

**Smiths Medical Terms and Conditions of Sale for Europe**

**("Terms and Conditions")**

Buyer's attention is drawn in particular to the provisions of clauses 3.2, 3.5, 3.7, 8.6, 9.2, 9.3, 9.4, 10.2, 11.3.3 and 14.1

These Terms and Conditions are for the purchase of Goods from Smiths Medical entities established in the EEA, the UK or Switzerland. The Seller is the Smiths Medical entity set out in the Order Confirmation.

**1. DEFINITIONS**

- 1.1 The definitions and rules of interpretation set out below apply in these Terms and Conditions:
- 1.2 **Buyer** means the person, firm or company, authority or government department or agency, which purchases the Goods from the Seller.
- 1.3 **Contract** means any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Terms and Conditions, as well as any purchase order from Buyer for the purchase of Goods from Seller that is accepted by the Seller in accordance with clause 2.5 and also incorporating these Terms and Conditions.
- 1.4 **Goods** means any goods, equipment, components, spare parts and materials agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).
- 1.5 **Order Confirmation** means the Smiths Medical order confirmation form issued to the Buyer for an accepted order.
- 1.6 **parties** means the Buyer and the Seller, a "party" being one of them.
- 1.7 **Seller** means the Smiths Medical entity set out in the Order Acknowledgement.
- 1.8 **Territory** means the geographic area specified by the Seller in which the Buyer is authorised to distribute and resell the Goods, or if not so specified, the nation state in which the Buyer takes delivery of the Goods.
- 1.9 A reference to a particular 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 and related regulations for the time being in force made under it.
- 1.10 Words in the singular include the plural and in the plural include the singular.
- 1.11 Headings of clauses, terms and conditions do not affect the interpretation of such clauses, terms and conditions.

**2. APPLICATION OF TERMS AND CONDITIONS**

- 2.1 Subject to any variation under clause 2.3, the Contract shall be subject to these Terms and Conditions. All other terms, conditions and warranties, whether implied by statute, common law or trade usage or expressed by the Buyer (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document), are hereby excluded, with the exception of conditions expressly accepted by the Seller in writing and conditions and other terms the exclusion of which is prohibited by mandatory statutory law or regulations.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer'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 Any variation to these Terms and Conditions and any representations about the Goods shall have no effect unless set out in writing and signed by authorised representatives of each of the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in the Contract. Nothing in this clause shall exclude or limit the Seller's liability for fraudulent misrepresentation.
- 2.4 Each purchase order or acceptance of a quotation for Goods from the Buyer for the Buyer's purchase of Goods from the Seller shall be deemed to be an offer by the Buyer to buy Goods and subject to the Seller accepting the purchase order pursuant to clause 2.5 shall create a Contract subject to these Terms and Conditions. These Terms and Conditions shall be included in each purchase order.
- 2.5 No purchase order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer. Acceptance of purchase orders is at the discretion of the Seller.
- 2.6 Subject to the Seller's discretion, the minimum order values are as follows:

Minimum Order Value (excluding spare parts)			Minimum Order Value (spare parts)			Order Processing Charge		
GBP	EUR / CHF	SEK / DKK	GBP	EUR / CHF	SEK / DKK	GBP	EUR / CHF	SEK / DKK
Less than 200	Less than 250	Less than 2000	Less than 20	Less than 25	Less than 200	20	25	200
200 or more	250 or more	2000 or more	20 or more	25 or more	200 or more	0	0	0

- 2.7 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.8 Any quotation is given on the basis that no Contract shall come into existence until the Seller sends an acknowledgement of order to the Buyer. Any quotation is valid for a period of thirty (30) days only from its date unless stated otherwise and provided that the Seller has not previously withdrawn it.

**3. DELIVERY**

- 3.1 The Buyer is responsible for providing complete and accurate delivery address information to the Seller and for checking such information is correctly set out in the Order Confirmation.
- 3.2 The Seller shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree.

