

TERMS AND CONDITIONS OF SALE OF DE SMIT MEDICAL SYSTEMS LIMITED

1. DEFINITIONS

In these Terms and Conditions the following expressions shall have the following meanings

- 1.1. "Contact Address" means Bristol Road, Cromhall, South Gloucestershire, GL12 8AX (Telephone: +44 (0)845 345 4226 / Fax: +44 (0)845 3454227 / Email: sales@desmitmedical.com)
- 1.2. "Contract" means a contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these Terms and Conditions
- 1.3. "De Smit" means De Smit Medical Systems Limited (Company Number: 06585345) whose registered office is at 584 Wellsway, Bath, BA2 2UE
- 1.4. "Goods" means the articles that the Buyer agrees to buy from De Smit
- 1.5. "You" "Your" means the individual or organisation who buys or agrees to buy the Goods from De Smit

2. CONDITIONS

- 2.1. Nothing in these Terms and Conditions shall affect Your statutory rights as a Consumer as that expression is defined in 1 of The Consumer Rights Act 2015.
- 2.2. These Terms and Conditions shall apply to all contracts for the sale of Goods by De Smit to You and shall prevail over any other documentation or communication from You. Please read these Terms and Conditions carefully before you submit your order to us as they tell you who we are, how we will provide Goods to You, how You and De Smit may change or end the contract, what to do if there is a problem and other important information.
- 2.3. Acceptance of delivery of the Goods shall be deemed conclusive evidence of Your acceptance of these Terms and Conditions.
- 2.4. No variation of these Terms and Conditions shall be binding unless agreed in writing by De Smit.

3. ORDERING

- 3.1. All orders for Goods shall be deemed to be an offer by You to purchase Goods pursuant to these Terms and Conditions and are subject to acceptance by De Smit. De Smit may choose not to accept an order for any reason.
- 3.2. De Smit must receive payment of the whole price for the Goods (and any VAT and delivery charges) that You order before Your order is accepted. Upon receipt of payment De Smit will confirm that your order has been accepted by sending an email to you at the email address you provide in your order form. Our acceptance of Your order brings into existence a legally binding contract between us.
- 3.3. Where the Goods ordered by You are not available from stock You shall be notified and given the option to either wait until the Goods are available from stock or cancel the order and receive a full refund within 30 days.
- 3.4. The images of products on the De Smit website are for illustrative purposes only. Although De Smit have made every effort to display the colours accurately, De Smit cannot guarantee that a device's display of the colours or the printed pictures on our website accurately reflects the colour of the products. Your Goods (and their packaging) may vary slightly from those images.
- 3.5. When making an order through De Smit's website, the technical steps You need to take to complete the order process are described in the Order Process section within the De Smit website.

4. PRICE AND PAYMENT

- 4.1. The Price of the Goods shall be as shown on De Smit's website. The price is exclusive of VAT. The price excludes delivery charges which are shown on De Smit's website.
- 4.2. The total purchase price, including VAT and delivery charges, if any, will be displayed in Your shopping cart prior to confirming the order.

5. RIGHTS OF DE SMIT

- 5.1. De Smit reserves the right to adjust the price and specification of any item on the De Smit website at its discretion.
- 5.2. De Smit reserves the right to withdraw any Goods from sale at any time.
- 5.3. De Smit reserves the right to cancel an order:
 - 5.3.1. if De Smit has insufficient stock;
 - 5.3.2. if any of the Goods ordered were listed at an incorrect price due to a typographical error or an error in pricing information received by De Smit from De Smit's suppliers;

PROVIDED THAT if De Smit exercises its rights under this Clause it will notify You by email and will as soon as possible (and in any event within 30 days) re-credit to the debit/credit card used for the order any sum deducted. De Smit will not have any liability to You in respect of such cancellation.
- 5.4. De Smit may change the Goods shown on De Smit's website:
 - 5.4.1. to reflect changes in relevant laws and regulatory requirements; and
 - 5.4.2. to implement minor technical adjustments and improvements which will not adversely affect the use of the Goods

6. AGE OF CONSENT

- 6.1. Where Goods may only be purchased by persons of a certain age You will be asked when placing an order to declare that they are of the appropriate legal age to purchase the Goods.
- 6.2. If De Smit discovers that You are not legally entitled to order certain Goods, the Seller shall be entitled to cancel the order immediately, without notice.

