

Terms and Conditions

1. GENERAL

In these terms we have used "the Company" to refer to InterMed Medical Limited and "the Purchaser" to refer to our customer. By agreeing to acquire goods from the Company, the Purchaser agrees to these terms.

2. ACCEPTANCE

Every order received by the Company will constitute an offer subject to acceptance by the Company. No order accepted by the Company will be modified or cancelled except with the written consent of the Company.

3. PRICE

- (a) The price will be as shown on the Company's Invoice, Packing Note and Despatch Note or other like document.
- (b) All prices are quoted in New Zealand Dollars by the Company subject to any variation which may occur between the dates of quotation and delivery or deliveries of goods in international monetary exchange rates, customs duties, purchase tax, freight costs or insurance rates or suppliers' selling prices.
- (c) All prices are plus Goods and Services Tax and other taxes and duties, which will be paid by the Purchaser.
- (d) All freight and despatch charges will be paid by the Purchaser.
- (e) Unless otherwise agreed by the Company in writing prior to sale the Purchaser must make full payment of the price of the goods to the Company before the goods will be dispatched to the Purchaser.
- (f) The Company is under no obligation to provide goods on credit. If, at the Company's discretion, goods are despatched to the Purchaser prior to receipt of full payment, payment will be due on or before the 20th day of the month following the date of the invoice provided to the Purchaser.
- (g) The Purchaser agrees to (i) give any further securities as the Company may from time to time require, in the form required by the Company; and (ii) to comply with those securities.
- (h) The Company may at any time notify the Purchaser that it is going to stop supplying goods on credit. This will be without prejudice to the Purchaser's obligation to pay amounts owing.
- (i) All payments by the Purchaser must be made without set-off or deduction.
- (j) The Company will apply all payments made to the Company by the Purchaser firstly towards any interest and any enforcement costs which shall become payable by the Purchaser to the Company and secondly towards any overdue amount owing by the Purchaser to the Company and thirdly towards any current amount owing by the Purchaser to the Company.

- (k) The Purchaser agrees to pay the Company's costs and expenses (including actual legal costs and disbursements on a solicitor and own client basis, and debt collection costs) in relation to the enforcement of the Company's rights under these terms and/or the recovery of any amount that the Purchaser owes the Company.

4. **DELIVERY**

- (a) Any goods quoted by the Company as ex-stock are so quoted subject to any prior sale by the Company.
- (b) The Company will use its reasonable endeavors to fulfil accepted orders but is entitled to cancel any order or orders relating to any item or items if in the opinion of the Company it is impractical or uneconomic to produce or supply the goods.
- (c) The Company will try to make delivery at the time specified in any accepted order but unless otherwise agreed by the Company in writing prior to sale, it will not be responsible for any loss or damage sustained by the Purchaser or any other person by reason of any delay in delivery or any failure to fulfil an order or make delivery howsoever caused.
- (d) Due to supplier export restrictions, we are unable to deliver products to addresses outside New Zealand.

5. **INSTALLATION**

- (a) If the Company or the manufacturer agrees to install any goods, the Purchaser will at the Purchaser's cost provide all service utilities and/or special handling equipment which may be required. For the purposes of this clause:
 - (i) The term "service utilities" will include (without limiting the generality thereof) electric power outlets, water outlets, drains and compressed air lines; and
 - (ii) The term "special handling equipment" will include (without limiting the generality thereof) any heavy lifting gear for movement of equipment to and/or at the installation site.
- (b) If the Company is required to provide any required service utilities and/or special handling equipment the costs will be paid by the Purchaser in addition to any other monies recoverable by the Company from the Purchaser.
- (c) Installation will be made at the time of delivery or as soon as practicable following delivery.
- (d) Unless otherwise agreed in writing by the Company the Company's responsibility to install any goods will cease if the Purchaser defers the installation.

6. **WARRANTY**

- (a) The Company warrants that all goods sold are free from material defects in materials and workmanship at the time of despatch by the Company.
- (b) The Company will have no responsibility for any damage that may be caused or may arise from or out of the handling or usage of any goods after the goods have been despatched by the Company. In particular but without limitation, the

Company will have no responsibility for breakage or failure of any electronic tubes or components, illumination sources, items wholly or partly of glass, silica or ceramic materials, thermocouples, batteries or electrical elements.

