



## Flocare Infinity Pump Supply Form for Pumps on Loan – Facility.

Customer Name:	
Customer Account Number:	

Nutricia Australia Pty Limited (**Nutricia**) agrees to provide the Customer with the Flocare Infinity Pump/s (**Pumps/s**) in accordance with the [Terms and Conditions for the Supply of Flocare Pumps on Loan – Facility](#) located at the above mentioned facility.

**PLEASE FILL IN THE RECEIVED PUMP DETAILS AS BELOW.**

Pump Serial Number	Pump Service Date		Pump Serial Number	Pump Service Date

By signing/accepting this form, the Customer acknowledges and agrees that they:

- a) have received the Pump(s) in good working condition;
- b) agree to comply with the Terms and Conditions.
- c) will ensure the Pump/s are serviced no later than the Service Due Date/s advised above;
- d) will ensure any patient who is being discharged and/or is required to use a Pump outside the Customer's facilities/premises (or their responsible carer), signs/accepts a [Flocare Infinity Pump Loan Agreement – Patient's Agreement](#); and
- e) will continue to be subject to the Terms and Conditions and will be required to reimburse or pay Nutricia for the Pump/s provided to a patient for their personal use, if any patient in (d) (or their responsible carer) does **not** sign/accept the Patient's Agreement upon receipt of the Pump.

<b>ACKNOWLEDGED &amp; AGREED TO FOR AND ON BEHALF OF THE ABOVE FACILITY.</b>	_____
	(An authorised signatory)
	_____
	(Printed Name)
	_____
	(Role)
	Dated: _____

## Terms and Conditions

1. **Loan:** Nutricia Australia Pty Limited (**Nutricia**) will provide the Pump to hospitals/health care facilities/other organisations ('Customer'), by way of limited licence for the sole purpose of dispensing Nutricia feed(s) to patients/residents under Customer's care. Subject to the Customer's compliance with these terms and conditions, the Customer may use the Pump on loan, by way of licence from Nutricia without charge for as long as the Customer is purchasing Nutricia feeds or as otherwise agreed by Nutricia (Loan Period) and otherwise in accordance with these terms and conditions. These terms and conditions shall cease to apply:

- a. when the Pump/s are returned to Nutricia by the Customer in good working order; or
- b. when the Pump has been provided to a patient in accordance with clause 18 and the patient (or their responsible carer) has completed the requested details, and read and accepted, the [Terms and Conditions for the Supply of Flocare Infinity Pumps on Loan in the Community](#) and the signed agreement is received by Nutricia.

whichever occurs last (**Term**). If the **Terms and Conditions for the Supply of Flocare Infinity on Loan in the Community** are not accepted by the patient (or their responsible carer), the Customer will remain responsible for the Pump/s and these terms and conditions will continue to apply until Nutricia terminates this agreement by notice to the Customer.

A reference to Customer refers to the Customer provided with pumps on loan for use by patients/ residents within the Customer's facility/premises and identified in the Flocare Infinity Pump Supply Form-Facility (Pump Supply Form). The Pumps are, at all times, owned by and the property of Nutricia. Nutricia reserves the right to revoke any license granted under this clause at any time.

2. **Title and risk:** The Pump will at all times remain the sole property of Nutricia. Nothing in this document grants the Customer any right, title or interest in the Pump. Risk of loss, theft, damage or destruction of the Pump will pass to the Customer upon delivery of the Pump to the address specified in the Pump Supply Form. The Pump will remain at the Customer's sole risk for the Term and until such time as the Pump is returned to Nutricia in accordance with these terms and conditions.

3. **Security:** The Customer acknowledges and agrees:

- a. this clause creates a Security Interest for the purposes of the Personal Property Securities Act 1999(**PPSA**);
- b. that the Customer grants a Security Interest to Nutricia;
- c. that Nutricia is a Secured Party in relation to the Pump and any Proceeds of the Pump, and is entitled to register its Security Interest on the Personal Property Securities Register;
- d. to waive the right to receive any notice under the PPSA, including notice of a Verification Statement, in relation to any such registration of a Security Interest by Nutricia unless that notice is required under the PPSA and cannot be excluded; and
- e. to, upon Nutricia's request, promptly execute any documents, provide all necessary information, and do any other thing required by Nutricia to obtain, maintain, register and enforce Nutricia's Security Interest in accordance with the PPSA.

