

# Intersurgical Limited – Terms and Conditions



## 1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

**“Company”** means Intersurgical Limited whose registered office is at Crane House, Molly Millars Lane, Wokingham, Berkshire RG41 2RZ (company number 01488409).

**“Conditions”** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Customer and the Company in accordance with clause 2.3.

**“Contract”** means the contract for the sale and purchase of the Goods.

**“Customer”** means the person whose order for the Goods is accepted by the Company.

**“Business Day”** means a day (other than a Saturday, Sunday or a public holiday in England) when the banks in the City of London are open for business.

**“Default”** means any act, statement, omission, breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract, breach of duty under statute or at common law or negligence by or on the part of the Company in connection with or arising out of the subject matter of the Contract in respect of which the Company is legally liable to the Customer. A number of such defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

**“Defective”** means in relation to any Good any product or material which is defective faulty as regards its quality or condition or fails to conform with its description or specification, other than as a result of any act or omission of the Customer.

**“End User Point”** means the location where the Goods provided are opened and used.

**“Good”** means any product and material (including any instalment, parts or sample thereof) which the Company supplies or is to supply in accordance with these Conditions.

**“Intellectual Property Rights”** means all copyright, design right, registered designs, patents, trade marks, rights in confidential information and know-how and all other intellectual property rights whether or not capable of registration and all rights or forms of protection having equivalent or similar effect to any of these which may subsist anywhere in the world and the right to apply for registrations and renewals of any of the foregoing.

**“Intended Use”** means the intended use of the Goods as indicated in the relevant instructions for use, or as may be requested from the Company.

**“Off-Label Use”** means the application or use of the Goods for a purpose that is not included in the relevant instructions for use, and/or is not indicated by the Company as an Intended Use.

**“Return Authorisation”** means a return authorisation number.

**“Relevant Claim”** means any claim or action resulting in liability in respect of damage to property, or death or personal injury arising from any fault or defect in the design, materials or workmanship of the Goods.

**“Training Materials”** means any technical information, clinical papers and other information provided by the Company to the Customer for the Customer's training purposes.

## 2. Basis of the sale

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with any written order of the Customer which is accepted in writing by the Company subject only to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Customer.

2.2 Quotations issued to the Customer by the Company are (unless otherwise stated) in British Pounds Sterling and are exclusive of any applicable VAT and other taxes and may be withdrawn or varied at any time. The Company shall not be obliged to supply a smaller or larger quantity at the prices quoted in respect of any revised or subsequent order. No binding contract shall in any event arise until the Customer's written order has been accepted by the Company and confirmed [in writing] by the Company's authorised representative.

- 2.3 No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Company and the Customer specifically referring to these Conditions.

The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

### 3. Orders and specifications

- 3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Customer (including its Customer account reference number and any applicable product reference codes, customer-specific pricing or delivery arrangements and required specification) and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

- 3.2 The quantity, quality and description of, and/or any specification for, the Goods shall be those set out in the Customer's order (if accepted by the Company). No orders for less than full box quantities of any Goods (where applicable) will be accepted.

No order which has been accepted by the Company may be cancelled by the Customer (whether before or after dispatch of the Goods) except with the prior agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Company as a result of cancellation.

### 4. Price of the Goods

- 4.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted, the price listed in the Company's published price list current at the date of acceptance of the order.

- 4.2 All prices quoted are subject to fluctuation in the cost of labour, materials, fuel, power, transport, currency rates and other costs. The Company reserves the right by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for Goods which is requested by the Customer, or any delay caused by instructions of the Customer or failure of the Customer to give the Company accurate information or instructions. Without prejudice to clause 2.2, where the price increases after the Company has confirmed the Customer's order the Company shall notify the Customer with a revised written confirmation and the Customer shall have 7 days to confirm whether the new price is acceptable. If the Customer does not notify the Company in writing that it wishes to cancel its order within 7 days of the revised confirmation the Company may proceed with dispatch of the Goods in accordance with the terms of that revised confirmation.

- 4.3 Unless otherwise agreed in writing between the Customer and the Company all prices are given by the Company on an EX WORKS basis exclusive of packaging costs and charges and, where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

- 4.4 Unless otherwise specified in writing by the Company, the price is exclusive of amounts in respect of any applicable Value Added Tax (VAT) and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods. For the avoidance of doubt, the Customer shall pay all taxes, duties, customs or other fees of any nature imposed upon the sale of the Goods by any federal, state or local authority and, in the event the Company is required to prepay any such sums, the Customer will reimburse the Company for the same.

- 4.5 Where under the Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the Recipient of the supply shall pay Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

- 4.6 The cost of pallets and returnable containers may be charged to the Customer in addition to the price of the Goods, where such pallets and/or returnable containers are not returned to the Company within 14 days of delivery.

## 5. Payment terms

- 5.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods (a) in the case of non-account customers, at any time after the Company has issued its written confirmation of the Customer's order; or (b) in the case of account customers, on or at any time after delivery of the Goods. Without prejudice to the preceding sentence, where the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.2 The Customer shall pay the price of the Goods to the bank account nominated by the Company: (a) in the case of non-account customers, in advance of dispatch of the Goods; or (b) in the case of account customers, in accordance with the payment agreed terms for the Customer's account. The time of payment shall be of the essence of the Contract. All payments shall be made in full, in British Pound Sterling (GBP), unless an alternative currency is expressly permitted by the Company in its invoice, without deduction in respect of any set-off or counterclaim.
- 5.3 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to: (a) cancel the Contract or suspend any further deliveries to the Customer; (b) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and (c) charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum over the base rate for the time being of Natwest Bank PLC (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made.
- 5.4 The Company reserves the right, in its sole discretion, to require payment in cleared funds at any time after issuing its written confirmation of the Customer's order to the Customer.

