

Terms and Conditions for the Supply of Flocare Infinity Pumps on Loan in the Community



Thank you for choosing a Nutricia Flocare enteral feeding pump. Before using the pump, please read the following terms and conditions carefully. By signing this document, you are agreeing to these terms and conditions and that you have in your possession the pump with matching serial number as identified in the table below ("pump"). If you do not agree to these terms and conditions, please do not use the pump and return the pump to Nutricia immediately.

Before using the pump, please complete the details in the table below and return a signed copy of this form to Nutricia at: pumpsau@nutricia.com.

The person accepting responsibility for the pump must sign this form.

Please note you may be charged a maximum of **\$1700** if you fail to return the pump when it is no longer required.

Patient Name (if applicable):

DOB: Male: Female: Not Specified:

Person Responsible for Pump (if applicable):

Relationship to Patient:

Email: Phone:

Address:

Postcode:

Signature: Date:

Secondary Contact: Phone:

Relationship to Patient: Mobile:

Email:

Signature: Date:

TO BE COMPLETED BY THE HEALTHCARE PROFESSIONAL PROVIDING THE PUMP

Name of Referring Hospital/Facility:

Flocare Infinity Pump: New: Replacement: Allocated to Facility:

Pump Serial No.: Pump Service Due Date:

Healthcare Professional Name: Phone:

Position: Mobile:

Email:

Signature: Date:

RETURNING THE PUMP

Please return pump promptly to Nutricia when no longer in use.
Do not return the pump to hospital.

Please scan the QR code to find out how to return your pump free of charge,
or contact the Nutricia pump team on 1800 245 580 / pumpsau@nutricia.com



