

Lavender Medical Limited – Terms of Business

October 2021 EDITION

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these conditions. These Terms of Business will supersede any previous Terms of Business

Charges: the charges payable by the Customer for the Goods.

Company: Lavender Medical Limited (CRN: 6828106).

Consignment Stock: Goods delivered by the Company to a Customer on the terms set out in condition 7.

Consignment Stock Agreement: an agreement in the form specified by the Company from time to time under which the Company agrees to provide stock to the Customer on a consignment basis.

Contract: any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions, and any supplemental conditions relevant to the arrangements between the Company and the Customer.

Customer: the person, firm or company who purchases the Goods from the Company.

Decontamination Certificate: the certificate confirming the Goods have been decontaminated and are sterile.

Delivery Point: the place where delivery of the Goods is to take place under condition 5.

Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them), including without limitation the Instruments and/or the Implants.

Guidelines on Cleaning and Sterilisation: the guidance provided by the Company relating to the cleaning, sterilisation and decontamination of the Goods.

Implants: the orthopaedic implants for osteosynthesis applications which may be made available by the Company to the Customer.

Instruments: the instruments for osteosynthesis applications which may be made available by the Company to the Customer.

Liability: liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

Price List: the price list of the Company which will be updated annually in line with the prices charged by suppliers for the Goods and which will be made available to Customers annually when updated.

Product Usage Form: means the product usage form to be completed by the Customer.

Quotation: the quotation provided by the Company to the Customer for the supply of the Goods, which may be a specific quotation for a specific order, a supply under the terms of a specific contract or long term supply agreement or any other arrangement or agreement between the Company and the Customer.

Returns Number: a number issued by the Company following approval to return Goods in accordance with these conditions.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

3. ORDERS AND ACCEPTANCE

3.1 Each order or acceptance of a Quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.

- 3.2 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 3.3 The Customer shall ensure that the terms of its order are complete and accurate.
- 3.4 Any Quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any Quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 3.5 If the Customer wishes the Company to consider exercising its discretion to deliver Goods in an emergency on humanitarian grounds and before a purchase order can be formally presented to the Company with a purchase order number, the Customer shall notify the Company of this and provide reasonable details in relation to the request which shall be promptly submitted to the Company. If the Company agrees to supply the Goods the on the basis of the request, then: -
- 3.5.1 the Customer undertakes to provide an official purchase order and purchase order number within 48 hours of the submission of the request;
 - 3.5.2 the Goods delivered will be delivered subject to these terms and conditions and on no other basis; and
 - 3.5.3 payment for the Goods will fall due in accordance with these terms whether or not the Customer provides an official purchase order.
- 3.6 In placing an order, accepting a Quotation, or making an emergency request, the Customer warrants that the Goods shall be used:-
- 3.6.1 for their intended purpose, reasonably and not improperly;
 - 3.6.2 in accordance with all national and international laws or relevant codes of practice or codes of conduct applicable to the Goods; and
 - 3.6.3 in accordance with the instructions for use provided by the manufacturer of the Goods or, if there are no such instructions for use, in accordance with any instructions for use issued by the Company;
- and that the Goods will not be resold by the Customer in contravention of any national or international laws or relevant codes of practice or codes of conduct (including without limitation any obligation not to sell the Goods for use in a country where the instructions for use do not include instructions in the language of that country).

- 3.7 The Goods are supplied with a surgeons notice ("the Surgeon's Notice"). The Customer undertakes to bring the Surgeon's Notice to the attention of any surgeon who will use the Goods.

4. DESCRIPTION

- 4.1 The quantity and description of the Goods shall be as set out in the Company's Quotation or acknowledgement of order.
- 4.2 All samples, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5. DELIVERY

- 5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Customer's place of business in accordance with the Quotation or otherwise as notified by the Company to the Customer from time to time.
- 5.2 In the event that the delivery of the Goods is not accepted, the Customer shall arrange to take delivery of the Goods within 7 days of notification by the Company of the Customer's failure to take delivery.
- 5.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 5.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 120 days.
- 5.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:-
- 5.5.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 5.5.2 the Goods shall be deemed to have been delivered; and

- 5.5.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

6. NON-DELIVERY

- 6.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 6.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. CONSIGNMENT STOCK

- 7.1 Goods delivered on the basis that a sale has not taken place and that the Goods are held by the Customer until required shall be referred to as "Consignment Stock"
- 7.2 Where Goods are delivered to be held as Consignment Stock, then the provisions of this condition 7 shall apply.
- 7.3 Before any Consignment Stock is delivered, the Customer shall deliver to the Company a Consignment Stock Agreement duly signed by or on behalf of the Customer.
- 7.4 Goods delivered as Consignment Stock shall be held by the Customer on the terms of the Consignment Stock Agreement.
- 7.5 When Goods are taken from the Consignment Stock and used by the Customer the Customer will promptly complete an order form and send it to the Company to enable such Goods to be replenished

and to enable the Company to invoice the Customer for the Charges for the Goods used has been delivered to the Company.

