Customer holds the benefit of the Customer's insurance of the Products on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Products being lost, damaged, or destroyed. The production of these Terms by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Customer to make further enquiries.
 - c. the Customer will not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - d. the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of, or return the resulting product to the Supplier as it so directs.
 - e. the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Products are kept and recover possession of the Products.
 - f. the Supplier may recover possession of any Products in transit after collection by the Customer.
 - g. the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Supplier.
 - h. the Supplier may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Customer.
- 13. Risk**
- 13.1. If the Supplier retains ownership of the Products under clause 12 then all risk for the Products shall immediately pass to the Customer on either:
- a. collection by the Customer and the Customer must insure the Products on or before collection, or
 - b. delivery of the Products. Delivery shall be deemed to have taken place immediately at the time that the Customer or the Customer's nominated carrier takes possession of the Products, whichever is the earlier.
- 14. Customer's Responsibilities**
- 14.1. The Supplier shall be entitled to rely on the accuracy of any specifications and other information provided by the Customer in the ordering of Products. In the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies because the Customer has failed to comply with this clause.
- 14.2. The Customer acknowledges:
- a. Where the Supplier provides any technical support, test or laboratory results to the Customer and any of the Customer's Patients, either written or verbal, that information is provided as a general guide only. Any technical support given by the Supplier should only be considered as general guidance to the Customer and the Customer's Patients, and any prescription or advice relating to the Supplier's Products provided by the Customer to their patients is the full and final responsibility of the Customer;
 - b. that the Supplier does not operate their own laboratories;
 - c. that the Supplier utilises third party laboratories for all pathology testing to ensure that all pathology results are provided to the Customer totally independently of the Supplier;
 - d. The Supplier does not accept liability for laboratory results, or the supply of any Products based on any laboratory results; and
 - e. The Customer is solely responsible for the advice provided to the Customer's patients based on the relevant medical history and not solely on reliance of any pathology result.
- 14.3. The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a Solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause.
- 14.4. The Customer agrees that information provided on the Supplier's website and portals (including e-commerce shops) is often for Practitioners only and should not be shared with patients.
- 14.5. Customer's technical and sales marketing material and electronics newsletters (via MailChimp or similar) are Practitioner only and are to remain for viewing only by qualified Practitioners that hold an active account with Nutrisearch.
- 14.6. Customer and Customer's Patients are responsible for the security of their passwords around accessing and signing into Supplier portals, e-commerce platforms etc.
- 14.7. Special Allergy Disclaimer: There is a lot of technical content contained on the Supplier's website, education portal, e-commerce portals etc, some of this information potentially includes nutritional and allergy information around nutritional and topical Products. The Supplier endeavours to do its best to ensure the accuracy of this information on their electronic platforms, however the Customer agrees that the information displayed on the final product label that arrives in its physical state is the only actual allergy statement that can be relied upon, and the Customer agrees to ensure that if there are any concerns or risks with any Patient relating to food or topical allergy including anaphylactic shock that the Customer will check with Nutrisearch directly so Nutrisearch can check with the brand owner concerned for any allergen that may be in the Product. The Customer agrees to also inform their Patients of the same.
- 15. Customer's Disclaimer**
- 15.1. Any advice, recommendation, information, assistance, or service provided by the Supplier in relation to Products provided is given in good faith is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. It shall be the responsibility of the Customer to confirm the accuracy and reliability of the same based on the intended or actual use of the Products.
- 15.2. Information available from the Nutrisearch website, Agents, or Employees, is given with the best intention, but cannot be relied upon for diagnosis. All Customers accessing information assume full responsibility for its use.
- 15.3. The Customer hereby disclaims any right to rescind or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgment.
- 16. Compliance with Laws**
- 16.1. The Supplier has an obligation to adhere to national regulatory requirements for the distribution of the Products. The Customer must adhere to the following conditions in order for the Supplier to supply the Products to the Customer:
- a. Products must be prescribed to the Customer's patients by a fully qualified and practicing health practitioner in the context of a private consultation;
 - b. The Customer must not display the Supplier's Products in a retail setting unless the Customer strictly adhere to clause 6.1(h) herein;
 - c. The Supplier reserves the right to remove Products and refuse future supply where Products are displayed or sold inappropriately; and
 - d. The Customer must provide the Supplier with evidence of health practitioner qualifications upon request by the Supplier.
- 16.2. The Supplier does not warrant that it complies with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Products. To the extent permitted by statute, no warranty is given by the Supplier as to the quality or suitability of the Products for any purpose and any implied warranty, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Products, or cause by the Products, or any part thereof however arising.
- 16.3. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Customer's use of the Products.
- 16.4. In the event of a recall of a Product, the Customer agrees to work with the Supplier however possible and wherever possible including to assist in notifying the Customer's Patients of a Product recall and the action and reasons being taken. The Customer indemnifies the Supplier against any claim against the Customer due to a product recall situation and any costs associated with a Product recall. The Customer is to make all efforts to contact the Customer's Patients to recall the Product.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1. Upon assenting to these Terms the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- a. all Products previously provided by the Supplier to the Customer;
 - b. all Products to be provided in the future by the Supplier to the Customer; and
 - c. all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest, or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to the Supplier for Products – that have previously been provided and that will be provided in the future by the Supplier to the Customer.