- (c) The Company will have no responsibility for any damage resulting from misuse or abuse of goods or from negligence or malpractice unless directly caused by the Company or its contractors.
- (d) Subject only to the provisions of this clause 6 and the warranty contained in sub-clause (a) of this clause 6 and to the extent permitted by law:
 - (i) All representations or terms not expressly set out in sub-clause (a) are expressly excluded.
 - (ii) The Company will be under no liability whatsoever to the Purchaser in respect of any representations or terms not expressly set out in these terms or otherwise set out in writing and signed by a duly authorised representative of the Company.
 - (iii) The Company will not be liable for any loss or damage or liability of any kind whatsoever, including consequential loss of any kind, whether suffered by the Purchaser or another person whether in contract, tort or otherwise and whether such loss or damage arises directly or indirectly from the goods or services provided to the Purchaser.
- (e) To the extent that the Company is liable for any reason for any loss suffered or liability incurred by the Purchaser arising from any breach of these terms and/or for any other reason, such liability is limited to the amount of the price of the goods concerned or the actual loss or damages suffered whichever is the lesser.
- (f) The Consumer Guarantees Act 1993 ("CGA"), the Fair Trading Act 1986 ("FTA") and other statutes may impose warranties, conditions or obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these terms, to the extent permitted by law, the Company excludes all such imposed warranties, conditions or obligations and excludes any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- (g) The parties acknowledge and agree that: the Purchaser is acquiring the goods under these terms "in trade" (for the purposes of the CGA and the FTA); and (ii) the goods are both supplied and acquired in trade for the purposes of the CGA and FTA and the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations) and 13 (false and misleading representations) of the FTA; and

the Purchaser agrees that all warranties, conditions and other terms implied by the CGA or sections 9, 12A and 13 of the FTA or any other statute or common law are excluded from these terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

7. RISK AND TITLE

- (a) Unless otherwise agreed in writing and signed by a duly authorised representative of the Company all risk in and of and for the goods will pass to the Purchaser immediately upon despatch of the goods by the Company to the Purchaser.
- (b) Title in the goods will not pass to the Purchaser until the Purchaser has discharged all outstanding indebtedness to the Company whatsoever.
- (c) Until payment in full of such indebtedness has been made the Purchaser acknowledges and agrees that:
 - (i) All goods supplied by the Company to the Purchaser are to be held by the Purchaser as bailee and trustee for the Company and if to be sold by the Purchaser to be so sold as agent for and on behalf of the Company subject to a duty to pay to the Company for all the proceeds of any such sale;
 - (ii) The Purchaser will store the goods supplied in such a way that it is clear that they are the property of the Company;
 - (iii) The Purchaser hereby irrevocably authorises and licences the Company and its agents and servants without the necessity of giving any notice to enter on and into and upon any premises occupied by the Purchaser to search for and remove any of the goods in which the Company has ownership as aforesaid without in any way being liable to the Purchaser or any person or company claiming through the Purchaser. If the goods or any of them are wholly or partially affixed to or incorporated in any other goods, the Company may where practical disconnect or sever in any way whatsoever as may be necessary to remove the goods.
 - (iv) If the Purchaser has resold any goods prior to payment in full of the outstanding indebtedness of the Purchaser to the Company, then the proceeds of such resale will be the property of the Company

8. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- (a) Clause 7(b) creates a security interest in goods the Company supplies to the Purchaser.
- (b) The Purchaser will not grant any other security interest or any lien over goods in which the Company has a security interest.
- (c) At the Company's request the Purchaser will promptly sign any documents and do anything else required by the Company to ensure its security interest constitutes a first ranking perfected security interest in the goods.
- (d) The Company may at any time enter the Purchaser's premises and properties to uplift goods in which the Company has a security interest.
- (e) If goods in which the Company has a security interest are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods; the Company's security interest will continue in the whole in

which they are included. The Purchaser will not grant any other security interest or any lien in either the goods or in the whole.