- 3.3 Any dates specified by the Seller for delivery of the Goods are estimates and time for delivery shall not be made of the essence by notice. If no dates are specified, time for delivery shall be within a reasonable time.
- 3.4 The Buyer may submit a request for next day delivery and such request may be accepted at the discretion of the Seller.
- 3.5 Subject to the other provisions of these Terms and Conditions the Seller 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 or interruption of business, depletion of goodwill, damage to reputation 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 Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
  - 3.6.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
  - 3.6.2 the Goods shall be deemed to have been delivered; and
  - 3.6.3 the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.7 If the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity noted in the Buyer's purchase order or in the Seller's acknowledgment, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the shortfall or surplus and shall pay for such goods at the pro rata Contract rate.
- 3.8 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

**4. PLACE OF DELIVERY**

- 4.1 Unless otherwise expressly agreed in writing by the Seller, the Seller shall deliver the Goods to the Buyer and delivery shall take place at the Buyer's premises ("Delivery Point").
- 4.2 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for taking delivery of the Goods.

**5. LOSS, SHORTAGE OR DAMAGE IN TRANSIT**

- 5.1 The Seller shall not be liable for loss or shortage or damage to Goods in transit unless:
  - 5.1.1 such loss, shortage or damage is caused by the Seller's negligence; and
  - 5.1.2 the carriers and the Seller are notified thereof in writing, in the case of damage or shortage within three days of delivery or, in the case of non-delivery, within a reasonable time after the date upon which the Goods would have been delivered in the ordinary course of events; and
  - 5.1.3 in the case of damage to Goods, the Buyer notifies the Seller's customer services department and such Goods are returned to the Seller for inspection within thirty days of delivery.

**6. CHANGES AND RETURNS**

- 6.1 If after the receipt of any purchase order for Goods before delivery, improvements are made to their design, on giving notice to the Buyer, the Seller may make reasonable alterations so such design provided that:
  - 6.1.1 the performance and quality of the altered goods are at least as high as those of the Goods ordered; and
  - 6.1.2 no price variation is made except with the Buyer's consent; and
  - 6.1.3 delivery is not unreasonably delayed.
- 6.2 If in respect of any order for Goods that are manufactured to the Buyer's specification the Buyer requests any amendment to such order, the Seller shall, at its discretion, charge the Buyer in respect of any such amendments at the rate of 25% of the invoice value of such Goods.
- 6.3 Except for Goods that do not conform to the warranty in clause 9 or any erroneous delivery of Goods due to Seller's mistake (subject to clause 3.7), if the Buyer wishes to return Goods to the Seller and the Seller is prepared to accept the return of such Goods, the Seller reserves the right to charge the Buyer a restocking charge at the rates set out in the table below. Any such returns shall be at the Buyer's expense and the Goods must be unused and in good and saleable condition.

Value of returned Goods (excluding VAT) in the currency set out in the Order Confirmation		Restocking Charge		
GBP / EUR / CHF	SEK / DKK	GBP	EUR / CHF	SEK / DKK
500 or less	5000 or less	100	130	1000
501 to 1000	5001 to 10000	150	190	1500
1001 to 5000	10001 to 50000	500	630	5000
5000 or more	50001 or more	1000	1260	10000

- 6.4 Notwithstanding that Goods returned pursuant to clause 6.3 must be unused, the Buyer undertakes to delete all user data (including without limitation patient data) from the Goods prior to returning those Goods to the Seller for any reason, including without limitation Goods sent to Seller for repair.
- 6.5 The Buyer undertakes to ensure there is no Personal Data (as defined in the applicable privacy and data protection legislation and regulations) on any Goods returned to the Seller for any reason, including without limitation Goods sent to Seller for repair or replacement.