- 17.2. The Customer undertakes to:
- a. sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - b. indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - c. not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of third party without the prior written consent of the Supplier
- 17.3. The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 17.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

- 17.6. The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 17.1 to 17.5.
- 18. Defects and Warranties**
- 18.1. The Customer shall inspect the Products on obtaining possession and shall within two (2) days of such time (time being of the essence) notify the Supplier of any alleged defect, error or omission, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Products within a reasonable time following such notification if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) repair or replace the Products.
- 18.2. Products will not be accepted for return other than in accordance with 19.1 above.
- 18.3. To the extent permitted by statute, no warranty is given by the Supplier as to the quality or suitability of the Products for any purpose and any implied warranty, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising.
- 19. Consumer Guarantees Act 1993**
- 19.1. If the Customer is acquiring Products for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Products by the Supplier to the Customer.
- 20. Intellectual Property**
- 20.1. Where the Supplier has any written formulas, specifications, or recipes for the Products, or creating any Products for the Customer, then the copyright in all such formulas, specifications and recipes for the Products shall remain vested in the Supplier and shall only be used by the Customer at the Supplier's discretion.
- 20.2. The Customer warrants that all specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design, or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 21. Default and Consequences of Default**
- 21.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two percent (2%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2. The Customer must pay Nutrisearch's costs (including but not limited to legal costs as between solicitor and client) of any incidental to the enforcement or attempted enforcement of Nutrisearch's rights, remedies, and powers under this Agreement.
- 21.3. If the Customer owes the Supplier any money the Customer shall be solely liable for the original amount and all expenses, costs, and/or disbursements incurred by Nutrisearch in recovering and outstanding monies including debt collection agency fees and/or solicitors' costs. As such the Customer shall indemnify the Supplier from and against all such costs and disbursements incurred by the Supplier in recovering the debt, including but not limited to internal administration fees, legal costs, the Supplier's collection agency costs, and bank dishonour fees.
- 21.4. Further to any other rights or remedies the Supplier may have under this agreement, if the Customer has made payment to the Supplier and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 16.
- 21.5. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these Terms the Supplier may suspend or terminate the provision of Products to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 21.6. Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- any money payable to the Supplier becomes overdue, or in the Supplier's sole opinion the Customer will be unable to make a payment when it falls due;
 - the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 22. Cancellation**
- 22.1. The Supplier may cancel any contract to which these Terms apply or cancel provision of the Products at any time before the Products have been delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Products already provided. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2. In the event that the Customer cancels the order for the Products, the Customer shall be liable for any Products provided by the Supplier up to the date of cancellation and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3. Cancellation of orders for orders for the Products made to the Customer's specifications will not be accepted once an order has been placed.
- 23. Privacy Act 1993**
- 23.1. The Customer authorises the Supplier or the Supplier's agent to:
- access, collect, retain and use any information about the Customer and/or Guarantor;
 - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - for the purpose of supplying Products to the Customer.
 - disclose information about the Customer and/or Guarantor, whether collected by the Supplier from the Customer and/or Guarantor directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection, or notifying a default by the Customer and/or Guarantor.
- 23.2. Where the Customer and/or Guarantor is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3. The Customer and/or Guarantor shall have the right to request the Supplier for a copy of the information about the Customer and/or Guarantor retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer and/or Guarantor held by the Supplier,
- 24. Dispute Resolution**
- 24.1. All disputes and differences between the Customer and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- 25. General**
- 25.1. The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 25.2. These Terms and any contract to which they apply shall be governed by the laws of New Zealand.
- 25.3. The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these Terms (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 25.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.6. The Customer agrees that the Supplier may amend these Terms at any time. If the Supplier makes a change to these Terms, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide any Products to the Customer.
- 25.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, earthquake, or other event beyond the reasonable control of either party.
- 25.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates a binding and valid legal obligation on it.
- 26. Personal Guarantee of Company Directors or Trustees**
- 26.1. If the Customer is a company or a trust, the director(s) or trustee(s) accept these Terms on the opening of an account or Ordering (whichever is the earlier) by the Customer, in consideration for the Supplier agreeing to supply Products and grant credit to the Customer (if appropriate), also accept the Terms in their personal capacity and jointly and severally personally undertake as principal debtors to the Supplier the payment of any and all monies now or hereafter owed by the Customer to the Supplier and indemnify the Supplier against non-payment by the Customer. Any personal liability will not exclude the Customer in any way whatsoever from the liabilities and obligations contained in the Terms. The Guarantors and Customer will be jointly liable.
- 26.2. The Terms shall be a continuing guarantee to the Supplier for all debts whatsoever or whensoever contracted by the Customer with the Supplier in respect of goods to be supplied.