

TERMS AND CONDITIONS OF SALE OF DE SMIT MEDICAL SYSTEMS LIMITED

1. DEFINITIONS

1.1. In these Terms and Conditions, the following expressions shall have the following meanings:-

"Contact Address" means Bristol Road, Cromhall, South Gloucestershire, GL12 8AX (Telephone: +44 0845 345 4226 / Fax: +44 (0)845 3454227 / Email: sales@desmitmedical.com);

"Contract" means a contract between de Smit and You for the supply of Goods and/or Services in accordance with these Terms and Conditions;

"de Smit" means de Smit Medical Systems Limited (Company Number 06585345) whose registered office is at 584 Wellsway, Bath, BA2 2UE;

"Goods" means the articles that You agree to buy from de Smit;

"order" means Your order for the Goods and/or Services, as set out in Your purchase order form or Your written acceptance of de Smit's quotation, as the case may be;

"Services" means the services including without limit repairs, servicing and calibration, that You request de Smit to supply and which de Smit agrees to supply to You;

"Terms and Conditions" means the terms and conditions set out in this document as varied from time to time in accordance with Condition 2.3;

"You" "Your" means the individual or organisation who buys or agrees to buy the Goods from de Smit;

1.2. The words "writing" or "written" in these Terms and Conditions include emails but not faxes. Emails shall be sent by de Smit using the email address provided by You in Your order form (or such other email address as You may notify de Smit in writing for that purpose).

2. TERMS AND CONDITIONS

2.1. These Terms and Conditions shall apply to all contracts for the sale of Goods and/or Services by de Smit to You and shall prevail over any other documentation or communication from You and You waive any right You might otherwise have to rely on any term endorsed upon, delivered with or contained in any of Your documents that is inconsistent with these Terms and Conditions. They also apply to the Contract to the exclusion of any other terms which are implied by law, trade custom, practice or course of dealing.

2.2. Acceptance of delivery of the Goods shall be deemed conclusive evidence of Your acceptance of these Terms and Conditions.

2.3. No variation of these Terms and Conditions shall be binding unless agreed in writing by de Smit.

2.4. All of these Terms and Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. ORDERING

3.1. All orders for Goods shall be deemed to be an offer by You to purchase Goods and/or Services pursuant to these Terms and Conditions and are subject to acceptance by de Smit in accordance with these Terms and Conditions. Oral orders shall be confirmed in writing by You within two working days. de Smit's acceptance of Your order brings into existence a legally binding contract between You and de Smit.

3.2. If de Smit is unable to accept Your order for any reason, de Smit will inform you of this in writing and will not charge you for the item(s). You are responsible for ensuring that the terms of Your order are complete and accurate.

3.3. A quotation for Goods given by de Smit shall not constitute an offer. A quotation shall only be valid for the period stated on the quotation (or if no period is stated on the quotation a period of 30 days from its date of issue).

3.4. de Smit reserves the right in its discretion to require payment of the whole price for the Goods and Services (and any VAT and delivery charges) that You order before Your order is accepted. In these circumstances 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. de Smit's acceptance of Your order brings into existence a legally binding contract between You and de Smit.

3.5. de Smit may, at its sole discretion, accept amendments to an order after acceptance.

3.6. Where the Goods ordered by You are not available from stock de Smit will notify you by email and will give You the option to either wait until the Goods are available from stock or cancel the order and receive a full refund within 30 days of such cancellation.

3.7. The images of products on de Smit marketing materials (including its 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 its website accurately reflects the colour of the products. Your Goods (and their packaging) may vary slightly from those images.

4. PRICE AND PAYMENT

4.1. The price of the Goods and the Services shall, unless otherwise agreed in writing by de Smit, be as shown on de Smit's standard price list from time to time. The price is exclusive of VAT which You shall additionally be liable to pay to de Smit at the prevailing rate. The price excludes delivery charges for Goods which shall be as shown on de Smit's standard price list from time to time.

4.2. Quotations for Services are valid for 30 days from issue, after which time de Smit reserves the right to apply a re-evaluation fee and in addition de Smit shall be entitled:-

4.2.1. to charge a storage fee at the rate of £12 per service item per day; and/or

4.2.2. to dispose of the item by de Smit according to The Waste Electric and Electronic Equipment (WEEE) Regulations 2013 and charge You a disposal fee of £50 in respect of the costs incurred by de Smit in storing or disposing of the item.

The rights of de Smit under this Condition shall be in addition to any other rights it may have whether for payment or otherwise.

4.3. Save as set out in Condition 3.4 de Smit shall issue an invoice when Goods are despatched or on completion of the Services. You shall pay each invoice submitted by de Smit in full and in cleared funds within 30 days of the date of the invoice or in accordance with any credit terms agreed by de Smit and confirmed in writing to You. Time for payment shall be of the essence of the Contract.

4.4. If You fail to make a payment due to de Smit under the Contract by the due date, then, without limiting de Smit's remedies under Condition 10, (Termination), You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.