- 6.6 The Seller shall, upon the reasonable request of the Buyer, package or bundle certain Goods together to form a kit (a "Custom Kit"). The Buyer agrees that in the event that it wishes to change the content of the Custom Kit and / or no longer wishes to purchase the Custom Kit, the Buyer shall notify the Seller in writing and shall purchase all Custom Kits which the Seller holds in stock.
- 7. RISK AND TITLE**
- 7.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 (as amended) shall have the same meaning in these terms and conditions but if there is any conflict between the provisions of Incoterms and these terms, the latter shall apply.
- 7.2 The Goods are at the risk of the Buyer from the time of placement of the Goods with the first carrier.
- 7.3 Ownership of and 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:
- 7.3.1 the Goods; and
- 7.3.2 all other sums which are or which become due to the Seller from the Buyer on any account at the date the goods are delivered to the Buyer.
- 7.4 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.4.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.4.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 7.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.4.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 7.5 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 7.6 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered "CPT" as defined in Incoterms 2010 (as amended) the terms of which are hereby incorporated in these conditions unless otherwise agreed in writing by the Seller and the Seller is under no obligation to give notice to the Buyer if shipment is by a route involving sea transit (including under circumstances in which it is usual to insure).
- 7.7 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.7.1 any sale shall be effected in the ordinary course of the Buyer's business (but not otherwise) at full market value; and
- 7.7.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.8 The Buyer's right to possession of the Goods shall terminate immediately if, before ownership and title to the Goods passes to the Buyer, the Buyer:
- 7.8.1 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
- 7.8.2 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 Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.8.3 suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts or the Buyer ceases to trade or continue in business; or
- 7.8.4 encumbers or in any way charges any of the Goods; or
- 7.8.5 an analogous step or process is taken in any other jurisdiction.
- 7.9 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.10 The Buyer grants the Seller, 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 Buyer's right to possession has terminated, to recover them.
- 7.11 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer for which payment has been received by the Seller from the Buyer, and thereafter to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 7.12 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this clause 7 shall remain in effect.
- 8. PRICES AND PAYMENT**
- 8.1 Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's price list published on the date of delivery. The price for the Goods shall be exclusive of value added tax (if any) and all costs or charges in relation to transit and packing materials, installation, carriage, insurance and additional labour.
- The Buyer shall pay any value added tax and all costs or charges in relation to transit and packing materials, installation, carriage in respect only of deliveries of Goods required by the Buyer within 24 hours, insurance and additional labour when the Buyer is due to pay for the Goods.
- 8.2 xSubject to clauses 8.6 and 8.8, payment of the price for the Goods is due according to the terms and in the currency stated on the invoice unless otherwise agreed by the Seller in writing. Time for payment shall be of the essence. In the event any invoice does not state the payment terms or currency, payment of the price for the Goods shall be due in pounds sterling within thirty (30) days of the date of invoice.
- 8.3 Payment for account Buyers is strictly monthly and to be made in accordance with invoice values. For non-account Buyers payments must be made in advance of delivery.
- 8.4 A Buyer wishing to open an account must provide recognised bank and trade references.
- 8.5 The Seller reserves the right to levy an interest charge in the event of failure to pay by the due date. Such charge will be at the rate of 2% per month on overdue amounts from the date payment is payable until the date payment is made or the maximum interest rate permitted by law, whichever is less.
- 8.6 When payment of any of the Seller's invoices is overdue it may suspend performance of the Contract to which the invoice relates and/or of any other contract then in existence between the Buyer and the Seller for the period until the invoice is paid.
- 8.7 The Seller reserves the right to change the terms of payment offered to the Buyer following a suspension of performance under the provision of clause 8.6 above.
- 8.8 All payments payable to the Seller under the Contract shall become due immediately on its termination notwithstanding any other provision.
- 8.9 Invoices are payable in full. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 9. WARRANTY**
- 9.1 The Seller warrants that (subject to the other provisions of these Terms and Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods shall:
- 9.1.1 conform in all material respects to all applicable drawings and specifications;
- 9.1.2 be free from defects in workmanship or materials;
- 9.1.3 be reasonably fit for the purpose for which the Goods are sold as intended by Seller; and
- 9.1.4 be reasonably fit for any particular purpose for which the Goods are bought only if the Buyer had made that purpose known to the Seller in writing and the Seller had confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller.
- 9.2 The Seller shall not be liable for a breach of any of the warranties in clause 9.1 unless:
- 9.2.1 the Buyer gives written notice of the defect to the Seller, within twenty-one (21) days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.2.2 the Seller is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there.
- 9.3 The Seller shall not be liable for a breach of any of the warranties in clause 9.1 if:
- 9.3.1 the Buyer makes any further use of such Goods after giving such notice; or
- 9.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.3.3 the Buyer alters or repairs such Goods without the prior written consent of the Seller.
- 9.4 Subject to clauses 9.1.4 and 9.3, if any of the Goods do not conform with any of the warranties in clause 9.1 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at its expense, return the Goods or the part of such Goods which is defective to the Seller.
- 9.5 If the Seller complies with clause 9.3.3 it shall have no further liability for a breach of any of the warranties in clause 9.1 in respect of such Goods.
- 10. COMPLIANCE WITH LAW AND QUALITY STANDARDS**
- 10.1 Buyer shall comply with all laws and regulations applicable to the storage, handling and distribution of the Goods, including, but not limited to those applicable to the export and import of the Goods and the registration or licencing of the Goods prior to sale.
- 10.2 Buyer shall not resell or distribute the Goods to areas outside the Territory which are allocated exclusively by Seller to other distributors or reserved exclusively to Seller except as authorised by the Seller or to the extent that such restriction is not permitted under applicable law. This limitation shall not limit Buyer's right to conduct passive sales in such areas.
- 10.3 With respect to any Goods held for resale or distribution by Buyer, Buyer shall implement quality management systems and protocols as follows:
- 10.3.1 Buyer shall, at its own expense, obtain and maintain any and all licenses, permits registrations, approvals and the like necessary to permit Buyer to lawfully sell, distribute and deliver Goods in the Territory.
- 10.3.2 Buyer shall maintain true, accurate, complete and current records relating to its purchases, sales and dispositions, logistics procedures, quality systems, and storage relating to Goods. For each sale, transfer or conveyance of Goods, Buyer shall collect and maintain the following information:
- 10.3.3 Product Traceability, including

