

**Area of application**

These general terms of delivery shall apply unless changed by written agreement between the parties. In the absence of written confirmation in conjunction with conclusion of the contract, no statements or information shall override the provisions of these terms of delivery or in any other respect influence the contents of the contract.

These regulations are not applicable to software included in the delivery insofar as the software is subject to separate conditions.

**1. Basis of Sale**

1.1 All quotations are given and all orders are accepted on these terms

2.2 No contract for the supply of goods or to perform work exists until the Supplier has issued an acknowledgement of the Buyer's order.

2.3 The Buyer acknowledges that these terms constitute the entire understanding between the parties for the sale of the Goods.

2.4 No modification of these terms shall be effective unless made by an express written agreement between the Buyer and a director of the Supplier.

**2. The Goods**

2.1 All descriptions and illustrations contained in the Supplier's catalogue, price list and advertisements or otherwise communicated to the Buyer other than in a current product data sheet are intended to present merely a general idea of the Goods described and shall not form part of the contract.

2.2 The Supplier reserves the right to make modifications to the specifications of the Goods, provided that this does not materially affect their performance.

**3. Price**

3.1 Subject to 4.2 below the price of Goods is as stated on the Acknowledgement of Order and does not include Value Added Tax, Customs duty, or any applicable sales tax at the appropriate rate.

3.2 Where carriage, insurance, storage or other charges are shown separately from the price of Goods, they are nevertheless payable by the Buyer at the same time as if they form part of the price and shall be treated as such for the purposes of these conditions.

**4. Cancellation**

The Buyer may not cancel the contract without the written consent of the Supplier. If such consent is given, it is made on the express condition that the Buyer shall indemnify the Supplier against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

**5. Payment**

5.1 Unless otherwise agreed in writing payment terms shall be 30 days from date of invoice.

**6. Delivery**

6.1 Any time or date specified for delivery is given in good faith as an estimate and the Supplier shall not be liable for any direct or indirect loss, damage, expense howsoever arising from any delay in delivery.

6.2 Delivery shall take place ex-works unless agreed otherwise in writing. The Supplier shall notify the Buyer when the Goods are ready for delivery.

**7. Retention of Title**

7.1 Title in the Goods shall not pass to the Buyer until the Buyer has paid to the Supplier all sums owed (under this or any other contract) by the Buyer to the Supplier. The Goods shall be at the risk of the Buyer on leaving the Supplier's factory.

7.2 The Buyer will indemnify the Supplier against any loss or deterioration in the Goods while they remain the property of the Supplier and will keep the Goods properly insured for not less than their contract value.

7.3 Without prejudice to any other rights the Supplier may have, the Supplier may recover the Goods and the Buyer agrees that the Supplier, its agents or employees may enter on the Buyer's premises and remove the Goods at any time, if any of the events in Clause 12.1(a) to (f) occur and property in the Goods has not passed to the Buyer.

7.4 Until title in the Goods has passed to the Buyer, the Buyer: -

(a) shall store the Goods on its premises separately from its own goods and those of any other person and in a manner which makes them readily identifiable as goods of the Supplier.

(b) shall not deal with or dispose of the Goods or any interest therein (other than by sale to an independent purchaser buying entirely in the ordinary course of the Buyer's business)

(c) hold itself out as the Supplier's agent in respect of the Goods.

7.5 If payment of any sum is overdue the Supplier shall have the right to commence proceedings against the Buyer for the price, notwithstanding that title in the Goods has not yet passed to the Buyer.

**8. Warranties**

8.1 The Supplier hereby warrants that the Goods are free from any material defect in workmanship and materials and correspond with any agreed written specification but save for any liability in relation to death and personal injury occasioned solely by the negligence of the Supplier or its employees the Supplier's liability (whether contractual or in respect of any negligence or otherwise) to the Buyer arising out of the supply of the Goods shall be limited to making available free of charge the labour and material required to make good any such defects or (at the Supplier's option) replacing any defective Goods. The Supplier's liability under this warranty is also conditional upon:

(a) written notice of the defect being given to the Supplier within 10 days after discovery of the same and in any event with 12 months after either date of delivery or the date on which the Buyer was informed that the goods are ready for delivery whichever first occurs; and

(b) the Goods having been properly stored and used by the Buyer prior to the defect occurring; and

(c) the Goods not having been subjected to any abnormal or improper use or modification; and

(d) the Goods having been returned at the Supplier's request but at the Buyer's expense for inspection.

