



The Buyer's attention is drawn in particular to the provisions of clause 11, clause 13 and clause 15.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following definitions apply:

Business Day: means a day other than a Saturday, Sunday or bank or public holiday when banks generally open for non-automated business in England.

Buyer: any person, firm, supplier or other legal entity which places an Order, or buys any Deliverables from the Seller under these Terms and Conditions, including its employees, servants, agents, principals (whether disclosed or undisclosed) or sub-contractors of any such person, firm or other legal entity.

Contract: means a contract between the Seller and the Buyer for the sale and purchase of the Deliverables incorporating these Terms and Conditions and the Order.

Deliverables: means the Goods or Services or both as the case may be.

Force Majeure: means an event or sequence of events beyond the Seller's reasonable control preventing it or delaying it from performing its obligations under the Contract including without limitation any failure or delay on the part of the manufacturer of any of the Goods to supply the Goods to the Seller, any strike, lock-out or any other industrial action, fire, explosion, flood, epidemic, pandemic, closure of motorways or other roads leaving no alternative route, unusually severe weather conditions or unusually severe traffic congestion which could not reasonably be anticipated leaving no alternative route, loss of power or telecommunications systems or computer failure or breakdown.

Goods: means the goods (or any part of them) to be supplied by the Seller to the Buyer in accordance with the terms of the Contract.

Intellectual Property Rights: means the copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights to get-up, rights in goodwill, rights in software, rights in confidential information, rights to inventions, rights to sue for passing off, domain names and all other intellectual property rights and similar rights.

Late Payment Compensation Fee: has the meaning given at clause 7.6.

Order: means the Buyer's order for the Goods and/or Services, received via the Seller's sales office, member of the sales team or service operations department, by telephone or email or by any other means.

Price: has the meaning at clause 4.1.

Seller: Select Medical Ltd (company registration number 4281283) whose registered office is at Unit 10, Philips Road, Whitebirk Industrial Estate, Blackburn BB1 5NA.

Services: means the services set out in the Order and to be supplied by the Seller to the Buyer in accordance with the Contract.

Statutory Interest: means statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended & supplemented by the Late Payment of Commercial Debts Regulations 2002.

Terms and Conditions: means the Seller's terms and conditions of sale set out in this document (as amended from time to time). These Terms and Conditions apply to the exclusion of all other terms and conditions (including any the Buyer purports to apply).

VAT: means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to writing or written includes faxes and emails.

2. APPLICATION OF THESE TERMS AND CONDITIONS

2.1 These Terms and Conditions shall apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms and conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, confirmation of order or referred to in any communication from the Buyer shall form part of the Contract except to the extent that the Seller otherwise expressly agrees in writing. Any other purported terms and conditions are expressly rejected by the Seller.

3. ORDERS AND CONTRACTS

3.1 Each Order by the Buyer shall be an offer to purchase the Deliverables subject to the Contract including these Terms and Conditions. If the Seller is unable to

accept the Order for any reason whatsoever, it shall notify the Buyer as soon as practicable.

- 3.2 The Buyer shall be solely responsible for ensuring that the Goods ordered are suitable for their intended application by the Buyer.
- 3.3 The Seller may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
 - (a) the Seller's written acceptance of the Order; or
 - (b) the Seller delivering or performing the Deliverables or notifying the Buyer that they are ready to be delivered or performed (as the case may be).
- 3.4 Rejection by the Seller of an Order, including any communication that may accompany such rejection shall not constitute a counter-offer capable of acceptance by the Buyer.
- 3.5 The Seller may issue quotations to the Buyer from time to time. Quotations are invitations to treat only and shall be valid for 30 days from the date of issue. They are not an offer to supply Deliverables and are incapable of being accepted by the Buyer.
- 3.6 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract. All descriptions, depictions and other particulars supplied by the Seller in catalogues, price lists or other documents issued by the Seller or statements made by word of mouth are given for general information purposes only and the Buyer acknowledges that it is not entering into the Contract in reliance thereupon.
- 3.7 The Contract shall be formed when the Seller acknowledges acceptance of the Buyer's Order or the Seller delivers or performs the Deliverables, whichever occurs earlier.

