

Terms and Conditions

1. GENERAL

These conditions apply to all goods sold, or services provided, by InterMed Medical Pty Ltd (“the Company”) to the purchaser of such goods or services (“the Purchaser”) unless varied in writing and signed by a duly authorised representative of the Company.

2. ACCEPTANCE

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

3. PRICE

- (a) The price for the goods or services is as shown on the Company’s Invoice, Packing Note and Despatch Note or other like document.
- (b) All prices are quoted by the Company subject to any variation which may occur between the dates of quotation and delivery or deliveries of goods or provision of services in international monetary exchange rates, customs duties, purchase tax, freight railage or insurance rates or suppliers’ selling prices.
- (c) All prices are quoted by the Company subject to the addition of any Goods and Services Tax, including Goods and Services Tax payable in respect of any installation carried out under paragraph 5, and any other tax imposed by any governmental authority upon the goods quoted or upon the production sale, distribution, delivery or upon any feature thereof if applicable. All such taxes are recoverable from the Purchaser and may be added by the Company to the price of the goods or services.
- (d) Unless otherwise agreed by the Company in writing prior to sale all freight and despatch charges will be borne by the Purchaser.
- (e) Unless otherwise agreed by the Company in writing prior to sale the Purchaser must make full payment of the price of the goods to the Company on or before thirty (30) days following the date upon which the goods are delivered to the Purchaser.
- (f) If the Purchaser defaults in making any payment to the Company on the due date then the Purchaser must pay to the Company interest on the amount overdue. Interest will be calculated and payable on a monthly basis for every month or part month during which any amount remains unpaid at the rate which will be 2% above the rate charged to the Company by the Company’s bankers on current overdraft facilities on the first day of the month concerned. The certificate of the Company’s bankers as to such rate will be conclusive for all purposes.
- (g) The Company will apply all payments made to the Company by the Purchaser firstly towards any interest which shall become payable by the Purchaser to the Company and secondly towards any overdue amount owing by the Purchaser to the Company and thirdly towards any current amount owing by the Purchaser to the Company.
- (h) The Company may suspend delivery of any the goods or performance of any services to the Purchaser if:
 - i. the Purchaser is in default of any obligations under these terms and conditions;

- ii. the Purchaser is or becomes (or the Company has reason to believe that the Purchaser has or may become) insolvent or unable to pay its debts as and when they fall due; or
- iii. any change in those exercising effective control of the Purchaser occurs. In any such event, the Company may require the Purchaser to pay immediately any amounts that are payable at a future date in respect of goods that have already been delivered or services that have already been provided.

4. DELIVERY

- (a) Any goods quoted by the Company as ex-stock are so quoted subject to any prior sale by the Company.
- (b) The Company will use its best endeavours to fulfil accepted orders but is entitled to cancel any order or orders relating to any item or items if in the opinion of the Company it is or has become impractical or uneconomic to produce or supply the same.
- (c) The Company will use its best endeavours to make delivery at the time specified in any accepted order but unless otherwise agreed by the Company in writing prior to sale will not be responsible for any loss or damage sustained by the Purchaser or any other person by reason of any delay in delivery or any failure to fulfil an order or make delivery howsoever caused.

5. INSTALLATION

- (a) If the Company or the manufacturer undertakes to install any goods the Purchaser will at the Purchaser's cost provide all service utilities and/or special handling equipment which may be required. For the purposes of this clause:
 - i. the term "service utilities" includes (without limitation) electric power outlets, water outlets, drains and compressed air lines; and
 - ii. the term "special handling equipment" includes (without limitation) any heavy lifting gear for movement of equipment to and/or at the installation site.
- (b) If the Company is required to provide any such required service utilities and/or special handling equipment the costs thereof will be recoverable from the Purchaser in addition to any other monies recoverable by the Company from the Purchaser.
- (c) Installation will be made at the time of delivery or as soon as practicable thereafter.
- (d) The goods will be at the Purchaser's risk from the time of despatch by the Company to the Purchaser notwithstanding that the Company may have any responsibility to install the same.
- (e) Unless otherwise agreed in writing by the Company the Company's responsibility to install any goods as such will cease if the Purchaser defers the installation.
- (f) In respect of goods which contain software embedded within the goods ("Software") and the Company has the right to grant a licence to use the Software to end users of the goods, the Company grants the Purchaser a non-exclusive, non-transferable licence to use the Software when using the goods. Subject to Part III Division 4A of the Copyright Act (Cth) 1968, the Purchaser must not and must not attempt to copy the Software (other than is reasonable for back-up purposes); transfer the Software to another system; incorporate the Software into other products; operate the Software in conjunction with other products; assign, sell, mortgage, lease, sub-licence the Software to another person; alter, modify, adapt, tamper with, reverse engineer, decompile, disassemble, all or any part of the Software without the prior express and written

