

JOINT OPERATIONS TERMS AND CONDITIONS OF SUPPLY TO BUSINESSES

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

Contract: the contract between Joint Operations and the Customer for the sale and purchase of the Products in accordance with these Conditions.

Customer: the person or firm who purchases the Products from Joint Operations.

Delivery Location: has the meaning given in clause 4.1.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Joint Operations: Joint Operations Limited (registered in England and Wales with company number 11817255).

Order: the Customer's order for the Products, as set out in the Customer's online, fax or telephone order, or as communicated via an internal portal provided by Joint Operations or the Customer as the case may be, the Customer's purchase order form, the Customer's written acceptance of Joint Operations' quotation, or overleaf, as the case may be.

Products: the products (or any part of them) set out in the Order.

Specification: any specification for the Products, including any related designs or drawings, that is published or made available by Joint Operations or as otherwise agreed in writing by the Customer and Joint Operations.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but includes email unless otherwise stated in these Conditions.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Joint Operations issues a written acceptance of the Order, at which point a Contract shall come into existence. Orders placed on Joint Operations' website will be accepted by the order acknowledgment email.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Joint Operations and any descriptions or illustrations contained in Joint Operations' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Products given by Joint Operations shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. PRODUCTS AND CONSULTATION ADVICE

- 3.1 The Products are described on the Joint Operations' website or as modified by any applicable Specification.
- 3.2 Joint Operations reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and Joint Operations shall notify the Customer in any such event.
- 3.3 Where Joint Operations employees or representatives are made available to the Customer (including but not limited to a surgeon) for consultation on the use of Products, the Customer acknowledges that any advice or information provided by the Joint Operations employee or representative is given on the basis that reasonable skill and care will be taken however the Customer is solely responsible for decisions that it takes in connection with the use of the Product in a surgical scenario or otherwise.

4. DELIVERY

- 4.1 Joint Operations shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Joint Operations notifies the Customer that the Products are ready.
- 4.2 Delivery is completed on the completion of unloading of the Products at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Joint Operations shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Joint Operations with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.4 If Joint Operations fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. Joint Operations shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Joint Operations with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.5 If Joint Operations delivers up to and including 10% more or less than the quantity of Products ordered the Customer may not reject them, but on receipt of notice from the

Customer that the wrong quantity of Products was delivered, Joint Operations shall make a pro rata adjustment to the invoice for the Products.

- 4.6 Joint Operations may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 The Customer acknowledges that Joint Operations is not the manufacturer of the Products and as such, unless otherwise agreed in writing, Joint Operations' only responsibility in respect of the quality of the Products is to use its best endeavours to transfer the benefit of the manufacturer's standard warranty in respect of the Products to the Customer and to provide such reasonable assistance as the Customer may require in the event that there is a defect in the Products. The **Warranty Period** shall be warranty period provided by the manufacturer of the Products.

- 5.2 Subject to clause 5.3, where Joint Operations has agreed in writing to provide a warranty to the Customer, if:

- (a) the Customer gives notice in writing to Joint Operations during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
- (b) Joint Operations is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if asked to do so by Joint Operations) returns such Products to Joint Operations' place of business at Joint Operations' cost,

Joint Operations shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. If the Products are not found to be defective, the Customer shall reimburse Joint Operations for the cost of return.

- 5.3 Joint Operations shall not be liable for the Products' failure to comply with any warranty provided by Joint Operations if:

- (a) the Customer does not use suitably trained personnel in the use of the Product;
- (b) the Customer makes any further use of such Products after giving notice in accordance with clause 5.2;
- (c) the defect arises because the Customer failed to follow the manufacturer's written IFU instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of Joint Operations following any drawing, design or specification supplied by the Customer;
- (e) the Customer alters or repairs such Products without the written consent of Joint Operations;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) the Products differ from their description and any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.4 Except as provided in this clause 5, Joint Operations shall have no liability to the Customer in respect of the Products' failure to comply with any manufacturer's warranty or any warranty agreed in writing by Joint Operations.

5.5 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Products supplied by Joint Operations.

6. TITLE AND RISK

6.1 The risk in the Products shall pass to the Customer on completion of delivery.

6.2 Title to the Products shall not pass to the Customer until the earlier of:

- (a) Joint Operations receives payment in full (in cash or cleared funds) for the Products, in which case title to the Products shall pass at the time of payment; and
- (b) the Customer resells or uses the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Joint Operations' property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Joint Operations immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give Joint Operations such information as Joint Operations may reasonably require from time to time relating to:
 - (i) the Products; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Joint Operations receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as Joint Operations' agent; and
- (b) title to the Products shall pass from Joint Operations to the Customer immediately before the time at which resale or use by the Customer occurs.

6.5 At any time before title to the Products passes to the Customer, Joint Operations may:

- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Products or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price agreed in writing between Joint Operations and the Customer.

- 7.2 The price of the Products:
- (a) Sold on the Joint Operations website includes amounts in respect of value added tax (VAT) unless otherwise stated;
 - (b) Sold otherwise than on the Joint Operations website excludes amounts in respect of VAT, which the Customer shall additionally be liable to pay to Joint Operations at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.3 Joint Operations may invoice the Customer for the Products on or at any time after the completion of delivery.
- 7.4 The Customer shall pay each invoice submitted by Joint Operations:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Joint Operations, and
- time for payment shall be of the essence of the Contract. The Customer shall notify Joint Operations of any queries or disputes relating to an invoice within 7 days of receipt of such invoice. Where a query is raised after such 7 day period, and Joint Operations agrees to credit and re-raise an invoice, the Customer shall pay such re-raised invoice within 10 days of the date of the invoice.
- 7.5 If the Customer fails to make a payment due to Joint Operations under the Contract by the due date, then, without limiting Joint Operations' remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. LIMITATION OF LIABILITY**
- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Products Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, Joint Operations' total liability to the Customer:
- (a) where such claim is covered by Joint Operations' product liability insurance, shall not exceed £10,000,000; and
 - (b) where such claim is not covered by Joint Operations' product liability insurance, shall not exceed the value of the Contract.
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, Joint Operations may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, Joint Operations may suspend provision of the Products under the Contract or any other contract between the Customer and Joint Operations if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Joint Operations reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, Joint Operations may terminate the Contract with immediate effect by giving written notice to the Customer for any reason (including but not limited to if the Customer fails to pay any amount due under the Contract on the due date for payment).

9.4 On termination of the Contract for any reason the Customer shall immediately pay to Joint Operations all of Joint Operations' outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, Joint Operations shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.5 The Customer may only return Products for a refund where Joint Operations gives its prior written approval to the return and the Customer notes that some products are subject to time constraints on their use and this will impact Joint Operation's decision as to whether to accept a return.

9.6 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 6, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

11. GENERAL

11.1 Assignment and other dealings.

- (a) Joint Operations may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Joint Operations.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 **Waiver.**
- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
 - (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Joint Operations: finance@jointoperations.co.uk

Customer: such email address to which the Order confirmation is sent by Joint Operations.
 - (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.