4. PRICES, VARIATIONS AND DISCOUNTS

- 4.1 The price for the Deliverables shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Seller from time to time before the Order is placed (the **Price**).
- 4.2 Neither the Seller's price list nor any prices which appear in the Seller's price list or on the Seller's website constitute an offer and the Seller may amend its published prices at any time prior to formation of the Contract in accordance with this clause. Any current price list replaces all previous price lists published.
- 4.3 Prices are quoted exclusive of VAT which shall be charged at the appropriate rate unless special VAT exemption applies and on completion of the appropriate documentation.
- 4.4 The Seller may increase Prices at any time by giving the Buyer not less than 15 Business Days' notice in writing provided that the increase does not exceed 15% of the Prices in effect immediately prior to the increase.

- 4.5 Notwithstanding clause 4.4, the Seller reserves the right by notice given at any time before delivery or performance of the Deliverables to vary the Price if, after the date of the entering into the Contract, there is an increase in the Seller's total direct cost of supplying the Goods including shipping, raw materials or production arising from any cause beyond the Seller's control.
- 4.6 Unless otherwise agreed in writing the Seller reserves the right to make such amendments to the Contract as it thinks fit or to terminate the Contract should any information or data supplied by the Buyer to the Seller proves to be incomplete or inaccurate in any respect.
- 4.7 The Seller reserves the right to vary or alter the specification of Goods without notice unless otherwise agreed in writing with the Buyer.
- 4.8 Any discount to Price which may be agreed between the Buyer and the Seller will only be binding on the Seller if such agreement is evidenced in writing.
- 4.9 If the Buyer is found to be in breach of these Terms and Conditions, the Seller reserves the right to disapply any discount to the Price of the Deliverables and charge the Buyer for the Deliverables at full Price.
- 4.10 Any forbearance by the Seller in continuing to apply the discount in the event of breach by the Buyer of these Terms and Conditions shall not be deemed to be a waiver of the Seller's rights and the Seller shall be entitled to claim the undiscounted price of all Deliverables under the Contract.

5. TITLE

- 5.1 Title to the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Deliverables and all other sums which are or which become due to the Seller from the Buyer on any account.
- 5.2 Until title passes to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
 - (b) store the Goods separately from all other material in the Buyer's possession;
 - (c) take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - (d) insure the Goods on the Seller's behalf for their full Price against all risks to the reasonable satisfaction of the Seller;
 - (e) ensure the Goods are easily identifiable as belonging to the Seller;
 - (f) not remove or alter any mark on or packaging of the Goods;
 - (g) inform the Seller immediately if they become subject to any of the events or circumstances in clause 11; and
 - (h) on reasonable notice, permit the Seller to inspect the Goods and provide the Seller with such information concerning the Goods as the Seller may request from time to time.

6. RISK

Risk in the Goods shall pass to the Buyer from the time they are tendered for delivery, at an agreed destination or are available for collection by the Buyer or cease to be in the possession of the Seller, in particular when they are delivered into the possession or custody of a carrier, forwarding agent, warehouseman or any other bailee or agent, for the purpose of transmission, whether or not such person contacts with or is instructed by the Seller or the Buyer.

