

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Definitions

In this document:

- 1.1. "Business Day" means day that is not a Saturday, a Sunday or a public holiday in England and Wales;
- 1.2. "the Company" means Innovative Design Orthopaedics Limited;
- 1.3. "Conditions" means terms and conditions specified in or in accordance with this document;
- 1.4. "Consent" means express consent of the Company in writing signed by an officer or other authorised agent of the Company and given before the occurrence of the event to which the consent relates;
- 1.5. "Contract" means contract for the supply of Goods and/or Services by the Company;
- 1.6. "Customer" means person to whom Goods and/or Services are supplied or to be supplied pursuant to a Contract;
- 1.7. "Goods" means goods supplied or to be supplied by the Company;
- 1.8. "Services" means services supplied or to be supplied by the Company;
- 1.9. "Decontamination Certificate" means certificate in a form reasonably acceptable to the Company and signed by a person duly authorised on behalf of the Customer that the Goods have undergone sterilisation according to a process previously specified or approved by the Company.

### 2. Formation of contract

- 2.1. Save with Consent, or as specified in special conditions published in respect of any particular Goods or Services, the Conditions apply exclusively to each Contract.
- 2.2. Acceptance by the Customer of delivery of Goods or performance of Services shall be deemed to constitute unqualified and irrevocable consent to the incorporation of the Conditions into the Contract.
- 2.3. The Company may vary the Conditions from time to time, provided that the Company shall take reasonable steps to bring the variation to the attention the Customer and no variation shall have effect in respect of a prior Contract.
- 2.4. No terms and conditions or contractual provisions specified or stipulated by the Customer, whether before or after the Conditions have been brought to the attention of the Customer, shall be binding on the Company.

### 3. Price

- 3.1. The price of the Goods or for the Services is quoted exclusive of VAT, delivery, packaging, carriage and insurance.
- 3.2. Any quotation given by the Company is an invitation to treat, not an offer to sell.
- 3.3. The prices of Goods and Services shall be as set out in the edition of the Company's price list last published before the Contract was made.
- 3.4. No order by the Customer shall be binding without Consent.

### 4. Payment

- 4.1. The aggregate of the price of the Goods or Services and of the applicable VAT, delivery, packaging, carriage and insurance is referred to below as "the Price".
- 4.2. The Company has no obligation to deliver Goods or provide Services until after the Company has received the Price.
- 4.3. The Price shall be due for Goods supplied on the "Use or Return" basis that are not returned to the Company by the return date specified on the delivery note undamaged and sealed in their original unsoiled packaging.
- 4.4. For Goods (including containers) supplied on the "Hire" basis the Price shall be due in respect of Goods that are not returned undamaged to the Company by the return date specified on the

delivery note and the Price of the sterilisation Service shall be due in respect of Goods that are returned by the return date without a Decontamination Certificate.

4.5. Where the Company has agreed to allow credit, the Price is due within 20 Business Days from delivery of the Goods (or delivery being tendered) or the supply of the Services, or from the date of the invoice if later, whether or not the Company has demanded payment.

4.6. Time for payment is of the essence of the Contract.

## **5. Delivery**

5.1. The Company is not liable for any delay in the delivery of Goods or the carrying out of Services.

5.2. Delivery of Goods will normally be made at the Company's premises when the Goods are handed over to the Customer, its agent or its carrier, but if the Company agrees to deliver the Goods other than at its premises, the Customer shall pay for carriage, insurance and delivery.

5.3. The carrying out of the Services will be at the place agreed in the Contract.

5.4. If delivery is not refused, but the Customer does not notify the Company accordingly, the Customer is not entitled to reject Goods.

5.5. If the Customer fails to take delivery of the Goods or gives inadequate delivery instructions then the Company may store the Goods until actual delivery and the Customer shall pay the reasonable costs of storage and insurance.

5.6. The Company may, after 20 Business Days, sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account to the Customer for any excess over the Price or recover any shortfall from the Customer.

