

## STANDARD TERMS AND CONDITIONS – THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO CLAUSE 8

In these Conditions the following expressions shall have the following meanings:

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| "Authorised Representative" | means a signatory of S&N who is authorised to amend the Contract and these Conditions.   |
| "Business Day"              | means a day (other than a Saturday, Sunday or public holiday) when banks are open for business.  |
| "Buyer"                     | means the person, firm, company or other organisation who purchases the Goods from S&N.  |
| "Conditions"                | means the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.   |
| "Contract"                  | means the contract between S&N and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.   |
| "Force Majeure Event"       | has the meaning given in clause 10.  |
| "Goods"                     | means the goods supplied or sold by S&N to the Buyer.  |
| "Order"                     | means an order placed by the Buyer for the supply of Goods in accordance with S&N's Specific Procedures.   |
| "Price"                     | means the price payable by the Buyer to S&N for the Goods as detailed in S&N's published price list in force as at the date of delivery or as stated in the Pricing Agreement.   |
| "Pricing Agreement"         | means S&N's document entitled Pricing Agreement which details the amount the Buyer is to pay for the Goods and any other terms which have been agreed by both parties and which is signed by the Buyer and S&N and incorporates these Conditions.  |
| "Specification"             | means S&N's standard specification for the Goods in effect at the time of delivery to the Buyer.   |
| "S&N"                       | means the appropriate Smith and Nephew company that is supplying the Goods to the Buyer.   |
| "S&N's Specific Procedures" | means the S&N procedures in place in each S&N business.  |
| "Use"                       | means the opening or unwrapping by or on behalf of the Buyer of any packaging containing the Goods or any other event which occurs whilst the Goods are in the possession of the Buyer and which results in the Goods being reasonably regarded as no longer sterile (or in the case of Goods which are not required to be sterile, no longer fit for their intended purpose). |

- 1.1 The singular in all cases shall imply the plural and vice versa.
- 1.2 The headings in these Conditions are for convenience only and shall not affect its interpretation.
- 1.3 Any reference in these Conditions to a statutory provision shall include such provision as from time to time modified or re-enacted or extended at the relevant time and shall include any orders, regulations, instruments or subordinate legislation made under the relevant statute.
- 1.4 To the extent of any conflict between these Conditions and any Pricing Agreement, the Pricing Agreement shall prevail.

### 2 BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 All quotations provided by S&N to sell the Goods shall be available for acceptance for a maximum period of thirty (30) days from the date of issue but may be withdrawn by S&N by written or oral notice to the Buyer at any time prior to S&N's acceptance of the Order and/or any Pricing Agreement. Quotations are made on the understanding that all resulting Orders shall be subject to these Conditions, including the limitations on varying these Conditions as set out in clause 2.7 below.
- 2.3 Any quotation given by or on behalf of S&N shall constitute an invitation to treat and the Contract shall become binding either:
  - 2.3.1 on acceptance of an Order by S&N, or
  - 2.3.2 upon signature by both parties of a Pricing Agreement in respect of the supply of the Goods.
- 2.4 The Buyer is responsible for ensuring that all terms associated with the supply of Goods are complete and accurate.
- 2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of S&N which is not set out in the Contract, and neither party shall have any remedy against the other in respect of any misrepresentation whether made innocently or negligently by the other party or any employee, agent, sub-contractor or representative of the other party in connection with this Agreement unless the representation in question has been incorporated into the Contract in accordance with clause 2.7 below.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by S&N and any descriptions or illustrations contained in S&N's catalogues, brochures, price lists or other materials are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 No employee, representative, agent or sales person of S&N other than an Authorised Representative has any authority to waive or vary any of these Conditions on behalf of S&N and if the Buyer wishes to make any amendment to these Conditions then S&N will only be bound by such an amendment to these Conditions if S&N has expressly accepted the amendment, waiver or variation in writing and the amendment, waiver or variation is incorporated in the Pricing Agreement and signed by an Authorised Representative.
- 2.8 All Orders will be placed by the Buyer in writing (or in accordance with S&N's Specific Procedures).
- 2.9 A minimum charge of fifteen pounds (£15.00) may be applied where an accepted Order has a value of two hundred pounds (£200.00) or less.