- (f) The Purchaser waives any rights the Company may have under sections 114(1)(a) (to receive a notice of intention to sell); 116 (to receive a statement of account); 120(2) (to receive notice of any of the Company's proposals to retain collateral); 121 (to object to any of the Company's proposals to retain collateral); 125 (to not have goods damaged if the Company removes an accession); 129 (to receive notice of the removal of an accession); 131 (to apply to the Court for an order concerning the removal of an accession); 133 and 134 of the PPSA (to reinstate the Security Agreement) and to receive a Verification Statement or Financing Change Statement relating to the Company's security interest.
- (g) The Purchaser must give the Company prior written notice of any proposed change of the Purchaser's name or address.

9. **GOODS RETURN**

- (a) The Company is under no obligation to accept the cancellation of any order or the return of goods.
- (b) The Company may, in its discretion, agree for the Purchaser to return some of the goods for credit by quoting the date of delivery and the invoice/packing slip numbers, provided that:
 - (i) the Purchaser requests the return within seven (7) days of the delivery of the goods;
 - (ii) the goods are in their original condition and packaging as supplied;
 - (iii) the goods have not been used;
 - (iv) the goods are not a custom order;
 - (v) The Company approves the request in writing;
 - (vi) A copy of the Company's written approval is attached to the goods when returned;
 - (vii) the Company may charge a handling charge of 15% of the price of the goods;
 - (viii) the Purchaser arranges, at its cost, for delivery of the goods to the Company.
- (c) Any shortage of goods delivered to the Purchaser must be notified in writing to us within seven (7) days of delivery of goods. The Company will, in its discretion replace such shortfall of goods or issue the Purchaser a credit note for the price of such shortfall of goods as soon as reasonably practicable. Any excess of goods delivered to the Purchaser must be returned, in the same condition as they were in when they were delivered, to the Company within seven (7) days of delivery.
- (d) The Purchaser must not return any goods for complaint without first submitting to the Company a sample of the goods and giving to the Company a reasonable opportunity to evaluate such complaint.

- (e) Under no circumstances will the Company be responsible for the cost of any delivery that has not been expressly authorised in writing by the Company.

10. **DEFAULT**

- (a) The Purchaser will be in default if:
 - (i) the Purchaser fails to pay an amount due under these terms by the due date for payment; or
 - (ii) the Purchaser commits a breach of any of its other obligations under these terms, the security, or the terms of any other contract the Purchaser has entered into, or enters into in the future, with the Company; or
 - (iii) the Purchaser becomes insolvent, is wound up, has a receiver appointed, enters into any composition or arrangement with its creditors, does any act which would render it liable to be placed in liquidation or have a receiver appointed over its property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
 - (iv) goods that the Company has retained title to are at risk; or
 - (v) an event or a series of events (whether related or not) occurs which, in the Company's opinion, may cause a material adverse change in the Purchaser's ability to meet its obligations to the Company.
- (b) If the Purchaser is in default then the Company may, at its option, do any one or more of the following:
 - (i) charge the Purchaser default interest at 5% above the rate charged to the Company by the Company's bankers on current overdraft facilities on the first day of the month concerned, per annum, on any late payments calculated on a daily basis from the due date until the date payment is received (including before and after judgement). The Certificate of the Company's bankers as to such rate will be conclusive for all purposes;
 - (ii) require the Purchaser to remedy the default in the manner and within a period that the Company advises;
 - (iii) require the Purchaser to pay to the Company all amounts the Purchaser owes to the Company immediately;
 - (iv) suspend or terminate the Purchaser's account with the Company;
 - (v) enforce security interests created by these terms;
 - (vi) exercise any rights that the Company has under these terms or that are available to the Company at law.
- (c) The Company may suspend or terminate the Purchaser's account with the Company at any time in its sole discretion. If the Purchaser's account is terminated, the Purchaser must immediately pay the Company any amount that is owed to the Company. Termination will not affect any of the Company's rights that have arisen before termination.