7. PAYMENT

- 7.1 The Seller shall invoice the Buyer for the Deliverables partially or in full, at any time following acceptance of an Order.
- 7.2 The Buyer shall pay all invoices in full without deduction or set-off, in cleared funds within 30 days of each invoice.
- 7.3 The Seller shall be entitled to suspend delivery of subsequent Orders and any agreed discounts until the payment of all outstanding invoices has been received.
- 7.4 Failure to pay any invoice by the due date shall entitle the Seller to suspend delivery of all unexecuted Orders. Time of payment is of the essence.
- 7.5 The Seller reserves the right at any time in its absolute discretion to demand immediate payment of any outstanding account whether due or not and to take legal action to recover the outstanding debt and all costs incurred in recovering the debt.
- 7.6 If payment is not made in accordance with these Terms & Conditions, the Seller reserves the right to charge a Late Payment Compensation Fee together with Statutory Interest on the overdue balance for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgement or decree against the Buyer.
- 7.7 In the event of any cheques, standing orders or direct debits due from a Buyer to the Seller are dishonoured, a charge of £45 (or such other sum as the Seller may from time to time advise the Buyer) will be made on the Buyer's account to cover bank and administrative costs.
- 7.8 The Seller reserves the right with absolute discretion to refuse or grant credit. The Seller may set and vary credit limits from time to time and withhold all further supplies if the Buyer exceeds such credit limit.
- 7.9 The Buyer shall pay all amounts due under the Contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller 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 the Seller to the Buyer.

8. DELIVERY AND DELAY

- 8.1 The Goods shall be delivered by the Seller, or its nominated carrier, to the location specified in the Order.
- 8.2 The Seller shall be deemed to have delivered the Goods when the Goods are despatched from the Seller's premises or, as the case may be, when the Goods are ready for collection at the Seller's premises.
- 8.3 The delivery of Goods to the Buyer shall be in accordance with the Seller's delivery schedule. The Seller shall not be liable for any loss or damage whatsoever arising as a result of failure to deliver or perform the Deliverables by a particular date or caused by Force Majeure. Time for delivery or performance of the Deliverables shall not be of the essence unless otherwise agreed by the Seller in writing. Dates for delivery and performance are indicative only.
- 8.4 The Services shall be performed by the Seller at the location specified in the Order. The Services shall be deemed delivered by the Seller on completion of the performance of the Services.
- 8.5 The Seller may deliver the Goods or perform the Services in instalments and to invoice the Buyer for each instalment. Any delay or defect in an instalment shall not entitle the Buyer to cancel any other instalment and shall not affect the due performance of the Contract as a whole.
- 8.6 Where the Seller agrees to an expedited delivery or performance and this necessitates overtime or additional costs, such costs and overtime shall be paid for by the Buyer.
- 8.7 Delivery of Goods shall be made by the Seller to such reasonably accessible premises as the Buyer shall reasonably require. The Buyer shall allow the Seller reasonable access to such premises and shall use best endeavours to ensure that a person shall be at the place of delivery to take delivery of the Goods and to sign for them. In the event that no such person being present at the time of delivery the Seller will not leave the Goods at the premises.
- 8.8 If the Buyer fails to accept delivery or fails to give the Seller adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Seller may do one or more of the following.
 - (a) charge the Buyer the cost of carriage of the failed delivery both to and from the Buyer's premises and in addition to the Seller's administration charges involved;
 - (b) charge the Buyer the full cost prices of the Goods and a sum in respect of its loss of profit provided that the Seller shall use its reasonable endeavours to mitigate such loss;
 - (c) store the Goods pending delivery and charge the Buyer for all reasonable storage and insurance charges;
 - (d) sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the Price under Contract.

- 8.9 The Seller shall not be liable for any delay in or failure of performance caused by:
- (a) the Buyer's failure to make the location ready;
 - (b) the Buyer's failure to prepare the location as required for the Deliverables;
 - (c) the Buyer's failure to provide the Seller with adequate instructions for performance or delivery of the Deliverables; or
 - (d) Force Majeure.

9. ACCEPTANCE AND CLAIMS PROCEDURE

- 9.1 The Buyer must check that the quantity and specifications of Goods delivered correspond with the Contract before signature of the delivery note. An unqualified signature shall be deemed to signify the Buyer's acceptance that the Goods are in good condition and delivered in the correct volume. The Seller will not be responsible for damage to any Goods or part thereof in transit unless the Buyer gives notice of claim to the Seller and to the carrier:
- (a) in case of damage, within 7 days after having received the Goods and
 - (b) in case of loss, within 7 days of the date of the invoice. The Buyer must retain damaged goods for inspection and collection by the Seller.
- 9.2 The Seller's liability in the case of loss or damage in transit shall be limited to repairing or replacing the damaged or, as the case may be, the lost Goods and the Seller shall be entitled to inspect the Goods at its discretion. The Seller shall not be under any other liability there under whatsoever.
- 9.3 The Seller shall have no liability whatsoever for any loss or damage where the procedure in this clause 9 is not complied with.