### 3 GOODS

- 3.1 The Goods are described in the Specification.
- 3.2 S&N reserves the right to discontinue Goods or to change Specifications, designs, Price or these Conditions at any time.
- 3.3 Requests for special or customised Goods must be submitted in accordance with S&N's Specific Procedures and detailed in the Pricing Agreement.
- 3.4 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify S&N against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by S&N in connection with any claim made against S&N for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with S&N's use of the Specification. This clause 3.4 shall survive termination of the Contract.
- 3.5 S&N does not guarantee suitability of materials or design of Goods made especially to the Buyer's requirements and differing from the Specification even if the purpose for which the Goods are acquired is known to S&N.
- 3.6 S&N does not accept responsibility for the safekeeping and condition of the Buyer's drawings and any other documentation whilst they are in S&N's possession.
- 3.7 Without prejudice to the generality of the foregoing, all recommendations and advice given by or on behalf of S&N as to the methods of storage or use of the Goods and the suitability of using such Goods in manufacturing processes or in conjunction with any other materials are given without liability on the part of S&N.
- 3.8 The Buyer is responsible for ensuring that the Goods are properly used by trained personnel. S&N accepts no liability whatsoever arising from the use of the Goods other than as set out in clause 8.
- 3.9 In no event shall the Buyer be entitled to use S&N's name in the marketing of the Goods without S&N's prior written consent.

### 4 DELIVERY

- 4.1 Unless agreed otherwise delivery of the Goods shall be Ex Works (EXW) under The Incoterms 2010 Rules.
- 4.2 The Buyer shall take all reasonable care of the Goods whilst they are in possession of the Buyer and in accordance with the medical device legislation for the Goods concerned.
- 4.3 Where the Buyer has Used any Goods delivered by S&N the Buyer shall, unless agreed otherwise by S&N, be liable to pay the Price of such Goods in full in accordance with the provisions of clause 5 below.
- 4.4 The Buyer is responsible for returning any Goods that the Buyer has not Used within such timescales as may have been agreed with S&N for such purpose and failing any such agreement as to timescales, within a reasonable time of delivery, provided that where the Goods are subject to a specific S&N returns policy, the Buyer shall return those Goods in accordance with that policy. S&N shall, upon request from the Buyer, provide a copy of any returns policy relevant to the Goods.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. S&N shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide S&N with adequate instructions that are relevant to the supply of the Goods.
- 4.6 If the Buyer fails to collect all or part of the Goods within three Business Days of S&N notifying the Buyer that the Goods are ready, then, except to the extent that such failure or delay is caused by a Force Majeure Event or S&N's failure to comply with its obligations under the Contract:
  - 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00am on the Business Day on which S&N notified the Buyer that the Goods were ready; and
  - 4.6.2 S&N shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.7 If ten (10) Business Days after the day on which S&N notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted as appropriate delivery of them, S&N may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the Price of the Goods or charge the Buyer for any shortfall below the Price of the Goods.
- 4.8 The Buyer shall not be entitled to reject the Goods if S&N delivers up to and including five percent (5%) more or less than the quantity of the Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.
- 4.9 S&N may deliver the Goods 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 Buyer to cancel any other instalment.
- 4.10 S&N reserves the right, at its sole option, to cancel or withhold the delivery of any Goods, (whether in whole or in part):
  - 4.10.1 until receipt of satisfactory credit reference in respect of any Buyer; and/or
  - 4.10.2 where the supply of such Goods would exceed any credit limit which S&N may, in its absolute discretion, have granted to the Buyer; or
  - 4.10.3 any of the circumstances in clause 6.3.1, 6.3.2 or 6.3.3 occurs; or
  - 4.10.4 subject to clause 5.8, if the Buyer breaches the Contract and where such breach is remediable, has not remedied the breach within fourteen (14) days of notice from S&N detailing such breach.
- 4.11 If S&N requires the Buyer to return any packaging materials to S&N, that fact shall be communicated to the Buyer in accordance with S&N's Specific Procedures. The Buyer shall make any such packaging materials available for collection at such times as S&N shall reasonably request. Returns of packaging materials shall be at S&N's expense.