4.5. de Smit also reserves the right to apply an administration charge if an invoice is not paid within 30 days of its due date as follows:-

Amount of debt	Administration Charge
Up to £999.99	£40
£1,000 to £9,999.99	£70
£10,000 or more	£100

4.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.7. de Smit may agree to offer a discount on the price of Goods against items traded in by You for that purpose. No discount will be applied to a purchase prior to the traded in item being received by de Smit.

5. RIGHTS OF DE SMIT

5.1. de Smit reserves the right to adjust the price and specification of any item at its discretion but if such change (other than a change made to ensure compliance with applicable statutory or regulatory standards) occurs after de Smit has accepted Your order de Smit will notify you in writing and You may contact de Smit to end the contract and receive a refund for any Goods paid for but not despatched.

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 was 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 Condition 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 marketing materials:

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 You 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, de Smit shall be entitled to cancel the order immediately, without notice.

7. WARRANTY

- 7.1. Some Goods come with a manufacturer's guarantee or warranty. Where this is the case, for details, You should refer to the manufacturer's guarantee or warranty provided with the Goods.
- 7.2. de Smit shall not be liable for the Goods' failure to comply with the warranty in Condition 7.1 if:
 - 7.2.1. You make any further use of such Goods after giving a notice in writing to de Smit within a reasonable time of discovery that some or all of the Goods do not comply with the warranty referred to in Condition 7.1;
 - 7.2.2. the defect arises because You fail to follow de Smit's or the manufacturer'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;
 - 7.2.3. You alter or repair such Goods without the written consent of de Smit;
 - 7.2.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 7.2.5. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 7.3. de Smit warrants to You that the Services will be provided using reasonable care and skill.
- 7.4. Save as set out in this Condition 7 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 (including without limit the terms implied by sections 13 to 15 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

8. DELIVERY OF GOODS AND SERVICES AND OWNERSHIP OF GOODS

- 8.1. Goods supplied within the UK will normally (but subject to stock availability) be delivered within 5 working days of acceptance of order.
- 8.2. Goods supplied outside the UK will normally (but subject to stock availability) be delivered within 14 working 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 of Goods and/or the supply of Services. However, the time of delivery is not of the essence. If delivery of the products is delayed by an event, circumstance or cause outside de Smit's reasonable 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. 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 delay in delivery of the Goods or supply of the Services that is caused by a Force Majeure Event or Your failure to provide de Smit with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or Services or your failure to comply with Condition 8.11.
- 8.5. If de Smit fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by You in obtaining replacement goods of similar description and quality, less the price of the Goods. de Smit shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event, circumstance or cause outside de Smit's reasonable control or Your failure to provide de Smit with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods
- 8.6. Delivery of the Goods shall be made to the address specified in the order. You shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If You fail to take delivery of the Goods when due de Smit may charge reasonable costs of storage from the Delivery Date until delivery is completed.
- 8.7. de Smit may deliver the Goods by instalments, which (to the extent not already paid for) shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle You to cancel any other instalment.
- 8.8. Risk in the Goods shall pass to You upon delivery of the Goods to You (or as You direct). Ownership of the Goods shall pass to You upon the later of delivery of the Goods to You (or as You shall direct) and receipt by de Smit of payment in full (in cash or cleared funds) for all Goods that de Smit has supplied to You.
- 8.9. At any time before title to the Goods passes to You de Smit may require You to deliver up all Goods in Your possession or control that have not been resold, or irrevocably incorporated into another product and if You fail to do so promptly, enter any premises of You or of any third party where the Goods are stored in order to recover them (and You shall procure the consent of any such third party to such entry).
- 8.10. de Smit may in its discretion accept returns of Goods provided that if any Goods returned by You are not in de Smit's reasonable opinion in "as new" and resaleable condition, are not eligible for credit return and will be returned to You at Your expense. Otherwise the following shall apply:-
 - 8.10.1. Products returned within 30 days of delivery are subject to a restocking charge of 15% of original cost.
 - 8.10.2. Products returned in excess of 30 days after delivery, but prior to 90 days, are subject to a restocking charge of 20% of original cost.
 - 8.10.3. Products may not be returned for a credit return after 90 days from the date of purchase.
 - 8.10.4. Reasonable additional charges for damage and/or missing parts and accessories will be applied to all returns.
- 8.11. You shall:-
 - 8.11.1. co-operate with de Smit in all matters relating to the Services;
 - 8.11.2. where relevant provide de Smit, its employees, agents, consultants and subcontractors, with access to Your premises, office accommodation and other facilities as reasonably required by de Smit to provide the Services;
 - 8.11.3. where relevant prepare Your premises for the supply of the Services as reasonably required by de Smit;
 - 8.11.4. comply with all applicable laws, including health and safety laws;
- 8.12. If de Smit's supply of the Services is prevented or delayed by Your act or omission or failure to comply with any of the obligations in Condition 8.11 then without limiting or affecting any other right or remedy available to it, de Smit shall have the right to suspend performance of the Services until You remedy the default, and de Smit may rely on Your default to relieve it from the performance of any of its obligations in each case to the extent Your default prevents or delays de Smit's performance of any of its obligations. You shall reimburse de Smit on written demand for any costs or losses sustained or incurred by de Smit arising directly or indirectly from Your default.