10. RESALE OF GOODS

- 10.1 The Buyer shall be responsible for the repair of all Goods that they have resold. The Seller shall:
- (a) where the faulty Goods are within their warranty period, supply the Buyer with the replacement parts to repair the fault for free; or
 - (b) where the faulty Goods are outside of their warranty period, at the Seller's discretion, supply the replacement parts at a discounted rate to the Buyer,

The Seller reserves the right to inspect the faulty goods before providing replacement parts.

11. TERMINATION OF CONTRACT

- 11.1 The Contract may not be terminated by the Buyer without the written consent of the Seller. The Seller reserves the right upon providing its consent to levy a charge of not less than 20% of the list Price of the Goods which are the subject of the Contract to cover the Seller's losses arising from such termination.
- 11.2 Notwithstanding clause 11.1, the Contract cannot be terminated:

- (a) where Goods have already been specifically ordered by the Seller on behalf of the Buyer and the manufacturer refuses to cancel the Order; or
- (b) where the Goods have already been despatched or delivered and cannot be returned to the manufacturer.

11.3 In the event that:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 Business Days of that party being notified in writing;
- (b) the Buyer makes any voluntary agreement with its creditors, proposes to enter into a Seller's voluntary arrangement, enters into administration, is unable to pay its debts as they fall due, makes application to a Court to suspend enforcement action against it, goes into liquidation (in the event that the Buyer is a Seller) or becomes solvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Buyer is an individual or firm), or if the equivalent occurs under any jurisdiction; or
- (c) an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Buyer; or
- (d) the Buyer suspends any payments hereunder or ceases, or threatens to cease on business; or
- (e) the Seller reasonably considers that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly,

then without prejudice to any other rights or remedies available to the Seller, the Seller shall be entitled forthwith to terminate the Contract or suspend any further deliveries under the Contract with immediate effect without any liability to the Buyer and if the Goods have been delivered but not paid for, the Price shall become immediately payable notwithstanding any previous agreement to the contrary.

- 11.4 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.5 On termination of the Contract for any reason whatsoever the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 11.6 Termination of the Contract shall not affect the Buyer's or the Seller's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of Contract that existed at or before the date of termination.
- 11.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. WARRANTIES

- 12.1 The Seller warrants that from delivery or at the time of performance, the Deliverables shall:
- (a) conform in all material respects to any sample and their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (d) if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s13.
- 12.2 The Buyer warrants that it has provided the Seller with all relevant, full and accurate information as to the Buyer's business and needs.
- 12.3 As the Buyer's sole and exclusive remedy, the Seller shall at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with this clause 12, provided that the Buyer:
- (a) serves a written notice on the Seller not later than five Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - (b) such notice specifies that some or all of the Deliverables do not comply with clause 12.1 and identifying in sufficient detail the nature and extent of the defects; and
 - (c) give the Seller reasonable opportunity to examine the claim of the defective Deliverables.
- 12.4 These Terms and Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 12.5 The Seller shall not be liable for any failure of the Goods to comply with clause 12.1:
- (a) where such failure arises by reason of wear and tear, wilful damage, negligence or could be expected to arise in the normal course of use of the Goods;
 - (b) to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
 - (c) to the extent caused by the Seller following specification, instruction or requirement of or given by the Buyer in relation to the Goods;
 - (d) where the Buyer modifies any Goods without the Seller's prior written consent, or having received such consent, not in accordance with the Seller's instructions; or

(e) where the Buyer uses any Goods after notifying the Seller that they do not comply with clause 12.1.