agreement of the Company; or remove any copyright, trade mark or disclaimer notification in or from the Software.

6. WARRANTY

Nothing in these terms and conditions of sale limits, excludes or modifies or purports to limit, exclude or modify any statutory consumer guarantees or any implied condition or warranty the exclusion of which from these terms and conditions of sale would contravene any statute or cause any part of these terms and conditions of sale to be void ("Non-Excludable Guarantees"). Subject to the limitations in the preceding sentence, the Company excludes from these terms and conditions of sale all conditions, warranties and terms implied by statute, general law or custom. Except for liability in relation to a Non Excludable Guarantee. the Company (including its officers, employees and agents) excludes all liability whether arising in tort (including without limitation negligence), contract or otherwise, for any personal injury or any other loss or damage (including without limitation loss of opportunity or loss of profits); whether direct, indirect, special or consequential. Subject to the Non-Excludable Guarantees:

- (a) the Company warrants that all goods sold are free from defects in materials and workmanship at the time of despatch by the Company. Modifications to the goods ordered by the Purchaser, or any of their components, could significantly affect their performance or conformance to their applicable specifications. Any modifications of the goods, or any of their components, other than as performed or authorised in writing by the Company, will invalidate and terminate our warranty for the goods, effective on the date of any such modification.
- (b) the Company will have no responsibility for any damage that may be caused or may arise from or out of the handling or usage of any goods after the same have been despatched by the Company. In particular but without limitation the Company will have no responsibility for breakage or failure of any electronic tubes or components, illumination sources, items wholly or partly of glass, silica or ceramic materials, thermocouples, batteries or electrical elements.
- (c) the Company will have no responsibility for any damage resulting from misuse or abuse of goods or from negligence or malpractice unless of the Company or its servants.
- (d) the provisions of this clause 6 and the warranty contained in sub-clause (a) hereof and so far as may be permitted by law:
 - i. all representations or terms not expressly set out in sub-clause (a) hereof are hereby expressly excluded.
 - ii. the Company will be under no liability whatsoever to the Purchaser in respect of any representations or terms not expressly set out herein or otherwise set out in writing and signed by a duly authorised representative of the Company
 - iii. if the Purchaser has, notwithstanding the provisions of this clause 6, any claim for damages against the Company at law (including without limitation direct, indirect, special or consequential loss or damages) in respect of a Non-Excludable Guarantee, and the Company is able to limit the Purchaser's remedy for a breach of a Non-Excludable Guarantee, then the liability of the Company for breach of the Non-Excludable Guarantee is limited to, at the Company's option:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;

- (d) the payment of the cost of having the goods repaired;
- (e) the supplying of the services again; or
- (f) the payment of the cost of having the services supplied again. Note: Subject to sub-clause 6(d)(iii) above, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