Terms and Conditions

- Loan:** Nutricia Australia Pty Limited (**Nutricia**) will provide the Pump to you, by way of licence, for the purpose of dispensing Nutricia feed(s) to the patient named above (**Patient**). Subject to the Patient's compliance with these terms and conditions, the Patient may use the Pump on loan from Nutricia without charge for as long as the Patient is required to use Nutricia feed 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 at the end of the Loan Period. A reference to Patient refers to the person named in Section 1 on page 1. A reference to 'you' refers to the person named in Section 2 on page 1. If there is no person named in Section 2 on page 1, then 'you' and 'Patient' are used interchangeably and refer to the person named in Section 1 on page 1. The Pumps are, at all times, owned by and the property of Nutricia. Nutricia reserves the right to revoke any licence granted under this clause at any time.
- Title and risk:** The Pump will at all times remain the sole property of Nutricia. Nothing in this document grants you any right, title or interest in the Pump. Risk of loss, theft, damage or destruction of the Pump will pass to you upon delivery of the Pump to the address specified above. The Pump will remain at your sole risk for the Loan Period and until such time as the Pump is returned to Nutricia in accordance with these terms and conditions.
- Security:** You acknowledge and agree:
 - this clause creates a Security Interest for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPSA**);
 - that you grant a Security Interest to Nutricia;
 - 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;
 - 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
 - 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.
- Delivery and return of Pump:** Nutricia will deliver the Pump to the address specified above free of charge, unless Nutricia will incur any extraordinary charges. When the Pump is no longer required by the Patient, you must contact Nutricia to arrange collection of the Pump. Nutricia (or its authorised representative) will collect, or pay for return of, the Pump unless Nutricia will incur any extraordinary charges. You must return the Pump in the same condition in which it was delivered to you, less any fair wear and tear. You must not return the Pump to a hospital.
- Use of Pump:** The following terms apply to the Patient's use of the Pump:
 - Feed:** You should only use Nutricia's enteral feed products with the Pump, unless otherwise first agreed by Nutricia in writing. If you need to use another supplier's feed product with the Pump, you must confirm compatibility with the Pump and your use is at your own sole risk. Nutricia makes no representation or warranty as to the suitability of the Pumps with any enteral feed products not made by Nutricia.
 - Giving Sets:** 'Giving Sets' means the Nutricia tubing which connects the Pump to the feed. Giving Sets are intended for single-use only. You must replace the Pump's Giving Set at least once a day. Nutricia may require you to return the Pump if Nutricia reasonably believes that you are not complying with this clause or have not used any Giving Sets over a 12-month period.
 - Intended use:** You 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 you, or made generally available, by Nutricia (Documentation). The Pump is only intended to be used as expressly set out in this document.
 - Disfigurement:** You 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.
 - Modifications:** You 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 authorised and approved in writing by Nutricia.
 - Possession:** You 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.
 - Lawful use:** You 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.
 - At all times, you 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, you must follow Nutricia's directions in relation to the Pump.
- Routine daily maintenance:** Without limiting your obligations under clause 7, you are responsible for maintaining and cleaning the Pump in accordance with the Documentation. If requested, you must provide us with any information required by us to determine the location, condition and use of the Pump.
- Servicing:** You are 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 in the table above. When Pump is due for servicing:
 - Nutricia may notify you and ask you to contact Nutricia to arrange the return of the Pump;
 - within 28 days of receiving any notice from Nutricia under clause 8.a, or otherwise at least once in each period of 24 months, you must contact Nutricia by calling 1800 884 367 to arrange the return of the Pump;
 - Nutricia will then dispatch a replacement Pump to you at the address specified above (as amended from time to time in accordance with clause 16). **Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia; and
 - on receipt of the replacement Pump, you must return the Pump that is due for servicing to Nutricia (at no cost to you).
- Repair:** Any Pump that does not function substantially in accordance with the Documentation and requires repair (Faulty Pump) must be returned to Nutricia. Where your Pump requires repair:
 - you must notify Nutricia by calling 1800 884 367
 - Nutricia will, within one (1) Business Day of receiving notice from you under clause 8.a, dispatch a replacement Pump to you at the address specified above (as amended from time to time in accordance with clause 16); and
 - on receipt of the replacement Pump, you must return the Faulty Pump to Nutricia (at no cost to you).
- 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 you 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, you may be required to reimburse Nutricia for the Replacement Value of the Faulty Pump. If you are required to reimburse Nutricia under this clause, Nutricia will issue an invoice to you for the reimbursement costs and you must pay the reimbursement costs as a debt due and payable to Nutricia, in the manner specified in, and within 20 days of the date of, the relevant invoice. **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 you or the Patient (as applicable) to use the Pump in accordance with these terms and conditions, including (without limit):
 - any unauthorised modification or repair of the Pump;
 - any use of the Pump in a way which is inconsistent with this document, or with the intended purpose or use of the Pump;
 - not using the Giving Set;
 - failure to change the Pump's Giving Set on a daily basis;
 - using feeds which are not from Nutricia;
 - immersion of the Pump in water;
 - loss of the Pump's power adaptor or pole clamp;
 - physical damage the Pump's exterior housing; and
 - not servicing, maintaining or repairing the Pump in accordance with this document.
- Replacement accessories:** You may only order replacement power cables or Pump accessories by contacting Nutricia. A fee of \$50 (plus freight and delivery) will apply to orders for replacement power cables or Pump accessories.
- Lost, Unreturned or Damaged Pumps:**
 - If you lose or fail to return the Pump to Nutricia in accordance with these terms and conditions or in accordance with any direction from Nutricia (**Unreturned Pump**), you may 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.
 - If you return a Pump that 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 (**Damaged Pump**), you may be required to reimburse Nutricia for all costs associated in repairing the Damaged Pump, and where the Damaged Pump cannot be repaired, you may be required to reimburse Nutricia for the Replacement Value of the Damaged Pump.
 - If you are required to reimburse Nutricia under this clause, Nutricia will issue an invoice to you for the reimbursement costs and you must pay the reimbursement costs as a debt due and payable to Nutricia, in the manner specified in, and within 20 days of the date of, the relevant invoice.
- Warranty:**
 - Nutricia warrants that the Pump, if used correctly and in accordance with this document, will function substantially as described in the Documentation.
 - If the Pump does not function substantially in accordance with the Documentation, then, subject to clause 12.c and so long as its failure to function was not caused by you, then Nutricia will, at its option, either repair or replace the Pump at no cost to you. This clause constitutes your sole remedy, and Nutricia's sole obligation, in respect of any breach of the warranty in clause 12.a.
 - Nutricia will not be liable for any breach of the warranty in clause 12.a to the extent that the breach is caused by use of the Pump contrary to the Documentation and/or any other breach by you of these terms and conditions.
 - To the extent permitted by law, if any warranty cannot be excluded, our liability will be limited, at our option, to the resupply or repair of the Pump.
 - 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 you) 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.
 - Nothing in these terms and conditions is intended to exclude, restrict or limit, any of your rights under the Australian Consumer Law being Schedule 2 to the Australian Competition and Consumer Act 2010 (Cth). In this regard, Nutricia notifies you as follows "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure".
- Liability:** To the maximum extent permitted by law:
 - 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;
 - Nutricia shall not be liable to you for any indirect or consequential loss or damage, cost, expense or injury suffered or incurred by you under or in connection with these terms and conditions, or the supply or use of the Pump;
 - 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
 - subject to clauses 13a, 13b and 13c, Nutricia's total aggregate liability (whether arising in tort, contract or otherwise) for any loss, cost, damage, expense or injury suffered or incurred by you arising under or in connection with these terms and conditions, or the supply or use of the Pump, shall not exceed \$50.
 - You indemnify Nutricia for any loss, claim, damages or action arising from or in connection with your breach of these terms and conditions.
- Privacy:** Nutricia is committed to managing and protecting your personal information in accordance with the Privacy Act 1988 (Cth). 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 <http://www.nutriciamedical.com.au/privacy>.
- General:** These terms and conditions are subject to the laws of New South Wales, Australia and you submit to the non-exclusive jurisdiction of the courts of that state. You may not assign or transfer these terms and conditions or any of your 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.
- Contact details:** If at any time you need to contact Nutricia about the Pump or these terms and conditions, please call or email Nutricia using email: pumpsau@nutricia.com; phone: 1800 245 580. It is your responsibility to ensure that your contact details are accurate and up to date. If you change your address or phone number at any time during the Loan Period, you must contact Nutricia to update your details.