- i. Customer/Transferee Name and Full Address
  - ii. Buyers Internal End User Number
  - iii. Invoice Number and Date
  - iv. Shipping Date
  - v. Quantity and Unit of Measure
  - vi. Company Item Number
- 10.3.4 Storage and environmental conditions
- 10.3.5 Sub-distributor management (including agreements), if applicable
- 10.3.6 Product inspection and quality control
- 10.3.7 Customer complaints and complaint management
- 10.3.8 Field action and recall management
- 10.3.9 Corrective and preventative actions
- 10.3.10 Management of nonconforming and returned products
- 10.3.11 Quality system
- 10.3.12 Product training, if applicable
- 10.3.13 Buyer shall maintain such records for the greater of five (5) years or such other period required by applicable local, state, region, territory, government or country requirements under laws and regulations in effect and as amended during the term of this Agreement. In connection with any regulatory or compliance matter, quality systems review, audit any government agency or notified body, or any quality audit pursuant to clause 10.3.20 below, or otherwise as required by law, Buyer shall furnish copies of any distributor records requested by Seller either to Seller or Seller's auditors, as applicable, within ten (10) business days of such request. Seller shall not use any such records for the purpose of soliciting the purchase of Goods by any Buyer customer directly from Seller.
- 10.3.14 In the event that Buyer sells, transfers or conveys the Goods to any sub-distributor or other third party prior to sale or distribution of the Goods to the end user, Buyer shall cause such sub-distributor or other third party to maintain the records listed above for the applicable period and to make copies of such records available to Seller as described.
- 10.3.15 Buyer shall while the Goods are under its responsibility, ensure storage and transport conditions do not jeopardise compliance with the general safety and performance requirements set out in the applicable medical device laws and regulations and maintain environmental controls for the storage and transportation of products in compliance with all labelling and any written instructions from Seller.
- 10.3.16 Buyer shall ensure that inventory is managed rotated so that delivery of Goods with the shortest remaining useful life is shipped first.
- 10.3.17 Buyer shall not make any changes to any Goods, including Goods labelling and packaging, without the prior written authorisation of Seller.
- 10.3.18 If Buyer receives any complaints or otherwise becomes aware of any suspected incident, defect or non-conformity of the Goods, Buyer shall notify Seller immediately. In the event of a recall or corrective action, regardless of whether it is required by any regulatory agency or voluntarily undertaken by Seller, Buyer shall cooperate with the reasonable requests of Seller with respect to the notification of customers and end users and the collection, shipment and storage of any returned Goods. Seller shall reimburse Buyer for any reasonable, directly incurred out-of-pocket costs payable to any third party in connection with providing such cooperation.
- 10.3.19 If Buyer considers or has reason to believe the Goods present any risk, Buyer shall notify the Seller immediately. This clause does not affect any other legal reporting obligation the Buyer may have.
- 10.3.20 Seller has the right to conduct audits at Buyers facilities upon reasonable notice to assess compliance to agreements, regulatory requirements and quality standards. Buyer shall provide access to books, records, and other documentation and facilities as part of these assessments.
- 10.3.21 In the event that Buyer sells, transfers or conveys Goods to any sub-distributor or other third party prior to sale or distribution of the Goods to the end user, Buyer shall cause such sub-distributor or other third party to cooperate with any such audit by Seller as well.
- 11. LIMITATION OF LIABILITY**
- 11.1 Subject to clause 4, clause 5 and clause 9, the following provisions in this clause 11 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any:
- 11.1.1 breach of these Terms and Conditions;
  - 11.1.2 use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 11.1.3 representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these terms and conditions are excluded to the fullest extent permitted by law.
- 11.3 Nothing in these Terms and Conditions excludes or limits the liability of either Party for:
- 11.3.1 death or personal injury caused by the negligence of the other Party or any of its officer employees or agents and if the Buyer is located in Germany, for claims arising from the German Act on Product Liability (*Produkthaftungsgesetz*);
  - 11.3.2 fraud or fraudulent misrepresentation; or
- 11.3.3 for any matter which it would be illegal for one Party to exclude or attempt to exclude its liability to the other Party.
- 11.4 Subject to clause 11.2 and clause 11.3:
- 11.4.1 The Seller'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 foreseeable losses and the Parties agree that such foreseeable losses does not exceed the invoice value of Goods ordered by the Buyer in the twelve month period ending in the month immediately prior to the month in which any such fault or defect as aforesaid first became known to the Buyer; and
  - 11.4.2 The Seller shall not be liable to the Buyer for any costs, claims, damages or expenses, whether arising out of or in connection with the Contract or any other breach of contract or statutory duty or any tortious act or omission;
    - 11.4.2.1 of an indirect or consequential nature;
    - 11.4.2.2 that are calculated by reference to profits, income, production or accruals or any loss thereof on a time or any other basis;
    - 11.4.2.3 that are calculated by reference to a loss of business, depletion of goodwill or any other form of pure economic loss; or
    - 11.4.2.4 to the extent that the same has been or will be made good or is otherwise compensated without cost to the other Party.
- 12. FORCE MAJEURE**
- 12.1 The Seller reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the goods ordered by the Buyer (without liability to the Buyer), and is otherwise excused from any failure to perform its obligations hereunder, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including but 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 Seller's or another 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 of excess of ninety (90) days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.
- 13. GENERAL**
- 13.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 13.2 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.
- 13.3 Failure or delay by the Seller 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.
- 13.4 Any waiver by the Seller 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.
- 13.5 A person who is not a party to the Contract has no right to enforce or avail themselves of any term of the Contract.
- 13.6 The Seller may assign the Contract or any part of it to any person, firm or company.
- 13.7 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 14. LAW AND JURISDICTION; COMPLIANCE**
- 14.1 The construction, validity and performance of these terms and conditions and matters pertaining thereto shall be governed in all respects by English Law. The English Courts in London shall have exclusive jurisdiction to settle any action brought in connection with these terms and conditions or matters pertaining thereto. The Buyer shall accept service by prepaid registered letter of any writ of summons in any such action at its principal place of business notwithstanding that it may be outside the jurisdiction of the English Courts.
- 14.2 The Buyer shall comply with all applicable laws and shall provide to the Seller in a timely manner any information necessary for the Seller to fulfil any obligations of disclosure under any applicable law.
- 14.3 Each party shall:
- 14.3.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**");
  - 14.3.2 have and shall maintain in place throughout the term of this agreement its own policies and procedures, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
  - 14.3.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of any Contract; and
  - 14.3.4 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and each party warrants that it has no foreign public officials as officers, employees or direct or indirect owners on commencement of any Contract).
- 14.4 Each party understands the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "**Convention**"), the US Foreign Corrupt Practices Act ("**FCPA**") and the UK Bribery Act 2010 and agrees to comply with the Convention, the FCPA and the Bribery Act 2010.
- 14.5 The Buyer acknowledges and agrees that the ultimate destination of the Goods sold hereunder is in the country where Seller is incorporated, unless otherwise stated in writing. Buyer shall not authorise or permit its employees, distributors, customers,