## **6. Transfer of risk**

Risk of damage to or loss of the Goods passes on delivery or, if the Customer wrongfully fails to take delivery, when delivery is tendered.

## **7. Protection of Goods**

The Customer shall keep the Goods until used in their original packaging in a cool, but frost-free, dry and dust-free environment, free from vibration, violent movement or corrosive substances and shall not remove them from the location specified in the dispatch note without Consent.

## **8. Passing of property**

Property in the Goods does not pass to the Customer until either the Company has received full payment of the Price and all other sums due to the Company from the Customer for the Goods or, in case of implantable components, the Goods have been surgically implanted. Until property in the Goods passes to the Customer the Customer:

8.1. will hold the Goods on the Company's behalf, and will keep the Goods separate from its other goods and those of third parties, properly stored, protected, insured and identified as the Company's property;

8.2. shall not pledge or charge the Goods by way of security or otherwise;

8.3. is entitled to use the Goods in the ordinary course of its business;

8.4. shall deliver up the Goods to the Company on demand and permit the Company to repossess the Goods, and grants the Company and those it authorises irrevocable licence to enter any premises to inspect or repossess the Goods.

## **9. Warranties**

9.1. Except as set out below, the Company warrants that the Goods will correspond to their description at the time of delivery and will remain free from defects in materials and workmanship until their stated expiry date subject to compliance with the above provisions for Protection of Goods.

9.2. Except as set out below, the Company warrants that any Services will be performed with reasonable skill and care.

9.3. All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **10. Restriction of liability**

10.1. The Company shall not be liable for loss, damage, costs, expenses or harm:

- 10.1.1. arising from defects in Goods caused by failure to keep or utilise the Goods in accordance with the Conditions or guidance provided by the Company in its published product descriptions, operational techniques and instructions for use;
- 10.1.2. modifications to Goods made without Consent;
- 10.1.3. inadequate improper follow up or maintenance;
- 10.1.4. use of the Goods other than for their intended purpose;
- 10.1.5. sustained as a result of late or non-performance of any of the Company's obligations where the delay or failure is due to any event or circumstances beyond the Company's reasonable control (which shall include, without limitation, acts of God, war, armed, conflict, riot, industrial action involving employees of the Company or a third party, defaults by the Company's suppliers or sub-contractors or any measures of a governmental or inter governmental authority)
- 10.1.6. by reason of any misrepresentation (unless fraudulent), or for the breach of any express or implied term of the Contract, or any duty at common law for:
  - 10.1.6.1. any loss of profit, business, contracts, opportunity, goodwill, revenues, anticipated savings, expenses, costs or similar loss; and/or
  - 10.1.6.2. any indirect, special or consequential loss or damage (whether for loss of profit or otherwise and whether caused by the negligence, breach of contract, tort, breach of statutory duty or the Company, its employees or agents or otherwise) which arise out of any breach of or in connection with the Contract.

10.2. Any other liability of the Company to the Customer in contract, tort, breach of statutory duty or howsoever arising out of or in connection with the Contract, shall be limited:

- 10.2.1. in the case of damage to property, to the amount recoverable from the Company's insurers; and
- 10.2.2. in the case of any other liability, to the value of the Goods and/or Services out of which the liability arises.

10.3. The Company shall not be under any liability for any delay or failure to perform any of its obligations under the Contract where it is prevented by reasons beyond its reasonable control including without limitation any act of God, war, riot, malicious damage, blockade, strike, lockout, industrial action, governmental action, accident, breakdown of machines, default of suppliers, storm, fire, flood, drought, tempest or similar event.

10.4. Where any valid warranty claim is made in respect of the Goods which is based on any defect in the materials or workmanship of the Goods or its failure to meet specification falling within the warranty set out in Condition 9.1, the Company can choose either to repair or replace the Goods (or the part in question) free of charge or grant credit to or refund to the Customer the Price (or a proportionate part of the Price) at the Company's absolute discretion, but the Company shall have no further liability to the Customer under the warranty.