9. DEFECTIVE GOODS AND LIMITATION OF LIABILITY

- 9.1. You shall inspect the Goods immediately upon receipt and 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 2 working days of the delivery of the Goods in question. If You fail to do so You shall be deemed to have accepted the Goods.
- 9.2. 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.
- 9.3. Where a claim of defect or damage is made the Goods shall be returned by You to de Smit in their original packaging and must be adequately insured during the return journey. You shall be entitled to a full refund (including delivery costs) plus any return postal charges if the Goods are in fact defective.
- 9.4. Goods must be returned by You at Your expense in their original packaging and must be adequately insured during the return journey. You will receive a refund of all monies paid for defective Goods (including delivery charges, if any) except for return postal charges within 14 days of cancellation. 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 notify a problem to us under Condition 9.1 or 9.2 and subject to Condition 9.4, de Smit's only obligation will be, at Your option;
 - 9.5.1. to make good any shortage or non-delivery;
 - 9.5.2. to replace or repair any goods that are damaged or defective; or
 - 9.5.3. to refund to you the amount paid by you for the Goods in question in whatever way de Smit chooses.
- 9.6. Subject to Condition 9.8, de Smit will not be liable to You for any indirect or consequential loss, damage or expenses (including loss of or damage to profits, business or goodwill).
- 9.7. 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.

- 9.8. Notwithstanding the foregoing, nothing in these Terms and Conditions is intended to limit any liability which cannot legally be limited nor in any way to exclude or limit de Smit's liability for any death or personal injury resulting from de Smit's negligence.
- 9.9. Subject to Condition 9.8, de Smit's total liability to You shall not exceed the price of the Goods or Services the subject of the claim.
- 9.10. This Condition 9 shall survive termination of the Contract.

10. TERMINATION

- 10.1. Without limiting its other rights or remedies, de Smit may terminate this Contract with immediate effect by giving written notice to You if:
- 10.1.1. You commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 10 days of You being notified in writing to do so;
- 10.1.2. You take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with Your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of Your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3. You suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of Your business; or
- 10.1.4. Your financial position deteriorates so far as to reasonably justify the opinion that Your ability to give effect to the terms of the Contract is in jeopardy.
- 10.2. Without limiting its other rights or remedies, de Smit may suspend provision of the Goods or Services under the Contract or any other contract between You and de Smit if You become subject to any of the events listed in Conditions 10.1.1 to 10.1.4, or de Smit reasonably believes that You are about to become subject to any of them. Further, if You do not pay de Smit for Goods on the due date for payment and you still do not make payment within 5 days of de Smit reminding you that payment is due, de Smit may suspend supply of Goods or Services to you until you have paid de Smit the outstanding amounts. de Smit will contact You to tell you that the supply of Goods or Services is being suspended. Suspension of the supply of Goods or Services is without prejudice to any other rights or remedies de Smit has under the Contract.
- 10.3. On termination of the Contract for any reason You shall immediately pay to de Smit all of de Smit's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has been submitted, de Smit shall submit an invoice, which shall be payable by You immediately on receipt.
- 10.4. Termination of the Contract, however arising, shall not affect either of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. INTELLECTUALPROPERTY RIGHTS

- 11.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by You) shall be owned by de Smit.
- 11.2. de Smit grants to You a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by You) for the purpose of receiving and using the Services and the Deliverables in your business.
- 11.3. You shall not sub-license, assign or otherwise transfer the rights granted by Condition 11.2.
- 11.4. You grant to de Smit a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by You to de Smit for the purpose of providing the Services to You.

12. WAIVER

No failure or delay by de Smit (whether express or implied) in exercising or enforcing any of its rights or remedies under the Contract shall constitute a waiver of that or any other right or remedy nor prejudice its rights to do so in the future.

13. FORCE MAJEURE

de Smit shall not be in breach of the Contract nor 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, epidemic or pandemic, strikes, lock outs, accidents, war or threat of war, terrorist attack, civil commotion or riots, imposition of sanctions, embargo, or breaking off of diplomatic relations, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, fire, nuclear, chemical or biological contamination, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, non-performance by suppliers or subcontractors and interruption or failure of utility service. In such circumstances de Smit shall be entitled to a reasonable extension of the time for performing its obligations.

14. ASSIGNMENT AND OTHER DEALINGS

- 14.1. de Smit may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2. You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of de Smit.

15. SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason such provision shall be severed but the remainder of the provisions of the Contract shall continue in full force, validity and effect. If any provision of the Contract is deemed deleted under this Condition 15 You and de Smit shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. CHANGES TO TERMS AND CONDITIONS

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.

17. GOVERNING LAW AND JURISDICTION

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, 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 to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

18. ENTIRE AGREEMENT

These Terms and Conditions, together with de Smit's current price list, 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 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.

19. THIRD PARTY RIGHTS

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 but this does not affect any right or remedy of a third party that exists or is available apart from that Act.