Capitalised terms used in this clause 3 and not otherwise defined have the meaning given to them in the PPSA.

4. **Delivery and return of Pump:** Nutricia will deliver the Pump to the address specified by the Customer free of charge unless Nutricia incurs additional charges as a result of the Customer's request/s such as requiring overnight delivery, in which case the Customer will pay any additional charges incurred. When the Pump is no longer required by the Customer, the Customer must contact Nutricia to arrange collection of the Pump. Nutricia (or its authorized representative) will collect, or pay for return of, the Pump unless Nutricia incurs any extraordinary charges as a result of the Customer's action/s or request/s in which case the Customer will pay any extraordinary charges incurred. The Customer must return the Pump in the same condition in which it was delivered to the Customer, less any fair wear and tear.

5. **Use of Pump:** The following terms apply to the Customer's use of the Pump:

- a. **Giving Sets:** 'Giving Sets' means the Nutricia tubing which connects the Pump to the feed. Giving Sets are intended for single-use only. Customer must replace the Pump's Giving Set at least once a day. Nutricia may require the Customer to return Pumps Nutricia if Nutricia reasonably believes that the Customer is not complying with this clause or has not used any Giving Sets over a 6-month period.
- b. **Intended use:** The Customer must ensure that the Pump is used only for the purposes for which it is designed, in a proper manner and by competent persons, and in accordance with any operating and routine daily maintenance instructions or documentation relating to the Pump and provided to the Customer, or made generally available, by Nutricia (**Documentation**). The Pump is only intended to be used as expressly set out in this document.
- c. **Disfigurement:** The Customer must not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed on the Pump, including (without limit) any warnings, instructions, serial numbers or labels indicating Nutricia's ownership of the Pump.
- d. **Modifications:** The Customer must not perform, or allow any person to

perform, any work on the Pump (including, without limit, modifications, maintenance and repairs) other than routine daily maintenance in accordance with clause 7, unless such work is first authorized and approved in writing by Nutricia.

- e. **Possession:** The Customer must not, without Nutricia's prior written consent, part with the possession of (including for the purposes of repair or maintenance), sell or offer for sale, loan, or lease, the Pump, or grant any security interest or other encumbrance in respect of the Pump.
  - f. **Lawful use:** The Customer must use the Pump in a careful, prudent manner, and comply with all laws, regulations, rules, and standards relating to the possession, use and storage of the Pump.
  - g. At all times, the Customer must use the Pumps in accordance with the manufacturer's specifications and manuals, particularly in regards to usage, care, maintenance and replacing sets. At all times, the Customer must follow Nutricia's directions in relation to the Pump.
6. **Routine daily maintenance:** Without limiting the Customer's obligations under clause 7, the Customer is responsible for maintaining and cleaning the Pump in accordance with the Documentation. If requested, the Customer must provide Nutricia with any information required by Nutricia to determine the location, condition and use of the Pump.

7. **Servicing:** The Customer is responsible for ensuring the Pump is returned to Nutricia for servicing at least once in each period of 24 months The next service due date is specified on the Pump. When a Pump is due for servicing:

- a. the Customer must contact Nutricia to arrange the return of the Pump within 28 days of the service due date as specified on the Pump or otherwise at least once in each period of 24 months.
- b. The Customer must contact Nutricia by calling 1800 060 051 or emailing [pumpsau@nutricia.com](mailto:pumpsau@nutricia.com) to arrange the return of the Pump;
- c. Nutricia will then dispatch a replacement Pump to the Customer (should this be required) to the address specified by the Customer within two (2) Business Days of the notification referred to in clause 7a. (**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia; and
- d. on receipt of the replacement Pump, the Customer must return the Pump that is due for servicing to Nutricia (at no cost to the Customer). If the pump is not returned it will be treated as a Lost Pump and clauses 11a. and 11b will apply.