7. RISK AND TITLE

- (a) Unless otherwise agreed in writing and signed by a duly authorised representative of the Company all risk in and of and for the goods will pass to the Purchaser immediately upon despatch of the goods by the Company to the Purchaser.
- (b) Unless otherwise agreed in writing and signed by a duly authorised representative of the Company ownership in the goods will not pass to the Purchaser until the Purchaser has discharged all outstanding indebtedness to the Company whatsoever.
- (c) The Purchaser must notify the Company if it has entered or enters into any finance arrangement in respect of the goods purchased under these terms and conditions of sale.
- (d) Until payment in full of such indebtedness has been made the Purchaser acknowledges and agrees that:
 - i. All goods supplied by the Company to the Purchaser are to be held by the Purchaser as bailee and trustee for the Company and if to be sold by the Purchaser to be so sold as agent for and on behalf of the Company subject to a duty to pay to the Company all the proceeds of any such sale;
 - ii. The Purchaser must if directed by the Company store the goods supplied in such a way that it is clear that they are the property of the Company;
 - iii. The Purchaser hereby irrevocably authorises and licences the Company and its agents and servants without the necessity of giving any notice to enter on and into and upon any premises occupied by the Purchaser to search for and remove any of the goods in which the Company has ownership as aforesaid without in any way being liable to the Purchaser or any person or company claiming through the Purchaser. If the goods or any of them are wholly or partially affixed to or incorporated in any other goods the Company may where practical disconnect or sever in any way whatsoever as may be necessary to remove the goods.
 - iv. If the Purchaser has resold any goods prior to payment in full of the outstanding indebtedness of the Purchaser to the Company then the proceeds of such resale will be the property of the Company (but only to the extent necessary to discharge such outstanding indebtedness).
 - v. This clause is intended to protect the Company in the event of default in payment by the Purchaser or the insolvency of the Purchaser.
 - vi. The Purchaser acknowledges and grants the Company a security interest for the purposes of the Personal Property Securities Act 2009 ("PPSA") in the goods and any

proceeds from goods supplied to the Purchaser and acknowledges the Company's rights in the goods are a 'purchase money security interest' ("PMSI") and the Company will have a PMSI in the proceeds of those goods. The Purchaser will do everything reasonably required of it by the Company to enable the Company to register its security interests with the priority the Company requires and to maintain those registrations including signing any documents and/or providing any information which the Company may reasonably require to register a financing statement or a financing change statement in relation to a security interest or to correct a defect in a statement. The Purchaser acknowledges and agrees that the Company does not need to give the Purchaser any notice under the PPSA (including notice of the single financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded and if the Company is required to give a notice to the Purchaser under the PPSA, and the Purchaser may, under the PPSA, waive the Purchaser's right to receive that notice, then the Purchaser hereby waives that right. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under these terms and conditions of sale, the Purchaser agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 155, 142 and 143 of the PPSA will not apply to the enforcement of those security interests. Unless otherwise stated, a term contained in this clause that is defined in the PPSA (but not otherwise defined in these terms and conditions of sale) has the meaning given to it in the PPSA.

8. GOODS RETURN

- (a) Goods delivered to the Purchaser as a consequence of any misinterpretation of the Purchaser's order may be returned for full replacement provided the same are in good condition and the error is reported to the Company within 7 days of receipt of the goods.
- (b) Goods delivered to the Purchaser as a consequence of error in the Purchaser's order may be returned provided the error is reported to the Company within 7 days of receipt of the goods and further provided the goods are in good condition and are of the Company's standard stock classification in all respects as determined by the Company's authorised representative. The Company shall be entitled to charge a reasonable restocking fee. Return freight is the responsibility of the Purchaser.
- (c) The Purchaser will not return any consignment of goods for complaint without first submitting to the Company a sample thereof and extending to the Company a reasonable opportunity to evaluate such complaint.
- (d) The Company will not be obliged to accept return of any goods unless:
 - i. within 7 days of the receipt of goods by the Purchaser the Company receives at its Sydney office a written request detailing the goods which the Purchaser seeks to return to the Company and the reason why the Purchaser seeks to return those goods and detailing the Company's Invoice/Packing Slip number relating to the goods in question; and
 - ii. the Company approves the request in writing; and
 - iii. a copy of the Company's written approval is attached to the goods when returned.
- (e) Under no circumstances will the Company be responsible for the cost of any cartage that has not been expressly authorised in writing by the Company.

9. USE OF GOODS

The Purchaser acknowledges that the goods are or may be subject to regulation by the Australian Therapeutic Goods Administration ("TGA"), the New Zealand Medicines and Medical Devices Safety Authority ("Medsafe"), Australia New Zealand Therapeutic Products Agency ("ANZTPA"), U.S. Food and Drug Administration ("FDA") and any other regulation that may be applicable in the countries where the Purchaser or end-user of the goods are located. The Purchaser agrees not to use or permit the goods to be used in any manner that does not comply with any and all such applicable regulations.