12.6 Except as set out in this clause 12, the Seller gives no warranty and make no representations in relation to the Deliverables and shall have no liability for their failure to comply with the warranty in clause 12.1.

12.7 To the extent permitted by law all other conditions warranties or obligations whether express as implied by statute, Common Law or otherwise are excluded.

13. LIMITATION OF LIABILITY

13.1 The extent of the Seller's liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause.

13.2 The Seller shall not be liable for any indirect, consequential or special losses.

13.3 Subject to clauses 13.4 and 13.5, the Seller shall not be liable for any of the following (whether direct or indirect):

(a) loss of profit;

(b) loss of corruption of data;

(c) loss of use;

(d) loss of production;

(e) loss of contract;

(f) loss of opportunity;

(g) loss of savings, discount, or rebate whether actual or anticipated);

(h) harm to reputation or loss of goodwill.

13.4 The limitations of liability shall not apply in respect of any indemnities given by the Buyer under the Contract.

13.5 Notwithstanding any other provisions of the Contract, the liability of both the Buyer and the Seller shall not be limited in any way in respect of the following:

(a) death or personal injury caused by negligence; or

(b) fraud or fraudulent misrepresentation.

13.6 The Buyer shall indemnify and keep indemnified, the Seller from and against any losses, damages, liability, costs (including legal fees) expenses incurred by the Seller as a result of or in connection with the Buyer's breach of any of the Buyer's obligations under the Contract.

14. INTELLECTUAL PROPERTY

- 14.1 All Intellectual Property Rights in the Deliverables shall remain at all times the property of the Seller. The Buyer shall acquire no rights for the Deliverables except as expressly provided for in these Terms and Conditions. The Buyer may not reproduce, copy, duplicate, transmit, publish, display, distribute or sell any material from the Seller's website. The Buyer may not use the Seller's website or its content for any commercial purpose; including the collection and use of any listings, descriptions, prices, make any derivative or commercially exploitative use of this website or its content, download or copy account information, use any data mining, robots or similar data gathering and extraction without the explicit written consent of the Seller.
- 14.2 Where Goods are produced by the Seller in accordance with the Buyer's instructions, specifications or drawings, the Buyer shall indemnify the Seller against all costs, damages and expenses to which the Seller may become liable as a result of infringement of any patent, registered design or any other Intellectual Property Rights.

15. FORCE MAJEURE

The Seller reserves the right to delay the date of delivery or performance of the Deliverables or reduce the volume of Goods ordered by the Buyer or to cancel the Contract without liability to the Buyer if it is prevented from or delayed in the carrying out of its obligations under the Contract due to Force Majeure.

16. ADDITIONAL TERMS

- 16.1 Unless otherwise stated, time is of the essence for any date or period specified in the Contract in relation to the Buyer's obligations only.
- 16.2 Both the Seller and the Buyer warrants to the other that it will at all times comply with its obligations (if any) under the Data Protection Act 2018. The Buyer consents to the Seller appointing subcontractors as third-party processors of personal data under the Contract.
- 16.3 Failure or delay on the part of the Seller in enforcing any provision of the Contract shall not be construed as a waiver of any of the Seller's rights under the Contract. Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.4 Both the Seller and the Buyer agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them.
- 16.5 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms and Conditions and is duly signed or executed by, or on behalf of the Buyer and the Seller.
- 16.6 If any provision of the Contract is found by a Court, tribunal or other 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.

- 16.7 The Seller, but not the Buyer, may assign its rights and obligations under the Contract.
- 16.8 Any written communication given pursuant to the Contract must be sent by pre-paid first class post to the registered office of the addresses or such other address as may have been notified to the other party in writing and shall be deemed to have been received by the addressee at 9.00am on the second Business Day after posting.
- 16.9 The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to it.
- 16.10 The Contract and any dispute or claim arising out of or in connection with it, its subject matter or formation shall be governed by and construed by the laws of England and Wales and the parties to the Contract agree to the exclusive jurisdiction of the courts of England and Wales.