8. **Repair:** Any Pump that does not function substantially in accordance with the Documentation and requires repair (Faulty Pump) must be returned to Nutricia. Should a Pump require repair:

- a. the Customer must notify Nutricia by calling 1800 060 051 or emailing [pumpsau@nutricia.com](mailto:pumpsau@nutricia.com).
- b. Nutricia will, within two (2) Business Days of receiving notice from the Customer under clause 8.a, dispatch a replacement Pump to the address specified by the Customer; and
- c. on receipt of the replacement Pump, the Customer must return the Faulty Pump to Nutricia (at no cost to the Customer). If the Faulty Pump is not returned it will be treated as a Lost Pump and clauses 11a. and 11b will apply.

9. **Costs of repair:** Nutricia will be responsible for all costs associated with the return and repair of Faulty Pumps, except where any Faulty Pump requires repair as a result of or in connection with any Improper Use, in which case the Customer will be responsible for all such costs. Where a Faulty Pump requires repair as a result of or in connection with any Improper Use and that Faulty Pump is unable to be repaired, the Customer may be required to reimburse Nutricia for the Replacement Value of the Faulty Pump. **Replacement Value** means the manufacturer's list price of the Pump as at the time of any loss of, or destruction to, the Pump.

**Improper Use** means any failure by the Customer to use the Pump in accordance with these terms and conditions, including (without limit):

- a. any unauthorized modification or repair of the Pump;
- b. any use of the Pump in a way which is inconsistent with this document, the Documentation, or with the intended purpose or use of the Pump;
- c. not using the Giving Set;
- d. failure to change the Pump's Giving Set on a daily basis;
- e. immersion of the Pump in water;
- f. loss of the Pump's power adaptor or pole clamp;
- g. physical damage to the Pump's exterior housing; and
- h. not servicing, maintaining or repairing the Pump in accordance with this document.

10. **Replacement accessories:** The Customer may order replacement power cables or Pump accessories by contacting Nutricia. A fee (plus freight and delivery) will apply to orders for replacement power cables or Pump accessories and these amounts are to be paid by the Customer as required by Nutricia

11. **Lost, Unreturned or Damaged Pumps:**

- a. Every 6 months, or at any other interval nominated or required by Nutricia, the Customer must provide Nutricia with a detailed report setting out the number of Pump(s) that have been delivered to the Customer, their serial number, the last service date and confirmation that the Customer holds details of the location of each Pump, and any other information that Nutricia may reasonably require.

- b. If Nutricia determines (acting reasonably) that the Customer has lost or fails to return the Pump to Nutricia in accordance with these terms and conditions or in accordance with any direction from Nutricia (**Unreturned Pump**), the Customer shall be required to reimburse Nutricia for the Replacement Value of the Lost Pump, as a debt due and payable to Nutricia within 14 days of demand by Nutricia. Replacement Value of the Pump will be the amount set out in the Current List Price.
- c. If the Customer returns a Pump that Nutricia determines (acting reasonably) is deteriorated or damaged beyond fair wear and tear or has not, in Nutricia's reasonable opinion, been maintained and cleaned in accordance with this document and/or the Documentation (Damaged Pump), the Customer shall be required to reimburse Nutricia for all costs associated in repairing the **Damaged Pump**, and where the Damaged Pump cannot be repaired, the Customer may be required to reimburse Nutricia for the Replacement Value of the Damaged Pump. Replacement Value of the Pump will be the amount set out in the Current List Price.

**12. Invoice:** If the Customer is required to reimburse or pay Nutricia under clauses 9, 10 or clause 11;

- a. the Customer will provide Nutricia with a purchase order (or purchase order number) for the Lost Pumps and/or the Damaged Pumps (as applicable) within 14 days of the end of the Loan Period, or if no Loan Period applies, the expiration of the Term;
- b. Nutricia will issue an invoice (including the purchase order number referred to in clause 12 a. to the Customer for the reimbursement costs; and
- c. the Customer will pay the reimbursement costs in the manner specified in the invoice within 20 days of the date of the relevant invoice.