(e) the Supplier does not authorise or warrant any Goods for use in patient-connected medical apparatus without the express written approval of an officer of the Supplier.

**9. Indemnity**

The Buyer agrees to indemnify the Supplier against all claims relating to the Goods sold to the Buyer in respect of any loss, damage or expense sustained by any third party save only in respect of death or personal injury caused by the negligence of the Supplier or any of its employees or agents.

**10. Force Majeure**

The Supplier shall bear no liability for loss, damage or delay howsoever arising caused in circumstances outside its control including (but not limited to) Acts of God, war, strike, civil commotion, work to rule or go slow, over time bans, lock-outs, fire, flood, drought or inability to procure materials or articles except at increased prices due to any of the foregoing causes (and in these circumstances may suspend or cancel the whole or part of any delivery).

The Supplier shall endeavour to notify the Buyer as quickly as reasonably possible if a force majeure event occurs.

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The Supplier shall endeavour to notify the Buyer as quickly as reasonably possible if a force majeure event occurs.

**11. Default**

11.1 Without prejudice to any other rights it may have and without prejudice to the provisions of clause 8 above, the Supplier may, by notice to the Buyer, terminate any contract between and Supplier forthwith and/or immediately recover from the Buyer all sums due from the Buyer under any contract with the Supplier together with any accrued interest and other legitimate charges and any loss to the Supplier as a result of any termination if:

(a) any payment due by the Buyer to the Supplier is overdue in whole or in part; or

(b) the Buyer shall commit any breach of any of the terms of any contract with the Supplier provided that if the breach is remediable

the Supplier has given to the Buyer notice of such breach which has not been remedied within seven days thereafter; or  
(c) a resolution is passed or a Court Order made resolving or ordering the Buyer to be placed into liquidation or ordering that an administrator be appointed over all or any of its assets; or  
(d) a receiver or administrative receiver is appointed overall or any of the assets of the Buyer; or  
(e) the Buyer (being an individual) has a petition in bankruptcy entered against him; or  
(f) the Buyer ceases or threatens to cease to carry on trading.  
11.2 Where the Buyer is situated outside of the United Kingdom the Supplier shall be entitled to terminate the contract and/or recover all sums due pursuant to clause 11.1 if any event occurs which is analogous to the events described in 11.1 (c) to 11.1 (f) inclusive.

#### **12. Intellectual Property Rights**

The Goods are sold and/or supplied subject to the rights of any person whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; the Buyer will in this respect accept such title to the Goods as the Supplier may have.

#### **13. Assignment**

The Buyer shall not assign or transfer any contract to which these Conditions apply nor the benefit thereof to any person whatsoever.

#### **14. Lien**

Without prejudice to any other remedies the Supplier shall in the event of default by the Buyer or any of the situations set out in clause 11.1 arising have a general lien on all goods and property in its possession (whether worked on or not) and belonging to the Buyer in respect of any sums due from the Buyer and shall be entitled after giving 14 days' written notice to the Buyer to dispose of such goods or property as it thinks fit.

#### **15. Proper Law of the Contract**

The construction, validity and performance of any contract shall be governed in all respects by the Law of the State of North Carolina. The Buyer hereby agrees to submit to the exclusive jurisdiction of the Missouri Courts.

#### **16. Notices**

Any notice required to be given under these conditions may be sent by pre-paid first class post or facsimile to the principal place of business or registered office of the part to whom the notice is being sent if sent by post, it shall be deemed to have been served (until the contrary is proved) on the second working day after the date of posting.