

## QMF89-Standard Terms and Conditions

Incus Surgical Limited, Mabrook House, Bocking End, Braintree, Essex, CM7 9AA

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### 1. Definitions.

1. "The Company" means Incus Surgical Ltd, of Mabrook House, 22 Bocking End, Braintree, Essex, CM7 9AA.
2. "The Customer" means the customer of the Company.
3. "The Contract" means any contract for the sale of goods by the Company to the customer.
4. "The goods" means goods of any description forming the subject matter of this contract including parts, components and ingredients of any materials incorporated into the goods.

### 2. Quotations.

Quotations by the Company, unless otherwise stated in terms, or otherwise agreed by the Company in writing, shall be open for acceptance within 30 days of the date of the quotation.

### 3. Existence of Contract.

1. No contracts shall come into existence until the Customer's order (whether placed pursuant to a quotation or otherwise) is accepted by the earliest of:
  - (a) the company's written acceptance;
  - (b) delivery of the goods;
  - (c) delivery of the company's invoice.
2. These conditions shall be incorporated in the contract to the exclusion of any terms and/or conditions stipulated or referred to by the Customer.
3. No variations or amendments of this contract or these terms and conditions shall be binding on the company unless confirmed by it, in writing.
4. The Customer hereby agrees that no reliance will be placed upon any written or oral statements or representation made by the company, its servants or agents, which is not enclosed or contained in the company's quotation or Order Confirmation (QMF43) or which is not reduced into writing by the customer and acknowledged in writing by the company before the contract comes into existence in accordance with sub-paragraph 3.1 above.

### 4. Prices.

1. Prices are ex-works and exclude freight, insurance and delivery charges; and further exclude Value Added Tax and all other taxes and duties whatsoever, unless otherwise offered and accepted.
2. The Company shall have the right to increase its prices to the Customer to account for any alteration in the cost of materials, parts or labour or to account for any changes in work or delivery schedules or quantities, or to account for any increases in the Company's costs of any kind arising for any reason after the date of the contract.
3. The Company shall not increase the price of any goods which are the subject matter of an invoice already delivered by the Company to the Customer.

### 5. Payment.

1. All invoices are payable without discount of any kind in pounds (Sterling) on a "strictly net basis".
2. In no circumstances whatsoever, shall the customer be entitled to make any deduction or claim any set-off or withhold payment on any invoice for any reason at all.
3. Time for payment shall be the essence of the contract. The Customer may be required to pay the Company interest on any overdue amount from the dates the payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of 4% per annum over the base rate from time to time quoted by Barclays Bank PLC and the Customer shall reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

### 6. Title.

1. Property in the goods shall remain with the Company and shall not pass to the Customer (notwithstanding the earlier passing of risk) until the price of the goods has become due and has been paid by the customer in full.
2. Until property passes to the Customer upon payment for the goods, the Customer shall hold the goods as bailee for the Company and shall store or mark them so that they can, always be identified as the property of the Company.
3. The Company shall be entitled at any time before property passed to the Customer to repossess all or any of the goods and/or use or sell them (without any liability to the Customer), and so terminate the Customers right to use, sell or otherwise deal with them as the Company's bailees.
4. For the purposes set out in the sub-paragraph 6.3 above or for the purposes of determining what goods are held by the Customer and inspecting them; the Company or its authorised agents may at any time enter and remain upon any premises of the customer.
5. The Company shall be entitled at any time before property is passed to the Customer, where or not payment for the goods is due, to require the Customer forthwith to return the goods to the Company (at the Customers expense) to any address the Company may reasonably specify.
6. Until property passes the entire proceeds of sales, good shall be held in trust for the Company and shall not be mixed with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the proceeds of sale.

7. The Company shall be entitled to maintain an action against the customer for the price of the goods notwithstanding that property in them has not passed to the customer.

### 7. Delivery, Risk and Performance.

1. Goods are delivered to the Customer when the Company makes them available to the Customer or any agents of the Customer or any carrier (who shall be the Customer's agent, whoever pays his charges) at the Company's premises or other delivery point agreed in writing by the Company.
2. Risk in the goods passed when they are delivered to the Customer as aforesaid.
3. The Company may deliver goods by instalments in any sequence.
4. No default or failure by the Company in respect of any use or more instalments shall vitiate the contract in respect of goods already delivered to the Customer, or yet to be delivered to the Customer and where the goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate contract.
5. The Company may deliver, and the Customer shall accept, in satisfaction of the contract, lesser quantity than the quantity of goods ordered.
6. Any dates quoted by the Company or specified by the Customer for delivery of the goods are deemed to be approximate only and shall not form part of the contract and the customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
7. Time for delivery is not of the essence of the contract.
8. If the Customer fails to take delivery of the goods or any part of them on the date they are made available and or fails to provide written instructions or any documents, licences, consents or authorisations required to enable the goods to be delivery, the Company shall be entitled to store or arrange the storage of goods, and the risk in the goods shall pass to the Customer. Delivery shall be deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure.
9. The Company shall not be liable for any penalty loss injury or damage or expense arising from any delay or failure in delivery for performance from any cause whatsoever, nor shall any such delay for failure entitle the Customer to refuse to accept any delivery or performance of or to repudiate or terminate the contract.

### 8. Goods Returns Policy.

1. In addition to your legal rights, we shall allow you to return goods if you simply change your mind. However, no goods may be returned to the Company without prior arrangement. Goods returned will be offset by a Credit Note – or an exchange. (See Clause 11 for Faulty or Damaged goods).
2. If the Company agrees to a return of an order the goods will only be accepted if they are un-used and are in their original packaging.
3. Any returned goods – even with prior notice agreement – may be subject to a re-stocking charge at the Company's discretion.