7. WARRANTY

- 7.1. The Goods come with a manufacturer's guarantee. For details, please refer to the Manufacturer's guarantee provided with the Goods. Except where You are dealing as a Consumer, all other warranties, conditions, or terms relating to fitness for purpose, merchantability or condition of the Goods, whether implied by statute, common law or otherwise are excluded to the extent permitted by law.

8. DELIVERY

- 8.1. Goods supplied within the UK will normally (and subject to stock availability) be delivered within 5 working days [and in any event within 30 days after the day] of acceptance of order.
- 8.2. Goods supplied outside the UK will normally (and subject to stock availability) be delivered within 14 working days [and in any event within 30 days after the day] of acceptance of order.
- 8.3. Where a specific delivery date has been agreed, and where this delivery date cannot be met, You will be notified and given the opportunity to agree a new delivery date or receive a full refund.
- 8.4. De Smit shall use its reasonable endeavours to meet any date agreed for delivery. If delivery of the products is delayed by an event outside De Smit's control then De Smit will contact You as soon as possible to let You know and will take steps to minimise the effect of the delay. Provided De Smit do this De Smit will not be liable for delays caused by the event, but if You are a consumer and there is a risk of substantial delay You may contact De Smit to end the contract and receive a refund for any Goods You have paid for but not received. Unless You are a consumer time of delivery shall not be of the essence and De Smit shall not be liable for any losses, costs, damages or expenses incurred by You or any third party arising directly or indirectly out of any failure to meet any estimated delivery date.
- 8.5. Delivery of the Goods shall be made to Your address specified in the order. You shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 8.6. Ownership of and risk in the Goods shall pass to You upon delivery of the Goods.

9. CANCELLATION AND RETURN

- 9.1. You shall inspect the Goods immediately upon receipt and shall notify De Smit on 0845 345 4226 within 7 working days of delivery if the Goods are damaged or do not comply with any of the Contract. If You fail to do so You shall be deemed to have accepted the Goods.
- 9.2. Where a claim of defect or damage is made the Goods shall be returned by You to De Smit. You shall be entitled to a full refund (including delivery costs) plus any return postal charges if the Goods are in fact defective.

- 9.3. Goods must be returned by You at Your expense in their original packaging and should be adequately insured during the return journey. You will receive a refund of all monies paid for the Goods (including delivery charges, if any) except for return postal charges within 14 days of cancellation. If You fail to return the Goods following cancellation, the Seller shall be entitled to deduct the cost of recovering the Goods from the Buyer.
- 9.4. Where returned Goods are found to be damaged due to Your fault You will be liable for the cost of remedying such damage.
- 9.5. If You are a Consumer You may have the right to cancel this contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 within 14 days without giving any reason.

The cancellation period will expire after 14 days on which you acquire, or a third party other than the carrier and indicated by you, acquires physical possession of the Goods

To exercise the right to cancel, You must inform us at de Smit Medical Systems Ltd, Bristol Road, Cromhall, South Gloucestershire, GL12 8AX, by fax to 0845 345 4227 or by email to sales@desmitmedical.com of Your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the following model cancellation form, but it is not obligatory.

Form of Cancellation

To de Smit Medical Systems Ltd at Bristol Road, Cromhall, South Gloucestershire, GL12 8AX, by fax to +44 (0)845 345 4227 or by email to sales@desmitmedical.com

I hereby give notice that I cancel my contract for the purchase of [insert product details] ordered on [insert date].

Name of consumer

Address of consumer

Signature of consumer (if sent by post or fax)

Date

To meet the cancellation deadline, it is sufficient for you to send Your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Please note that this cancellation right does not apply if the Goods or any part of the Goods which are dispatched sealed and sterile becomes unsealed and/or unsterile after delivery.

If You cancel this contract, De Smit will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).

De Smit may make a deduction from the reimbursement for loss in value of any Goods supplied, if the loss is the result of unnecessary handling by you.

De Smit will make the reimbursement without undue delay, and not later than

- a) 14 days after the day we receive back from you any Goods supplied, or
- (b) (if earlier) 14 days after the day you provide evidence that You have returned the Goods, or
- (c) if there were no Goods supplied, 14 days after the day on which De Smit are informed about Your decision to cancel this contract.

De Smit will make the reimbursement using the same means of payment as You used for the initial transaction, unless You have expressly agreed otherwise; in any event, You will not incur any fees as a result of the reimbursement. De Smit may withhold reimbursement until De Smit have received the Goods back or You have supplied evidence of having sent back the Goods, whichever is the earliest.

