

Terms and Conditions for Consignment Stock

Oct 2021 EDITION

(Date)

Between

(1) Lavender Medical Limited (registered number 6828106) whose registered office is at Niall House, Unit 4, 24-26 Boulton Road, Stevenage, SG1 4QX (the “Company”);

and

(2) (the customer) whose registered office is at Trust Headquarters, (the “Customer”)

Background

- (1) The Company is a supplier of medical implants and instruments and has agreed to supply such items to the Customer on a consignment basis.
- (2) This Consignment Stock Agreement (the “Agreement”) is supplemental to the Company’s Terms of Business (May 2010 Edition) (the “Terms of Business”) which have been entered into between the Company and the Customer.
- (3) This Agreement governs the basis on which the Customer has agreed to purchase and the Company has agreed to supply Consignment Stock (as defined in the Terms of Business) to the Customer.

IT IS AGREED, as follows:

1. Definitions and Interpretation

1.1 In this Agreement defined terms shall have the meanings given to them in the Terms of Business. In addition the following definitions shall apply in this Agreement:

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| “Premises” | the premises of the Customer which are at the address specified above. |
| “Schedule of Consignment Stock” | the Schedule detailing the quantity and description of the Consignment Stock held by the Customer. |

For the avoidance of doubt the Schedule of Consignment Stock and any future amendments (the “**Amendments**”) to it forms an integral part of this agreement. The Amendments will be as set out in Form A (“**Form A**”) of the attached Schedule of Consignment Stock.

2. Provision of Consignment Stock

2.1 Goods that are delivered on the basis that a sale has not taken place and the Goods will be held by the Customer until required shall be referred to as “Consignment Stock”.

2.2 The Company shall supply to the Customer such quantities of the Consignment Stock as are set out in the Schedule of Consignment Stock agreed between the Company and the Customer. The parties may revise the Schedule of Consignment Stock from

time to time. The parties acknowledge that it is of critical importance that the Schedule of Consignment Stock is at all times kept up to date and provides an accurate description and representation of the Consignment Stock held by the Customer. The Customer and the Company shall at all times keep the Schedule of Consignment Stock up to date.

- 2.3 The Consignment Stock will be supplied with a surgeons notice (the “Surgeons Notice”). The Customer undertakes to bring the Surgeons Notice to the attention of any surgeon who uses the Consignment Stock.

Instruments

- 2.4 The Instruments which form part of the Consignment Stock shall be used by the Customer with the Implants only and the Customer acknowledges that the Instruments are solely intended for use with the Implants.
- 2.5 The Customer shall ensure that the Instruments are used in a skilful and proper manner and in accordance with any operational instructions issued for them and shall ensure that the Instruments are operated and used by properly skilled and trained personnel.
- 2.6 The Customer shall take all reasonable steps to keep the Instruments in good working order in accordance with the Company’s instructions. The Customer shall immediately inform the Company if the Instruments or any of them require repair or maintenance or suffer loss or damage.
- 2.7 The Instruments shall at all times be kept at the Premises and shall not be transferred to any other Premises without the prior written consent of the Company. This applies specifically to all other premises within the NHS Trust or private group of which the Customer is a member.

Implants

- 2.8 When any Implant is used from the Consignment Stock the Customer shall raise an order for a replacement Implant and shall provide the order to the Company within seven working days of such use.
- 2.9 The Company reserves the right to withdraw or withhold supplies of the Implants in the event that the use of the Consignment Stock falls below the usage levels set out in the Schedule of the Consignment Stock.
- 2.10 Upon removal from the Consignment Stock and use of the Implants (or any of them) the Customer shall be deemed to have purchased such Implants at the price of that Implant as stipulated in the Price List in force at that time (or such other price as may be agreed from time to time) exclusive of Value Added Tax. Payment of the Charges shall be made to the Company in accordance with Condition 4.
- 2.11 Upon expiry of any Consignment Stock item/implant the customer shall within seven working days of being notified by the Company place an order for the replacement of such items at the price of that Implant as stipulated in the Price List in force at that time (or such other price as may be agreed from time to time) exclusive of Value Added Tax. Payment of the Charges shall be made to the Company in accordance with Condition 4.