7.6 Any Goods: -

7.6.1 removed from Consignment Stock (whether or not in compliance with condition 7.5); or

7.6.2 expired / out of date

7.6.3 which are damaged or which would not qualify to be returned under the terms of the Company's returns policy in condition 11

shall be regarded as sold to the Customer on the terms of these conditions on the earlier of the date of such removal/expired or the date upon which the Goods would cease to qualify to be returned under the Company's returns policy and shall be paid for in accordance with these terms on that basis.

7.7 The Customer shall immediately notify the Company of any changes to the Consignment Stock including any damage or loss.

7.8 Risk in the Consignment Stock shall pass to the Customer on delivery to the Customer of the Consignment Stock and shall only revert to the Company if the Consignment Stock is returned to the Company with the prior consent of the Company.

7.9 In respect of Goods delivered to be held by the Customer as Consignment Stock, the period for the return of those Goods under condition 11 shall run from the date of the delivery to the Customer as Consignment Stock not the date of sale to the Customer.

8. RISK AND TITLE

8.1 The Goods are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Goods 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:-

8.2.1 the Goods; and

8.2.2 all other sums which are or which become due to the Company from the Customer on any account.

8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:-

8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

- 8.3.2 store the Goods (at no cost to the Company) separately 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;
 - 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 8.3.4 maintain the Goods 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.
- 8.4 The Customer's right to possession of the Goods shall terminate immediately if:-
- 8.4.1 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) except 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 charge holder (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 possible insolvency of the Customer; or
 - 8.4.2 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
 - 8.4.3 the Customer encumbers or in any way charges any of the Goods.
- 8.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 8.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

- 8.7 Where the Company is unable to determine whether any Goods 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.
- 8.8 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 8 shall remain in effect.

9. CHARGES

- 9.1 Unless otherwise agreed by the Company in writing, the Charges for the Goods shall be the charge set out in the Quotation or acknowledgement of order which shall be based on the Company's Price List in force from time to time.
- 9.2 The Charges for the Goods shall include the costs of standard delivery but shall be exclusive of any value added tax and the costs of delivering the Goods by any means other than standard delivery. The Customer shall pay all such amounts in addition when it is due to pay for the Goods, unless these are specifically included in the Quotation. Standard delivery for these purposes means delivering the Goods 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 (9.00am-5.00pm).

10. PAYMENT

- 10.1 Subject to condition 10.4, payment of the Charges is due in pounds sterling within 30 days of the date of the Company's invoice to the Customer for the Goods.
- 10.2 Time for payment shall be of the essence.
- 10.3 No payment shall be deemed to have been received until the Company has received the full amount due in cleared funds.
- 10.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 10.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4 % above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

11. RETURNS

11.1 The Customer may return non faulty or non-defective Goods to the Company on the following terms:

11.1.1 The Customer must return the Goods within 14 days of receipt by them of the Goods;

11.1.2 The Customer has notified the Company prior to return and obtained authorisation from the Company and the Company has issued a Returns Number;

11.1.3 When the Goods are returned to the Company, then on receipt of the returned Goods to the Company the Goods must be in the original undamaged and unmarked packaging and in the same condition as supplied by the Company and any product seals or other sterile security must be fully intact.

11.1.4 Any expiry date on the Goods must not have passed by the date of return;

11.1.5 The Goods do not require controlled storage conditions;

11.1.6 The Goods do not comprise of special order products, non-stock items of the Company or to the specification of the Customer;

11.1.7 All the Goods within the box must be returned and the Company will not accept part or split boxes; and

11.1.8 The cost of return is at the expense of the Customer.

11.2 Providing the Customer complies in full with the provisions of condition 11.1, the Company will issue, within 7 days of receipt of the Goods a credit to the value of the Company's invoice for such goods, less an administration Charge which will be equivalent to 30% of the value of such invoice which will be valid for a period of 3 months from the date of issue.