### 5 PRICE AND PAYMENT

- 5.1 The Price of the Goods shall be the Price set out in S&N's published price list in force as at the date of delivery (available on request) or (where agreed) as stated in the Pricing Agreement.
- 5.2 The Price of the Goods is exclusive of any minimum charge as set out in clause 2.9, costs and charges of insurance and transport of the Goods, which shall be invoiced to the Buyer.
- 5.3 The Price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Buyer shall, on receipt of a valid VAT invoice from S&N, pay to S&N such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 5.4 S&N may invoice the Buyer for the Goods on or at any time after the Buyer has placed the Order.
- 5.5 The Buyer shall pay the invoice in full and in cleared funds by the 20th day of the calendar month following the date of the invoice. Payment shall be made to the bank account nominated in writing by S&N. Time of payment is of the essence.
- 5.6 S&N reserves the right (in S&N's absolute discretion) to change any credit facility from time to time given to the Buyer.
- 5.7 If the Buyer fails to make any payment due to S&N under the Contract by the due date for payment (due date), then the Buyer shall pay interest on the overdue amount at the rate of four percent (4%) per annum above National Westminster Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
  - 5.8.1 In the event of default of payment by the Buyer, S&N shall be entitled, without prejudice to any other right or remedy:
    - 5.8.1.1 without notice to suspend or cancel any or all further deliveries under the Contract and under any other Contracts between S&N and the Buyer then current; or
    - 5.8.1.2 to serve notice on the Buyer requiring immediate payment for Goods supplied by S&N under the Contract and all other Contracts with the Buyer whether or not payment is otherwise due or invoiced.
- 5.9 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against S&N in order to justify withholding payment of any such amount in whole or in part. S&N may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by S&N to the Buyer.

### 6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Buyer upon delivery in accordance with Clause 4.1.
- 6.2 Title to the Goods shall pass to the Buyer when S&N has received payment in full (in cash or cleared funds) for the Goods.
- 6.3 In respect of Goods to which title has not passed to the Buyer, S&N shall be entitled to require the Buyer to deliver up the Goods to S&N, and if the Buyer fails to do so forthwith, S&N may either accelerate any credit period in relation to payment of the Price and/or recover any Goods on whichever is the earliest of the following events:
  - 6.3.1 the Buyer applies to the court for an interim order under the Insolvency Act 1986 or (being an individual or partnership) makes a proposal for an individual voluntary arrangement under that legislation; or
  - 6.3.2 the Buyer (being a company):
    - (a) goes into compulsory or voluntary liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that purpose; or
    - (b) has an administrative receiver or receiver appointed over all or any part of its assets or undertaking; or
    - (c) suffers or permits distress or execution to be levied against any of its assets or suffers or permits a judgment against the Buyer to remain unsatisfied for more than seven (7) days; or
    - (d) has any action, step, legal proceedings or other procedure taken in respect of it by its directors, shareholders, bankers, creditors or any person seeking to appoint a liquidator or an administrator or takes any such action itself; or
    - (e) has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986; or
    - (f) ceases or threatens to cease to carry on business; or
    - (g) is in the reasonable opinion of S&N unable to pay its creditors as and when its debt fall due or is otherwise insolvent as defined in the Insolvency Act 1986; or
    - (h) suffers or permits anything analogous to any of the events in clause 6.3 to occur under the law of any relevant jurisdiction; or
  - 6.3.3 the Buyer is in material breach of its obligations under the Contract.

### 7 COMPLIANCE

- 7.1 The Buyer acknowledges receipt of S&N's Code of Conduct, which is available on S&N's website at: <http://compliance.smith-nephew.com>.
- 7.2 The Buyer agrees that S&N Goods are approved by the United States Food and Drug Administration ("FDA") only for certain indications. S&N's Goods should only be used for FDA-approved indications. S&N will not be responsible for damages or losses of any kind arising out of uses that are other than, or contrary to, those indications (commonly called "off-label" uses). S&N's warranties, representations, and obligations pursuant to these General Conditions are void as to any such off-label uses.

