

## TERMS OF SALE AND LICENCE AGREEMENT

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This Terms of Sale and Licence Agreement (the **Agreement**) applies to all transactions for the purchase of Products from Neuroscience Research Australia (ABN 94 050 110 346) (**NeuRA**).

### 1. General

1.1 In this Agreement:

**Intellectual Property Rights** means all intellectual property rights, including but not limited to the following rights:

- (a) patents, trade marks and designs (whether registered or not), copyright, semiconductor or circuit layout rights, know-how, trade secrets; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

**Order** means an order for a Product made in a form specified by NeuRA, including orders made through the website [www.neura.edu.au](http://www.neura.edu.au) (the **Website**).

**Product** means a Falls Assessment Kit supplied by NeuRA, including any subscription to use the Software.

**Software** means the Falls Assessment program accessed through the Website.

**Subscription Term** means the term for which a username and password supplied under subscription by NeuRA to use the Software is valid.

1.2 All Orders are subject to acceptance by NeuRA.

1.3 The terms of this Agreement are the complete and exclusive statement of agreement between NeuRA and you. NeuRA does not offer or agree to any other conditions, warranties, guarantees or representations about the quality or description of the Products or the Software supplied by NeuRA.

1.4 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### 2. Prices

2.1 The price of a Product shall be NeuRA's selling price in effect on the date of receipt by NeuRA of an Order, less any applicable deductions that may be in effect from time to time.

2.2 NeuRA reserves the right to change its prices from time to time without prior notice. All prices include the Australian Goods and Services Tax (GST) at 10%. The total GST payable will be shown on invoices issued by NeuRA.

2.3 Delivery charges, insurance, duties and any other applicable taxes are in addition to the price of a Product.

### 3. Order Delivery

3.1 Full payment for a Product must be received by NeuRA before delivery occurs, unless other

terms of payment are agreed in writing.

- 3.2 Any delivery times quoted by NeuRA are estimates only and NeuRA is not liable for any loss, damage or delay caused by late delivery or non-delivery of a Product.
- 3.3 NeuRA reserves the right to deliver a Product in any number of instalments.
- 3.4 NeuRA is not responsible for any loss or damage to a Product in transit caused by any event of any kind by any person, whether or not NeuRA is legally responsible for the person who caused or contributed to that loss or damage.

#### **4. Return of Product**

- 4.1 You may return a Product to NeuRA within seven days of receipt for a refund of the price of the Product inclusive of GST, if you are unsatisfied for any reason.
- 4.2 You must obtain a Return Authorisation Number (RAN) from NeuRA before returning a Product, which must be at your expense. All Products returned must be in as new condition.

#### **5. Grant of Licence and Use of Software**

- 5.1 NeuRA grants to you a non-exclusive licence to use the Software during the Subscription Term for the purpose of generating falls risk assessment reports from measurements made using Products supplied by NeuRA.
- 5.2 The Subscription Term may be extended at its conclusion by payment according to the rate schedule issued by NeuRA from time to time.
- 5.3 You acknowledge that the results generated by the Software depend on the accuracy of measurements made in accordance with the instructions supplied with each Product, and that the Software is not intended as a substitute for clinical judgment or to indicate a lack of a need for careful attention to patients' individual characteristics and circumstances. The Software must not be regarded as solely determinative of any falls risk without medical consideration of any other possible risk factors.
- 5.4 In order to use the Software, you must obtain access to the Website, through devices that access web-based content, and pay any service fees associated with such access.
- 5.5 You agree to take responsibility for the safekeeping of your username and password. You are liable if your user name or password is used by an unauthorised person. You agree to release and indemnify NeuRA in connection with any use (whether authorised or unauthorised) of your username or password.
- 5.6 Except as expressly permitted under this Agreement, you must not:
  - (a) copy or reproduce in any way part or all of the Software;
  - (b) modify, adapt, translate, tamper with, reverse engineer, disassemble, decompile, circumvent any copy protection technology or otherwise attempt to create or generate or derive any code for, or in respect of, the Software except as permitted by applicable law; or
  - (c) access the Website for unlawful purposes, or in a manner which infringes the rights of, or restricts or inhibits the use of the Website by any other user.
- 5.7 NeuRA may suspend or terminate your licence to use the Software at any time without prior notice if you fail to comply with your obligations under this Agreement.

#### **6. Intellectual Property Rights**

- 6.1 All Intellectual Property Rights in any Product and the Software are owned by NeuRA or are used under licence.
- 6.2 No Intellectual Property Rights in any Product or the Software are transferred to you under

this Agreement.

## **7. Warranties**

7.1 NeuRA warrants that:

- (a) any Product supplied by it will be free from defects in materials and workmanship under normal use and service for a period of one year from the date you receive the Product;
- (b) it is the lawful user of the Software and is entitled to grant the licence under this Agreement; and
- (c) any identifying personal information or details obtained by it or through its Website will not be divulged to another party.

7.2 Other than the warranties contained in clause 7.1, to the maximum extent permitted by law, NeuRA (including its subcontractors and agents) disclaims all express and implied warranties relating to any Product and the Software, including but not limited to, implied warranties of care, skill, merchantability and fitness for a particular purpose, or that access to the Software will be uninterrupted or error-free.

## **8. Limitation of Liability**

8.1 NeuRA's liability for breach of any implied warranty or condition in respect of any Product or the Software which cannot be excluded is limited, at its option, to:

- (a) in the case of a Product, the replacement of the Product or the supply of equivalent goods, the repair of the Product, the payment of the cost of replacing the Product or acquiring equivalent goods, or the payment of the cost of having the Product repaired; or
- (b) in the case of the Software, the supply of access to the Software again or the payment of the cost of having the access supplied again.

8.2 To the maximum extent permitted by law, NeuRA (including its subcontractors and agents) will not be liable for any indirect, incidental, special or consequential damages or loss of profits or revenue arising from any use of a Product or the Software, or from any act or omission on its part.

## **9. Indemnity**

9.1 You indemnify and agree to keep NeuRA indemnified from and against any liability, losses, damages, expenses or costs incurred by NeuRA as a result of any act, default or omission by you under this Agreement.

## **10. No Representations**

10.1 You acknowledge that, except for the warranties contained in clause 7.1, you have not relied on any representation, warranty, promise, forecast or statement made by NeuRA in deciding to enter into this Agreement.

## **11. Transfer**

11.1 You may transfer all of your rights and obligations under this Agreement to a third party only as part of a sale or transfer of a Product if:

- (a) the transferee accepts in writing the terms and conditions of this Agreement; and
- (b) NeuRA receives written notice of the transfer within 30 days of the date of the transfer.

**12. Severance**

- 12.1 If the whole or any part of any clause of this Agreement is illegal or unenforceable, it is to be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

**13. Governing Law**

- 13.1 This Agreement is to be governed by and construed in accordance with the laws of New South Wales, Australia and you agree to submit to the jurisdiction of the courts of New South Wales.