11.3 The Company shall have no further Liability to the Customer for the returned Goods.

11.4 This return condition does not affect the statutory rights of the Customer in relation to any defective Goods.

12. QUALITY

12.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

- 12.2 The Company warrants that (subject to the other provisions of these conditions) the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 on delivery and for the following periods:-
- 12.2.1 in the case of Goods with an expiry period, until the expiry date;
 - 12.2.2 in the case of Goods requiring sterile conditions until the sterile seal or other security is broken, damaged or tampered with; and
 - 12.2.3 in all other cases for a period of 3 months from the date of delivery.
- 12.3 The Company shall not be liable for a breach of the warranty in condition 12.2 unless:-
- 12.3.1 the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 5 days of the time when the Customer discovers or ought to have discovered the defect; and
 - 12.3.2 the Company is given a reasonable opportunity, after receiving the notice, of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business or some other address as the Company may notify to the Customer, at the Company's cost for the examination to take place there.
- 12.4 The Company shall not be liable for a breach of the warranty in condition 12.2 if:-
- 12.4.1 the Customer makes any further use of such Goods after giving such notice; or
 - 12.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the sterilisation, storage (including any controlled storage conditions), installation, commissioning, use or maintenance of the Goods or (if there are none) good medical practice; or
 - 12.4.3 the seal or other sterile security on the Goods is broken or damaged otherwise than due to the actions or inactions of the Company; or
 - 12.4.4 the Customer alters or repairs such Goods without the written consent of the Company; or
 - 12.4.5 the Company inspects the Goods or allows some other person to inspect the Goods and reasonably concludes that the Goods are of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 12.5 Subject to condition 12.3 and condition 12.4, if any of the Goods do not conform with the warranty in condition 12.2 the Company shall at its option replace such Goods (or the defective part) or refund the Charges for such Goods at the pro rata Contract rate provided that:-

- 12.5.1 the Customer has notified the Company prior to return and obtained authorisation from the Company and the Company has issued a Returns Number; and
- 12.5.2 if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective either:-
- 12.5.2.1 to the Company; or
- 12.5.2.2 to some other address as the Company may notify to the Customer; and
- 12.5.3 contaminated Goods have been cleaned to the Company's reasonable satisfaction in accordance with medical practices and a Decontamination Certificate (obtained at the cost of the Customer) is sent with the returned Goods; and
- 12.5.4 the Goods are returned through medically required containers in accordance with all relevant Health and Safety legislation (including the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007), in transportation approved by the Company marked for the attention of the Returns Department (or otherwise as the Company may direct to the Customer) ; and
- 12.6 If the Company so requests, the Customer shall destroy the Goods instead of returning them in accordance with condition 12.5.2. If the Company complies with condition 12.5 it shall have no further Liability for a breach of the warranty in condition 12.2 in respect of such Goods.
- 12.7 Any Goods replaced shall belong to the Company and any replacement Goods shall be guaranteed on these terms for the unexpired portion of the periods set out in condition 12.2.
- 12.8 If the Customer wishes to resell, or other transfer ownership of the goods to a third party it will not do so without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

13. LIMITATION OF LIABILITY

- 13.1 Subject to condition 6, condition 8 and condition 12, the following provisions set out the entire financial Liability of the Company (including any Liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:-
- 13.1.1 any breach of these conditions;
- 13.1.2 any use made by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

- 13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these conditions excludes or limits the Liability of the Company:-
- 13.3.1 for death or personal injury caused by the Company's negligence; or
- 13.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its Liability; or
- 13.3.3 for fraud or fraudulent misrepresentation.
- 13.4 Subject to condition 13.3:-
- 13.4.1 the Company's total Liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Charges; and
- 13.4.2 the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. ASSIGNMENT

- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

15. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials,

provided that, if the event in question continues for a continuous period in excess of 120 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

16. GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 These conditions and the Contract constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 16.7 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

17. COMMUNICATIONS

- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post, or sent electronically:

17.1.1 (in case of communications to the Company):

17.1.1.1 to its registered office or such changed address as shall be notified to the Customer by the Company; or

17.1.1.2 to its email address provided on the Quotation or such changed email address as shall be notified to the Customer by the Company; and

- 17.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address (including any email address) of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 17.2 Communications shall be deemed to have been received if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting) or if delivered by hand or electronically, on the day of delivery.