3. Risk and Title

- 3.1 The Consignment Stock is at the risk of the Customer from the time of delivery.
- 3.2 Subject to Condition 3.9, ownership of the Consignment Stock shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:-
 - 3.2.1 The Consignment Stock; and
 - 3.2.2 All others sums which are or which become due to the Company from the Customer on any account.
- 3.3 Subject to Condition 3.9, until ownership of the Consignment Stock has passed to the Customer, the Customer shall:-
 - 3.3.1 Hold the Consignment Stock on a fiduciary basis as the Company's bailee;
 - 3.3.2 Store the Consignment Stock (at no cost to the Company) separate from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property at the Premises;
 - 3.3.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Consignment Stock; and
 - 3.3.4 Maintain the Consignment Stock in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 3.4 The Customer's right to possession of the Consignment Stock shall terminate immediately if:-
 - 3.4.1 The Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) expect a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the Court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating chargeholder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any Court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possibly insolvency of the Customer; or
 - 3.4.2 The Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

- 3.4.3 The Customer encumbers or in any way charges any of the Consignment Stock.
- 3.5 The Company shall be entitled to recover payment for the Consignment Stock notwithstanding that ownership of any of the Consignment Stock has not passed from the Company.
- 3.6 The Customer grants the Company, its agents and employees an irrevocable licence at with reasonable notice, to enter any premises where the Consignment Stock are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 3.7 Where the Company is unable to determine whether any Consignment Stock are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 3.8 On termination of this Agreement, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 3 shall remain in effect.
- 3.9 Nothing in this Condition 3 shall prevent the Customer from using the Consignment Stock during the ordinary course of its business in accordance with this Agreement.
- 4. CHARGES**
- 4.1 When the Customer uses Implants which are part of the Consignment Stock or requires Instruments which are consumables to be replaced, the Customer will be deemed to have purchased such Implants and/or Instruments. The Customer will order, from the Company, within seven working days of such use or identifying that replacement is required, replenishment Implants or replacement Instruments. The Company shall invoice the Customer the Charges for replacements and/or replenishments.
- 4.2 When an Implants/Instruments/ Consumables which are part of the Consignment Stock pass their expiry date as marked on the packaging, the Customer will be deemed to have purchased such Implants/Instruments/ Consumables. The Customer will order, from the Company, within seven working days of such use or identifying that replacement is required, replenishment Implants or replacement Instruments. The Company shall invoice the Customer the Charges for replacements and/or replenishments.
- 4.3 Unless otherwise agreed by the Company in writing, the Charges for the replacement or replenishment Consignment Stock (including expired stock) shall be the price of such items as detailed in the Company's Price List in force at that time (or such other price as may be agreed from time to time) exclusive of Value Added Tax.
- 4.4 The Charges for the Consignment Stock shall include the costs of standard delivery but shall be exclusive of any value added tax and the costs of delivering the Consignment Stock by any means other than standard delivery. The Customer shall pay all such amounts in addition when it is due to pay for the Consignment Stock. Standard delivery for these purposes means delivering the Consignment Stock on the date requested by the Customer provided the Company is notified no later than 3.00pm GMT on the day prior to the date delivery is required and delivery will take place any time during normal working hours (9.00 a.m. – 5.00 p.m.).
- 4.5 For the purposes of this Condition 4, consumable Instruments mean Instruments which by their nature will need to be replaced following recurrent use and includes,

without limitation, drills, taps, screwdrivers, countersinks and any other Instruments which the Company deems, in its reasonable opinion, to be items of a consumable nature.

4.6 Payment of the Charges shall be made in accordance with the Terms of Business.

5. Care of Consignment Stock

5.1 The Customer shall:-

5.1.1 not interfere with the Consignment Stock, their working mechanisms or any other parts of them and shall take reasonable care of the Consignment Stock and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;

5.1.2 notify the Company immediately after any fault breakage, loss and/or damage to the Consignment Stock;

5.1.3 take adequate and proper measures to protect the Consignment Stock from theft, vandalism, misuse, damage and/or other risks;

5.1.4 notify the Company of any change of its address and upon the Company's request provide details of the location of the Consignment Stock;

5.1.5 permit the Company at all reasonable times and upon reasonable notice and in any event, no less than once every six months to inspect the Consignment Stock including allowing access to any property where the Consignment Stock is situated for the purposes of ensuring the Consignment Stock is being stored correctly and properly;

5.1.6 keep the Consignment Stock at all times in its possession and control at the Premises and not part with control of the Consignment Stock and not remove the Consignment Stock from the country where the Company is located without the prior written consent of the Company; and

5.1.7 not continue to use Consignment Stock where it has been damaged and notify the Company immediately if the Consignment Stock is involved in an accident resulting in damage to the Consignment Stock, other property and/or injury to any person.