brokers, freight forwarders, and/or agents to transfer, export, re-export, or import any of the Goods to any person without complying with applicable export, import, and economic sanctions laws and regulations of the country where Seller is incorporated, the United States, the European Union, or any other applicable jurisdictions. The Buyer agrees to notify the Seller immediately if the Buyer or the end-user (if not the Buyer and known) is specifically or otherwise effectively listed on any relevant government restricted or prohibited parties lists, including the Denied Persons List, Entity List, Sectoral Sanctions Identifications List, or Specially Designated Nationals List, or if the export privileges of the Buyer or any relevant third party whom the Buyer will involve in this transaction (including its customer, if applicable), are otherwise denied, suspended or revoked in whole or in part by any relevant government authority. The Buyer shall ensure that the Goods are not used in relation to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons. The Buyer shall indemnify the Seller against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from the Buyer's breach of this clause.

- 14.6 Breach of condition 14.3, 14.4, or 14.5 by either party shall entitle the other party to terminate the Contract with immediate effect.
- 14.7 The Seller and its affiliated companies are committed to conducting their business ethically and lawfully. To that end the Seller, through its ultimate parent Seller, Smiths Group plc, maintains a Code of Business Ethics and mechanism for reporting unethical or unlawful conduct. The Seller expects that the Buyer will also conduct its business ethically and lawfully. If the Buyer has cause to believe that the Seller or any employee or agent of the Seller has behaved unethically or unlawfully under, or in connection with this Agreement, the Buyer is encouraged to report such behaviour to the Seller or to Smiths Group plc. A copy of Smiths Group plc's Code of Business Ethics and mechanisms for making such reports are available on [www.smiths-group.com](http://www.smiths-group.com)
- 14.8 The Buyer shall not, directly, or indirectly, in connection with any Contract and the business resulting from it, offer, pay, promise to pay, or authorise the giving of money or anything of value to any government official, to any political party or official thereof or to any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any government official, to any political party or official thereof, or to any candidate to political office, for the purpose of:
- 14.8.1 influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or
- 14.8.2 inducing such official, political party, party official, or candidate to use his or its influence with the government to affect or influence any act or decision of such government or instrumentality, in order to assist the Seller in obtaining or retaining business for or with, or directing business to the Seller.
- 14.8.3 Breach of this condition 14.7 by Buyer shall entitle Seller to terminate the Contract with immediate effect.
- 14.9 The Seller adheres to MedTech Europe's Code of Business Ethics (<http://www.medtecheurope.org/industry-themes/topic/122>), the AdvaMed Code of Ethics for Interactions with Healthcare Professionals (<http://www.advamed.org>) and medical device industry codes in the Territory. Buyer confirms that it has read those codes and agrees to honour their principles and not to do anything that violates those principles.

## 15. DATA PROTECTION

- 15.1 The parties acknowledge that each party is a separate and independent controller of personal data disclosed by each party to the other party pursuant to this Agreement. In no event will the parties process the personal data as joint controllers.
- 15.2 Each party shall be individually and separately responsible for complying with the obligations that apply to it as a controller under applicable data protection laws, in particular (and without limitation) all necessary transparency and lawfulness requirements.