Save as set out above once Goods been dispatched there is no right to a refund.

- 9.6. If You are a Consumer You may have additional rights under the The Consumer Rights Act 2015 says Goods must be as described, fit for purpose and of satisfactory quality. During the expected life of your Goods your legal rights entitle you to the following:
- up to 30 days: if your item is faulty, then you can get a refund.
 - up to six months: if your faulty item can't be repaired or replaced, then you're entitled to a full refund, in most cases.
 - up to six years: if the item can be expected to last up to six years you may be entitled to a repair or replacement, or, if that doesn't work, some of your money back.

If You wish to exercise Your legal rights to reject Goods you must either post them back to De Smit or (if they are not suitable for posting) allow De Smit to collect them from you. De Smit will pay the costs of postage, please contact us for a free returns label or collection.

The above is a summary of Your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

10. LIMITATION OF LIABILITY

- 10.1. Subject to clause 9.6, if the Goods are not what You ordered or are damaged or defective or the delivery is of an incorrect quantity, De Smit shall have no liability to You unless You notify De Smit in writing at the Contact Address of a problem within 7 working days of the delivery of the Goods in question.
- 10.2. Subject to clause 8.4, if You do not receive Goods ordered by You within 30 days of the date on which You ordered them, De Smit shall have no liability to You unless you notify De Smit in writing at the Contact Address of the problem within 40 days of the date on which You ordered the Goods.

If You notify a problem to us under this condition, De Smit's only obligation will be, at Your option;

- 10.2.1. to make good any shortage or non-delivery;
- 10.2.2. to replace or repair any goods that are damaged or defective; or
- 10.2.3. to refund to you the amount paid by you for the Goods in question in whatever way De Smit chooses.

- 10.3. Unless You are a consumer save as precluded by law, De Smit will not be liable to You for any indirect or consequential loss, damage or expenses (including loss of profits, business or goodwill) howsoever arising out of any problem You notify to De Smit under this condition and De Smit shall have no liability to pay any money other than under clause 10.2.3 above.
- 10.4. If You are a consumer, if De Smit fails to comply with these Terms, De Smit will be responsible for loss or damage You suffer that is a foreseeable result of De Smit breaking these Terms or failing to use reasonable care and skill, but will not be responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both parties knew it might happen, for example, if You discussed it with an authorised representative of De Smit during the sales process. The Goods are only supplied to You for domestic and private use. If You use the products for any commercial, business or re-sale purpose De Smit will have no liability to You for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 10.5. You must observe and comply with all applicable regulations and legislation, including obtaining all necessary customs, import or other permits to purchase Goods from the De Smit website. The importation or exportation of certain Goods to or by You may be prohibited by certain national laws. De Smit makes no representation and accepts no liability in respect of the export or import of the Goods You purchase.
- 10.6. Notwithstanding the foregoing, nothing in these terms and conditions is intended to limit any rights You might have as a Consumer under applicable local law or other statutory rights that may not be excluded nor in any way to exclude or limit De Smit liability to You for any death or personal injury resulting from De Smit's negligence.

11. WAIVER

- 11.1. No waiver by De Smit (whether express or implied) in enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

12. FORCE MAJEURE

- 12.1. De Smit shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and De Smit shall be entitled to a reasonable extension of its obligations.

13. SEVERANCE

- 13.1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

14. CHANGES TO TERMS AND CONDITIONS

- 14.1. De Smit shall be entitled to alter these Terms and Conditions at any time, but this right shall not affect the existing Terms and Conditions accepted by You upon making a purchase.

15. GOVERNING LAW AND JURISDICTION

- 15.1. These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

16. ENTIRE AGREEMENT

- 16.1. These Terms and Conditions, together with De Smit's current website prices, delivery details, contact details and privacy policy, set out the whole of the Agreement relating to the supply of Goods to You by De Smit. Nothing said by any sales person on De Smit's behalf should be understood as a variation of these terms and conditions or as an authorised representation about the nature or quality of any Goods offered for sale by De Smit. Save for fraud or fraudulent misrepresentation, De Smit shall have no liability for any such representation being untrue or misleading.

17. THIRD PARTY RIGHTS

- 17.1. Except for De Smit's directors, employees or representatives, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract agreement but this does not affect any right or remedy of a third party that exists or is available apart from that Act.