10.5. Where any valid warranty claim is made in respect of the Services or the installation or commissioning of Goods which is based on the failure of the Company to perform such Services, installation or commissioning with reasonable skill and care falling within the warranty set out in Condition 9.2, the Company can choose either to redo the work in question or carry out repairs or replace any Goods affected free of charge or grant credit to or refund to the Customer the Price (or a proportionate part of the Price) at the Company's absolute discretion, but the Company shall have no further liability to the Customer under the warranty.

- 10.6. The Customer accepts that the Company's limitation of liability set out in Condition 10 is fair and reasonable in all of the circumstances.
- 10.7. Nothing in the Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Company for death or personal injury caused by reason of the negligence of the Company.

## **11. Company's remedies**

- 11.1. If the Price is not fully paid when due, or the Customer breaks any other of its obligations under a Contract, or the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Customer, or the Customer ceases or threatens to cease to carry on business or the Company reasonably believes (and so notifies the Customer) that any of the events mentioned in this condition is about to occur, then the Company has, and may exercise, any or all of the following rights and remedies:
  - 11.1.1. cancel the Contract and/or any other Contracts and/or suspend any further deliveries;
  - 11.1.2. cancel and withdraw any trade discount allowed on the Price;
  - 11.1.3. withdraw all credit facilities and be immediately paid for all outstanding invoices issued whether or not they were due for payment;
  - 11.1.4. charge and recover from the Customer interest from day to day on all unpaid amounts at 4% per year above the HSBC Bank base rate from time to time both before and after entry of judgment.
- 11.2. The exercise by the Company of any right or remedy shall not affect its right to exercise any other right or remedy.
- 11.3. No waiver by the Company of a breach of a Contract by the Customer, whether express or implied by delay or failure to enforce any of its rights under a Contract, shall prevent the Company from subsequently enforcing such rights in respect of that or any other breach of a Contract.

## **12. Time for making claims**

Any notice of claim by the Customer that:

- 12.1. Goods were not delivered or do not correspond to the Contract description must be notified to the Company within 5 Business Days from the date of delivery or (where there is non or incorrect delivery or the failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure (or after such defect or failure should have been discovered by a prudent Customer).
- 12.2. Services do not correspond with Contract specification must be notified to the Company within a reasonable time after discovery of the defect or failure (or after such defect or failure should have been discovered by a prudent Customer).

## **13. Confidentiality**

All information, drawings, specifications, documents, design material and all other data which the Company has disclosed to the Customer ("Confidential Information") is proprietary to the Company and confidential. The Customer agrees that it will not disclose Confidential Information to third parties, whether directly or indirectly, without Consent.

## **14. Third parties' rights**

- 14.1. Save as follows, a Contract will only confer rights and benefits on the Customer and no third party is able to acquire rights or benefits under the Contract.
- 14.2. A Contract may not be assigned by the Customer, but the Company may assign or sub-contract all or any of its rights or obligations.

## **15. Notices**

- 15.1. Unless the Customer gives the Company notice to the contrary, the Company may deliver an order confirmation or invoice by email transmission in portable document format to the address of the person or department that ordered the items on the invoice.
- 15.2. Any notice given under the Conditions must be in writing, addressed to the registered office or principal place of business of the addressee or any other address notified as the correct address for service of documents.
- 15.3. Any notice must be given by hand or sent by first class post (airmail if overseas).
- 15.4. Email is not effective notice.

## **16. Whole agreement**

The Conditions and the documents referred to in them contain the entire agreement between the parties and no other agreements, representations, warranties, promises or understandings express or implied will bind the parties or form part of a Contract without Consent.

## **17. Law**

English law governs the Conditions and each Contract and the parties submit to the exclusive jurisdiction of the English courts.