### 8 GOODS WARRANTIES AND LIABILITIES

- 8.1 S&N catalogue Goods are warranted to conform in all material respects to S&N's standard Specification for a particular Good in effect at the time of delivery to the Buyer (including any tolerance parameters) for the warranty period for the particular Good, beginning from the date of delivery to the Buyer. This warranty is restricted to either (i) repair or replacement of Goods without charge and within a reasonable period of time or (ii) a full refund or credit in the amount of the purchase Price of the Goods by S&N, at its option, of any Goods found to be defective during the warranty period. Damage inflicted to Goods by the user will result in additional charges and may void this warranty. This includes, but is not limited to, normal use-related damage, any attempted repairs by unauthorised service providers, using a sterilisation method not approved by S&N and using the Goods in a manner that is not in accordance with the Goods claims or instructions for use of the Goods. This warranty applies to the original buyer only and is not transferable. This warranty is the sole warranty of S&N. All other warranties of any kind or description whatsoever including warranties of merchantability, satisfactory quality and fitness for a particular purpose, expressed or implied, are excluded to the fullest extent permitted by law.
- 8.2 Except as set forth above in this clause 8, S&N shall not be liable for any losses, whether arising from breach of contract, tort (including negligence) or otherwise, and whether or not flowing directly, indirectly or as a consequence of such breach, tort or other cause. This includes, but is not limited to, loss of profit or anticipated savings, loss of anticipated profit, economic loss, loss of data, wasted expenditure, and loss of reputation or goodwill.

### 9 CONFIDENTIALITY

Each party shall at all times keep confidential details of the Contract and of Prices for any Goods supplied under the Contract.

### 10 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party/s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of S&N or subcontractors.

### 11 MISCELLANEOUS

- 11.1 The Buyer shall not assign, sub-contract or in any way dispose of or transfer its rights or obligations under the Contract without the prior written consent of S&N, such consent not to be unreasonably withheld or delayed. S&N shall be free to assign and/or transfer any of its rights or obligations under the Contract to any of its associated companies or to a third party. S&N shall be free to sub-contract any of its obligations under the Contract.
- 11.2 Any notice required to be served pursuant to these Conditions shall be served at such address as each party may from time to time notify to the other and shall be served by first class registered post or registered airmail. Any such notice shall be deemed to have been served in the case of a destination in the UK two (2) days after the date of despatch and in the case of any other destination seven (7) days after the date of despatch.
- 11.3 Any term of these Conditions which is or becomes void or unenforceable shall, to the extent of such invalidity, be severable and shall not affect the other provisions or terms or the remainder of the affected provision of these Conditions.
- 11.4 Failure by either party to exercise any right to enforce these Conditions or any term of the Contract relating to any breach of these Conditions or the Contract shall not be construed as a waiver of any such breach or any subsequent breach of the same provision or any other provision.
- 11.5 Except as otherwise provided in these Conditions or the Contract, a person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of these Conditions or the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 11.6 Except as set out in these Conditions, any variation to the Conditions, including in the Pricing Agreement, shall only be binding when agreed in writing and signed by the S&N Authorised Representative and incorporated in the Pricing Agreement.
- 11.7 Limitations Of Actions. Any and all claims and actions arising out of or relating to the Conditions by either party against the other shall be commenced within one (1) year from the discovery of the facts giving rise to any such claim or action, or such claim or action shall be forever barred, except for (a) any unperformed financial obligations and (b) claims related to the regulatory compliance obligations of any party.
- 11.8 These Conditions and the Contract shall be governed by and interpreted in accordance with the laws of England and Wales the parties hereby submit to the exclusive jurisdiction of the English and Welsh Courts in relation to any matter or dispute arising out of or connected with these Conditions or the Contract (whether of a contractual or tortious nature or otherwise), but without prejudice to the right of S&N to take proceedings in any other Court of competent jurisdiction.