**13. Warranty:**

- a. Nutricia warrants that the Pump, if used correctly and in accordance with this document, will function substantially as described in the Documentation.
- b. If the Pump does not function substantially in accordance with the Documentation, then, subject to clause 13.c and so long as its failure to function was not caused by the Customer, then Nutricia will, at its option, either repair or replace the Pump at no cost to the Customer. This clause constitutes your Customer's remedy, and Nutricia's sole obligation, in respect of any breach of the warranty in clause 13.
- c. Nutricia will not be liable for any breach of the warranty in clause 13.a to the extent that the breach is caused by use of the Pump contrary to the Documentation and/or any other breach by the Customer of these terms and conditions.
- d. To the extent permitted by law, if any warranty cannot be excluded, Nutricia's liability will be limited, at Nutricia's option, to the resupply or repair of the Pump.
- e. All warranties made by Nutricia and obligations imposed upon Nutricia are excluded where those warranties are relied upon or where those obligations arise as a result of or in connection with an act, omission, default (including a breach of these terms and conditions or any contract between Nutricia and the Customer) or negligence of the Customer. If those warranties and obligations are unable to be excluded by law, then they are reduced to the extent permitted by law.
- f. Nothing in these terms and conditions is intended to exclude, restrict or limit, any of the Customer's rights under Consumer Guarantees Act 1993 or the Fair Trading Act 1986.

**14. Liability: To maximum extent permitted by law:**

- a. Nutricia will not be responsible or liable for any delay or failure in the performance of its obligations under these terms and conditions where such delay or failure is caused by circumstances outside Nutricia's reasonable control;
- b. Nutricia shall not be liable to you for any indirect or consequential loss or damage, cost, expense or injury suffered or incurred by the Customer or any third party, under or in connection with these terms and conditions, or the supply or use of the Pump;
- c. Nutricia's liability for any breach of a warranty or representation that is implied by law and which cannot be lawfully excluded is limited to the repair or replacement of the Pump in accordance with clause 13.b; and
- d. Subject to clauses 14a, 14b and 14c, Nutricia's total aggregate liability (whether arising in tort, contract or otherwise) for any loss, cost, damage, expense or injury suffered or incurred by the Customer or any third party arising under or in connection with these terms and conditions, or the supply or use of the Pump, shall not exceed \$50., excluding death or injury to persons which is directly caused by Nutricia's wilful negligence.
- e. The Customer indemnifies Nutricia for any loss, claim, damages or action arising from or in connection with the Customer's breach of these terms and conditions, except where directly caused by Nutricia's wilful negligence.

**15. Privacy:** Nutricia is committed to managing and protecting the Customer's personal information in accordance with the Privacy Act 2020 and the Health Information Privacy Code 2020. These terms and conditions incorporate the Nutricia Privacy Policy which sets out how Nutricia collects, uses, protects and discloses personal information. The Nutricia Privacy Policy can be viewed [here](#).

**16. General:** These terms and conditions are subject to the laws of Australia and the Customer submits to the non-exclusive jurisdiction of its courts. The Customer may not assign or transfer these terms and conditions or any rights or obligations under these terms and conditions to any other person. No waiver of any breach of these terms and conditions by Nutricia will be deemed to be a waiver of any other or any subsequent breach. Any failure by Nutricia to enforce any of these terms and conditions will not be interpreted as a waiver of the relevant term or condition.

**17. Contact details:** If at any time the Customer needs to contact Nutricia about the Pump or these terms and conditions, please call or email Nutricia using email: [pumpsau@nutricia.com](mailto:pumpsau@nutricia.com); phone: 1800 060 051. It is the Customer's responsibility to ensure that the Customer's contact details are accurate and up to date. If the Customer's contact details or phone number changes at any time during the Term, the Customer must contact Nutricia to update contact details.

## Section 18 below applies when the Customer provides the Pump to a Patient for Patient's personal use upon discharge or otherwise

**18. Provision of Pump to Patient for Personal Use:** Prior to providing a Pump to any patient (or their responsible carer) for the patient's personal use outside the Customer's facility/premises, the Customer will ensure the patient (or their responsible carer) has completed the requested details on the Home Patient **loan agreement**, and read and accepted, the [Terms and Conditions for the Supply of Flocare Infinity Pumps on Loan in the Community](#) (as may be amended from time to time). Customer understands and agrees that a failure to do so or failure of the signed Loan Agreement being sent to Nutricia by the Customer will result in:

- a. Customer continuing to be responsible for the Pump and subject to these terms and conditions in respect of the Pump/s provided to a patient (or their responsible carer); and
- b. the Pump/s being considered a 'Lost, Unreturned or Damaged Pump' under clauses 11 and 12.