### 9. Claims Notification.

1. Any claim for non-delivery of any goods in the United Kingdom shall be notified by the customer to the company within 14 days of the date on the company's invoice.
2. Any claims that the goods have been delivered or damaged or are not of the correct quantity or do not comply with the description in the contract shall be notified by the customer to the company within seven (7) days of their delivery or deemed delivery.
3. Any alleged defect in the goods shall be notified by the Customer to the Company within seven (7) days of delivery or in the case of any defect which is not reasonably apparent on the inspection within seven (7) days of the defect coming to the Customer's attention.
4. Any claim under this condition must be in writing and must contain full details of the claim including any details required by the company to identify the goods.
5. The Company shall be afforded a reasonable opportunity and facilities to investigate any claims under this condition and the Customer shall if so requested in writing by the Company promptly return any goods the subject of any claim and any packing securely packed, and the carriage paid to the Company for examination.
6. The Company shall have no liability to any claim in respect of which the Customer has not complied with the provisions of this condition.

### 10. Scope of Contract.

1. Under no circumstances whatsoever shall the Company have any liability of whatever kind for:
  - (a) any defects resulting from wear and tear accident or improper use or storage after delivery;
  - (b) any goods which have been altered after delivery;
  - (c) the suitability of any goods for any purpose or use under the specific conditions whether those purposes or conditions were known or communicated to the company.
2. Under no circumstances whatsoever shall the Company have any liability of whatever kind for any:

(a) descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the company contained in the Company's catalogues, price lists or elsewhere since they are merely intending to project a general idea of the goods and not form part of the contract or be treated as representations;

(b) technical information recommendations, statements or advice furnished by the company, its servants or agents;

(c) any variations in the quantities of dimension of any goods or changes in their specifications of substitution of any materials if the variation of substitution does not materially affect the characteristics of the goods and the substituted materials are of a quality equal or superior to those originally specified.

delivery of goods outside the Company premises and to provide all necessary instruments, documents, licences, consents authorisations, permissions and insurance required for the acceptance of the goods from the Company on the due date.

#### **11. Extent of Liability.**

1. The Company shall have no liability to the Customer (other than liability for death or personal injury resulting from the Company's negligence) for any loss or damage of any nature arising from the breach of any express or implied warrant or condition of the contract or any negligence breach of statutory or other duty on the part of the company or in any other way our of it in connection with the performance or purported performance of or failure to perform the contract except in accordance with this condition.
2. If the Customer establishes that goods have not been delivered or have been delivered damaged or are not of the correct quantity or do not comply with their description or are defective, the Company shall at its option replace with similar goods, any goods which are missing, lost or damaged or do not comply with their description or are defective or allow the Customer to credit for their invoice value or refund to the customer the invoice price of any such goods.
3. If the Company is liable in accordance with this condition in respect of only some goods the contract shall remain in full force and effect in respect of the other goods in the contract.
4. The Company shall not be liable in any circumstances whatsoever for goods which are lost or damaged in transit and all claims shall be made against the carrier.
5. There are no circumstances in which the liability of the Company to the Customer under this condition shall exceed the invoice value of the goods.

#### **12. General.**

1. If the Customer fails to make any payment or otherwise defaults in any of its obligations under the contract or agreement with the Company or becomes insolvent, has a receiver appointed or is wound up (voluntarily or compulsory) or the Company bona fide believes that any such event may occur; then the Company may suspend or terminate the supply of any goods and shall be entitled to forfeit any monies already paid.
2. The contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.
3. The contract cannot be cancelled without the written agreement of the Company and upon payment by the Customer to the company of 25% of the total contract price, or such other sum expressly agreed in writing by the Company.
4. The contract shall be governed by the English Law and the Customer consents to the exclusive jurisdiction of the English Courts in matters regarding the contract except to the extent that the Company invokes the jurisdiction of the Courts of any other country.
5. Any notice to be given under this contract shall be in writing or sent by facsimile transmission or forwarded by recorded delivery post to the receiving party at its business address or last known business address and shall be deemed to have been given on the date of the facsimile transmission or on the day following that on which the notice was posted.

#### **13. Force Majeure**

The company shall not be liable for any failure in the performance of any of its obligations under the contract caused by factors outside its control.

#### **14. Exports.**

1. For the avoidance of doubt all the above terms and conditions apply to orders from Customers outside the United Kingdom as well as those from within the United Kingdom unless previously agreed in writing.
2. The provisions of this condition apply to Customers from outside the United Kingdom by its any inconsistency arises between this condition and any others, for Customers from outside the United Kingdom, the provisions of this condition shall prevail.
3. Orders from Customers outside the United Kingdom must be covered by an irrevocable letter of credit to cover the purchase price and any other additional costs and charges whatsoever, confirmed by a London clearing Bank unless other arrangements have been made and agreed between the company and the customer in writing.
4. The Company's prices do not include F.O.B charges or any delivery charges to docks, airports or otherwise to the customers order unless otherwise offered.
5. Any obligation on the Company to carry or arrange for the carriage of any goods to any points outside the Company's premises must be agreed with the company in writing, will be entirely at the Customer's expense and will be invoiced to the Customer by the Company separately and at cost price.
6. Insurance is only affected on the Customer's specific instructions and to the Customer's specific requirements, notified to the company in writing and entirely at the Customer's expense. However, the company is under no obligation to accept any instructions to affect any Insurance cover.
7. The notification periods specified in clause 8 shall be extended in each case by seven (7) days for Customers from outside the United Kingdom.
8. Unless otherwise agreed in writing by the Company before the contract is made, it is the responsibility of the customer to make provision for the