5.2 The Customer will pay to the Company the full replacement cost (at the list price of those items as specified in the Price List in force at that time (or such other price as may be agreed from time to time) exclusive of Value Added Tax) of any Consignment Stock which is expired, lost, stolen or damaged beyond economic repair.

5.3 It is the Customer's responsibility to make sure that the Customer and all other parties who use the Consignment Stock during the term of the Contract are properly instructed in their safe and correct use.

6. Breakage

6.1 The Customer shall be responsible for all expenses, loss and/or damage suffered by the Company arising from any breakage of the Consignment Stock due to the Customer's negligence, misdirection and/or misuse of the Consignment Stock.

6.2 Subject to Condition 6.1 the Company will at its own cost carry out all routine maintenance and repairs to the Consignment Stock. Maintenance and repairs will be undertaken when the Consignment Stock are in the possession of the Company.

6.3 The Customer must not repair or attempt to repair the Consignment Stock unless authorised to do so in writing by the Company.

7. **Loss or Damage to the Consignment Stock**

The Customer will pay to the Company the full replacement cost of any Consignment Stock which is lost, stolen and/or damaged beyond economic repair whilst in the possession of the Customer. The replacement value will be replacement value of the Consignment Stock at the date the Company is notified of the loss, theft or damage as detailed in the Price List in force at that time (or such other price as may be agreed from time to time) exclusive of Value Added Tax

8. **Storage**

The Customer will ensure the Consignment Stock is stored in accordance with the relevant medical storage requirements, and in accordance with any storage requirements provided by the Company.

9. **Liability**

9.1 The Customer shall at all times use the Consignment Stock in accordance with the instructions provided by the Company as amended from time to time. The Company shall not be liable for any loss or damage suffered by the Customer resulting from any failure to comply with such instructions or for any misuse of the Consignment Stock. The Customer shall indemnify and hold the Company harmless for any loss or damage, claims or expenses it may suffer or incur as a result of any such misuse or failure to comply with instructions.

9.2 In addition to Clause 9.1, the Company's liability shall be limited to those matters specified in the Terms of Business.

10. **Inspection**

10.1 The Customer shall permit the Company at any time during normal working hours and upon reasonable notice to inspect the Consignment Stock. This will normally be once every three months, although could be more frequent dependent on circumstances.

10.2 The Customer shall pay the Company in full for any shortfall in the quantities of Implants and shall reimburse the Company in full for any loss or damage to the Consignment Stock or any part of it.

11. **Term**

11.1 This Agreement shall remain in effect for a minimum term of twelve months unless and until either party gives to the other not less than one month's notice in writing. Upon such termination the Company shall remove the Consignment Stock.

11.2 The Company will not buyback any stock above the Consignment Stock levels set out in this agreement.

11.3 Notwithstanding clause 11.1 above the Company shall be entitled to terminate this Agreement without notice if the Customer:

11.3.1 is in breach of any of its contractual obligations hereunder; or

11.3.2 shall have a receiver or manager appointed of it undertaking its assets or any part thereof or shall go into liquidation for the purposes of and followed by a construction or amalgamation or shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or shall enter into or propose any composition or agreement with its creditors.

12. General

The Terms of Business will apply to, and this Agreement is supplemental to, the Terms of Business. If there is any conflict between the terms of this Agreement and the Terms of Business, this Agreement shall prevail.

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| Acknowledged and signed for (the customer | Acknowledged and signed for LAVENDER MEDICAL LIMITED |
| BY: | <i>M Owers</i> |
| PRINT: | MICHELLE OWERS |
| POSITION: | OFFICE MANAGER |
| DATE: | |