

New Zealand Terms and Conditions - Reseller

1. Terms & Conditions of supply

1. For the purposes of these terms and conditions (“**conditions**”), the:
 - a) words “**we**”, “**us**” “**our**” and similar expressions, refer to GN ReSound (NZ) Limited, trading as ReSound;
 - b) word “**you**”, and similar expressions, refer to you, the proposed customer;
 - c) word “**Device**” refers to the hearing instrument designed to perform a particular task or function;
 - d) word “**website**” refers to our website located at the domain <http://www.resound.co.nz>;
 - e) letters “**GST**” mean good and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax;
 - f) words “**Taxable Supply**” and “**Tax Invoice**” have the meanings given to those terms in section 2 of the Goods and Services Tax Act 1985;
 - g) letters “**PPSA**” mean the Personal Property Securities Act 1999 and includes any regulations made under that Act.
2. These conditions constitute the entire agreement between the parties in relation to its subject matter. If these conditions conflict with any other document or with any matter in any warranty form, these terms prevail to the extent of the inconsistency.
3. By purchasing a Device, accessory or any product (“**Product**”) from this website and/or by completing the registration process to become a member of ReSound, you expressly agree to be bound by these conditions.

2. Warranties and Limitations

1. **Consumer warranty:** Click [here](#) to download a copy of our warranty to consumers (**Consumer Warranty**).
2. **Your warranty to us:** By reselling our Product, you warrant to us that:
 - a) the Consumer Warranty will be provided to all purchasers of the Product at the time of sale;
 - b) any aspect of the Product packaging supplied by you and any representation made by you in relation to the Product:
 - i. is not misleading or deceptive; and
 - ii. does not contravene any applicable law, regulation or applicable policy of a government agency, of any kind whatever including in relation to packaging and the information appearing on packaging;
 - iii. you hold any and all professional licences or registrations which are necessary for you to assist and advise the purchaser of the Product; and
 - iv. if you supply Product to a third party which is acquiring the Product for business purposes, then you will ensure that the terms of such sale exclude liability for any claims under the Sale of Goods Act 1908 and Consumer Guarantees Act 1993 as set out in clause 4 below.
3. **Our warranty to you:** For all Products that we sell to you, we warrant to you that:

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- a) we will do all things reasonably necessary to promptly service warranty claims made in accordance with the terms of the Consumer Warranty; and
 - b) We will carry spare parts for each Device for the length of the standard and/or extended warranty period set out in the Consumer Warranty. We do not guarantee the availability of spare parts outside of these periods. Where a Device is outside of warranty, we reserve the right to refuse to supply spare parts where limited stock is available. Due to constraints surrounding your patient's ear anatomy, our manufacturing team may have to perform certain modifications.
4. **Purchase for Business Purposes:** If you acquire any Product from us for the purposes of a business, then the conditions, warranties and guarantees, representations and descriptions in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 or implied by law, trade or custom will not apply and are excluded from these conditions, and the only warranties, representations, conditions and agreements in respect of any Products we supply to you are those which are contained in these conditions or expressly authorised or confirmed in writing by us.
5. **Limitation of liability:** To the maximum extent permitted by law, our liability to you for any breach of these conditions or any matter arising under or in relation to these conditions is limited, at our option, to:
 - a) if the breach relates to a product, replacement of the product, supply of equivalent product, or payment of the cost of replacing the product; and
 - b) if the breach relates to a service, supply of the service again, or payment of the cost of supplying the service again.
6. **Application of limitation of liability:** To the maximum extent permitted by law, the limitation of liability set out above will apply whether a claim is made in contract, tort (including negligence), equity, under statute, or otherwise.
7. **No liability for indirect loss:** We will not be liable to you for any indirect or consequential loss incurred by you as the result of any act or omission by us arising out of or related to these conditions or our supply of Products to you.
8. **Non warranty repairs:** In relation to Device repairs outside of the warranty periods specified in the Consumer Warranty:
 - a) The cost of shipping to the repair centre will be your responsibility
 - b) Upon receiving the device at our service centre we will investigate and provide you with a quote for repair if requested.
 - c) Upon your written acceptance of the quote, we will proceed to carry out the repair.
9. **Return for Credit Policy (Top-Up Products):** In order for a Return for Credit Policy to apply (if applicable) goods must be returned to us within 90 days from supply and must be in as-new-condition accompanied with the original packaging and documentation.
10. **Return for Credit Policy (Tier Products):** In order for a Return for Credit Policy to apply (if applicable) goods must be returned to us within 90 days from supply and must be in as-new-condition accompanied with the original packaging and original documentation.

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11. **Hear Saver Devices CAUTION:** Hear Saver devices are intended to assist in the prevention of hearing damage only. They are intended to be only part of a total protection solution and are not intended to be a standalone prevention solution. They must be used strictly in accordance with the instructions provided. Failure to do so may result in permanent hearing damage. To the extent permitted by law, we exclude liability for any injury, loss or damage caused to property or persons arising from a failure to use those devices in accordance with our instructions.

