

## CONDITIONS OF SALE

Sales will only be made to businesses. If you are an individual not acting in the course of a business do not place an order with the Seller.

### 1 Interpretation

#### 1.1 In these Conditions:

- 'Buyer'** means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
- 'Conditions'** means the standard terms and conditions of sale set out in this document and includes any additional terms agreed in writing between the Buyer and the Seller;
- 'Contract'** means the contract for the purchase and sale of the Goods;
- 'Force Majeure'** means in relation to either party, any circumstances beyond the reasonable control of that party including but not limited to, acts of God, floods, sabotage, strikes, lock-outs and other industrial or governmental action, difficulties in obtaining raw materials, labour;
- 'Goods'** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
- 'Quotation'** means any written quotation, issued by the Seller to the buyer in connection with the proposed supply or supply of Goods to the Seller;
- 'Seller'** means Malvern Medical Developments Limited (registered in England under number 3505188) with the registered office address of Unit 10, Northbrook Close Worcester Worcs. WR3 8BP
- 'Writing'** and any similar expression includes facsimile transmission, electronic mail and comparable means of communication but does not include SMS text.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2 Basis of the sale

- 2.1 The Seller shall sell, and the Buyer shall purchase the Goods in accordance with any Quotation, of the Seller which is accepted by the Buyer, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any and all other terms and conditions subject to which any such Quotation is accepted or purported to be accepted by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller. The Seller does not recognise or accept any terms and conditions of contract supplied by the Buyer.
- 2.3 The Seller's employees or agents are not authorised to make any representations or provide any advice concerning the Goods (including but not limited to recommendations or advice as to storage, application and use of Goods) unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed
- 2.4 The quantity, description and cost of the Goods shall be as set out in the Quotation sent by the Seller to the Buyer.
- 2.5 Any typographical, clerical, or other error or omission in any sales literature, Quotation, price list, website, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3 Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order, (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality, and description of and any specification for the Goods shall be those set out in the Quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller),
- 3.4 If any process, design, addition and/or changes is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and

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expenses awarded against or incurred by the Seller in connection with or paid Of agreed to be paid by the Seller in settlement of any claim for Infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.5 All samples, drawings, illustrations, descriptive matter, images, technical data, measurements, performance descriptions, specifications and advertising issued by the Company and/or contained in the Company's catalogues, website, brochures, or any other written document are issued or published for the sale purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract and the Seller reserves the right to make changes to the Goods without notifying the Buyer and this is not a sale by sample.
- 3.6 Materials, equipment, tools, installations, dies, moulds, copyright, design rights or any other forms of intellectual property rights and confidential information (whether marked 'Confidential' or otherwise) in all drawings, specifications and data supplied by the Seller to the Buyer or not so supplied but used by the Buyer In relation to the Goods ordered shall at all times be and remain the exclusive property of the Seller and shall not be disposed of other than in accordance with the Seller's written instructions, nor shall such items be used otherwise than as authorised by the Seller in writing.
- 3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.8 The Seller reserves the right to refuse to accept any cancellation of orders for Goods, which the Seller shall decide in his sole discretion, represents a special order produced to the Buyers requirements.

#### 4 Price of the goods

- 4.1 The price of the Goods shall be as on the Quotation or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer. Where appropriate the cost of delivery as specified in condition 6.1 shall be added to the price of the Goods. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any Quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on a DAP basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging, and insurance.
- 4.4 The Seller reserves the right to impose a further charge in respect of small orders. Such charge shall be at a level fixed by the Seller to reflect the extra work necessitated due to the handling of the order,

#### 5 Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any

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- purported appropriation by the Buyer); and  
 5.3.3 make a claim for interest under the late Payment of Commercial Debts (Interest) Act 1998.

## 6 Delivery

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods at the Buyer's premises or such other place as the Buyer may specify at any time after the Seller has notified the Buyer that the Goods are ready for delivery.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery or early delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing
- 6.3 Where Goods have been altered to the Buyer's specifications and is to be delivered by the Seller, the Seller reserves the right to deliver up to 15 per cent more or 15 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver anyone or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (In the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or
- 6.6.3 charge the Buyer for any shortfall below the price under the Contract.

## 7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods,
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, and Insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

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**8 Warranties**

- 8.1 Subject to the conditions set down below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery or up to the expiry date of the Goods whichever is the shorter.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
  - 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing). Misuse or alteration or repair of the Goods without the Seller's approval;
  - 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition, or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller. in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not revised, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure 10 meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.5 Goods delivered to the Buyer whether in accordance with the Contract or not will not be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller. If the Seller agrees to accept any such goods for return the Seller reserves the right to levy a handling charge of 10% of the price of such goods. Such goods must be returned by the Buyer carriage paid and insured for the return in their original shipping carton, free from biological and chemical hazards or any other hazard which may infringe the Health and Safety at Work Act or any other Act governing such matters.
- 8.6 The Seller reserves the right to defer the date of delivery or cancel the Contract or reduce the volume of Goods ordered by the Buyer (without liability to the Buyer, whether in contract or tort) by reason of a Force Majeure event.

**9 Limitation of liability**

- 9.1 Subject to condition 6 and condition 8, 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 Buyer in respect of:
  - 9.1.1 any breach of these Conditions;
  - 9.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 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.
- 9.3 Nothing in these conditions excludes or limits the liability of the Company:
  - 9.3.1 for death or personal injury caused by the Company's negligence; or
  - 9.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 9.3.3 for fraud or fraudulent misrepresentation.
- 9.4 Subject to condition 9.2 and condition 9.3:
  - 9.4.1 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 price; and
  - 9.4.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of

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business, depletion of goodwill or otherwise, 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.

## 10 Insolvency of buyer

10.1 Condition 10.2 applies if:

- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If condition 10.1 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11 General

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision,
- 11.3 No person who is not a party to a Contract shall be entitled to take benefit of it by virtue of the Contracts (Rights of Third Parties) Act 1999 unless he is a permitted assignee of the Company
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.

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