3. General Conditions

1. **Order.** You may, from time to time, complete an online order form for the supply of any Product or services and such an order must include:
 - a) the quantity of Products or services required;
 - b) any relevant specifications; and
 - c) the time and date for delivery which must be at least 10 days from the date that we receive the order.
2. **Effect of order.** An order is an offer from you and when accepted by us (in our discretion), takes effect as a binding contract by us to sell and you to buy the specified goods or services. An accepted order cannot be cancelled by one party without the consent of the other party. We must give you notice accepting or declining an order within 5 days of receiving that order.
3. **Title and risk.** Risk of loss or damage to, Products passes to you upon the first to occur of the passing of the relevant Products to you or the physical delivery of the relevant Products to you. You acknowledge and agree that we retain title and property in and ownership of the relevant Products supplied to you until the whole amount payable to us for all Products supplied to you and for anything else owing has been paid in full to us, and then property and ownership pass to you. You may sell or use the relevant Products in the ordinary course of business but must hold on trust for us all proceeds of sale or use up to an amount equal to the price still unpaid to us.
4. **Security Interest.** You grant us a security interest in the Products and their proceeds to secure your obligations and liabilities to us under these conditions. You agree that:
 - a) you will not grant or allow any third party security interest in or over the Products;
 - b) you irrevocably authorise us to search for and remove the Products and for that purpose to enter into any premises where they may be found using such force as is necessary;
 - c) you waive the right to receive a copy of the verification statement confirming verification statement confirming registration of a financing statement or financing change statement relating to the security interest;
 - d) nothing in section 134 of the PPSA will apply to these conditions or the security under these conditions and you waive your rights under sections 121, 125, 129 and 131 of the PPSA.
5. **Payment.** You must pay us in accordance with the payment instructions contained on the order form (if any) or, where not specified, within 20 days of the end of the month in which we send you the invoice for any Products delivered, or services rendered, to you.

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6. **Estimated service delivery times.** Any service times for the supply of Products or services stated in an order to you is only an estimate and we are not liable to you for failure to supply at that delivery time, or for minor delays in delivery, on any ground whatsoever. In this respect you agree that time is not of the essence.
7. **GST.** All payments or any other consideration payable to us by you under or in connection with these conditions (“**Primary Payment**”) are exclusive of GST. If any payment is for, or in connection with, a supply provided by us to you under or in connection with these conditions, which is a Taxable Supply, then, in addition to the Primary Payment, we are also entitled to an amount on account of GST, with such amount to be calculated by multiplying the Primary Payment by the applicable GST rate. Such amount shall be paid to us at the same time, by the same party and in the same manner as the relevant Primary Payment is otherwise required to be paid or given, but only if we have provided a valid Tax Invoice to you.
8. **Variations in specifications.** We reserve the right to vary the specifications or performance criteria of any Device or accessories from time to time and to obtain Devices or accessories from different sources, at our absolute discretion. We may do so without informing you, provided that we have reasonable grounds for believing that the alternative Device or accessory offered is substantially similar to, or an improvement of, the Device or accessory previously offered.
9. **Device does not include accessories.** For the avoidance of doubt, an accessory does not form part of the complete Device and the supply of an accessory constitutes an independent supply under these conditions.
10. **Workshop repairs.** In the event that Devices are delivered or taken to our workshop for repair, service or maintenance, all Devices must be collected within seven (7) days of our notifying you that they are ready for collection. In the event that Devices are not collected within the notice period, we reserve the right to charge you for the costs of storage and/ or disposal and all associated costs.
11. **Unexpected delay.** This provision applies if something happens which is beyond our reasonable control which makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases, we may delay performing any of our obligations under these conditions until such time that we can perform our obligations in our usual way (including service or repair) without additional difficulty or expense, and we are not liable for any delay which results. If delay or failure to deliver is caused by a force majeure event or labour dispute, we may suspend service or supply and completion of our obligations under these conditions are suspended as long as the force majeure event continues, but only to the extent to which we are prevented or delayed in performing any of our obligations by the relevant force majeure event. For the purpose of this provision, force majeure event means any event or circumstance outside our reasonable control, including but not limited to, an act of God, war, lightning, fire, earthquake, storm, flood, explosion, failure or delay in the availability of equipment, materials or transport. Whilst we shall use reasonable endeavours to comply with your particular service requirements, you will not be entitled to claim compensation by reason of our failure to comply with your delivery requirements or minor variations to the Device or accessories as a result of changes to our processes or specifications.

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12. General Agreement Terms:

Variation. These conditions can only be varied in writing signed by one of our authorised officers specifying the variation and the transaction to which the variation applies. However, for the avoidance of doubt, any variation of these conditions will not retrospectively amend the terms and conditions relating to any supply of goods or services made prior to the date of variation, unless otherwise agreed in writing by authorised officers of both parties. We may from time to time update and amend these conditions in relation to future orders by giving notice of such amended conditions to you.

Severance. If any provision or part of any provision of these conditions is invalid, void, illegal or unenforceable, that provision or part of the provision (as the case may be) will be severed from these conditions and will not affect the validity, existence, legality and enforceability of the remaining provisions of these conditions.

No Set Off. You are not entitled to set off against or deduct from the price any sums owed or claimed to be owed to you by us.

No Waiver. The failure by us to enforce any provision of these conditions shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision. Waiver of any power or right under these conditions must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.

Non Representation. The description, illustration and performance of any Product referred to in our catalogue, marketing material, price list or advertising is for general guidance only and you should fully satisfy yourself that the Product will meet your requirements and will be suitable for your intended purpose.

Indemnity. To the maximum extent permitted by the law, you hereby indemnify us and each of our agents and employees against any liability, loss or damage we may incur or sustain as a result of the use of the Products and any loss or damage arising or resulting from any failure to perform or improper performance of your obligations under these conditions.

Applicable Law. These conditions will be governed by and construed in accordance with the laws of New Zealand. Each party submits to the exclusive jurisdiction of the courts of New Zealand.