## 6. Delivery

- 6.1 Delivery shall be made by the Company notifying the Customer that the Goods are available for collection or if the Company has agreed an alternative point for delivery, by the Company delivering the Goods to, as relevant, that agreed location or delivery agent. The Company shall endeavour to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence unless previously agreed by the Company in writing. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by any cause beyond the reasonable control of the Company. The Goods may be delivered by the Company in advance of the quoted delivery date. The Company shall have no liability whatsoever for any act or omission of a delivery agent appointed (whether by the Company or the Customer) to take receipt of the Goods in accordance with this clause.
- 6.2 The Company shall be entitled to deliver the Goods in separate instalments. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.3 If the Customer fails to take delivery of the Goods at or fails to give the Company adequate delivery instructions by the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company, the Company may: (a) arrange storage the Goods at the Customer's risks until physical possession has been transferred to the Customer or its courier or transport agent and charge the Customer for the reasonable costs (including insurance) of storage; or (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

Save as provided in this clause 6.4, all orders once accepted by the Company are non-cancellable, non-returnable and non-refundable. In the event that the Customer wishes to return any Defective Goods to the Company, it shall (without prejudice to clause 9) first notify the Company and obtain a Return Authorisation from the Company and shall then comply with any return procedures specified by the Company. Following receipt of the return of any Defective Goods, the Company shall refund or credit the Customer the price of any Defective Goods and associated reasonable costs and charges of return incurred by the Customer.

## 7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer: (a) in the case of Goods to be delivered at the Company's premises, at the time when the Company raises its invoice for those Goods; or (b) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery to the agreed place or party or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall: (a) hold the Goods as the Company's fiduciary agent and bailee; (b) keep the Goods separate from those of the Customer and third parties and properly stored (in appropriate conditions), protected, insured and identified as the Company's property; and (c) be entitled to use the Goods in the ordinary course of its business (unless the Company revokes such entitlement in writing). On any such use of the Goods the Customer shall use those Goods as have been longest in its possession.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided that the Goods are still in existence and have not been resold) the Company shall be entitled: (a) at anytime to enter upon any premises where the Goods are stored to inspect them; and (b) at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 7.6 The provisions set out in this clause shall be without prejudice to the obligation of the Customer to purchase the Goods.

## 8. Customer obligations

- 8.1 The Training Materials are for the use of the Customer and its personnel in connection with its use of the Goods and shall not be resold or otherwise exploited.
- 8.2 The Customer shall use the Goods in compliance with the Company's instructions and with all applicable laws and regulations.
- 8.3 The Customer shall promptly inform the Company of (i) any changes to applicable laws, regulations and standards of which it becomes aware and (ii) any complaints in relation to the Goods that it receives and then investigate and respond to the complaint in accordance with the Company's complaint procedures (as notified in writing) and report back to the Company the outcome of any such procedure.
- 8.4 The Customer shall employ and maintain appropriate, up-to-date and accurate traceability records to enable the immediate return of any Goods, or batches of Goods, to the Company in the event of a product recall. Such records shall be available for inspection by the Company.
- 8.5 The Customer shall, as soon as it becomes aware of any matter which may result in a Relevant Claim against the Company: (a) give the Company written notice of the same, with all relevant details; (b) give the Company access to and allow copies to be taken of any materials, records or documents as the Company may require to take action under this clause and clause 8.6 below; (c) allow the Company the exclusive conduct of any proceedings and, at the Company's cost (save where the Relevant Claim has arisen as a result of an act or omission of the Customer), take any action that the Company directs to defend or resist the matter; and (d) not admit liability or settle the Relevant Claim without the Company's written consent.
- 8.6 The Customer shall, at the cost of the Company, give any assistance that the Company shall reasonably require to, as a matter of urgency, carry out a product recall of the Goods.
- 8.7 Where the Customer purchases Goods which are not delivered to an End User Point, the Customer shall provide the Company, on a monthly basis, with sales distribution data to include the following details: product code, product description, quantity, purchase price and final delivery point.
- 8.8 The Customer shall use the Goods in accordance with their Intended Use. Any Off-Label Use, including reprocessing, remanufacture, alteration, modification, repair or repackaging is the sole responsibility of the Customer as the remanufacturer. For the avoidance of doubt, this includes all legal requirements for safety, quality and performance relating to CE marking and conformity with applicable regulations.

## 9. Notification of Claims

- 9.1 The Company shall have no liability for claims by the Customer for non-delivery, shortages, damage or loss in transit unless: (a) the Customer inspects the Goods and notifies the Company within 7 days of (as the case may be) the date the Company notifies the Customer that the Goods are ready for collection or the date the Company notifies the Customer the Goods are due to be delivered to any agreed alternative location or delivery agent; (b) the Company has the opportunity to inspect the Goods before any use is made thereof by the Customer; and (c) after delivery, the Goods have been stored and handled in accordance with the Company's instructions and recommendations. Any remedy under this clause 9.1 shall be limited, at the Company's option, to the replacement or repair of any Goods which are proven, to the Company's satisfaction, to have been non-delivered, lost or damaged in transit to the Customer. Where the Customer does not notify the Company of any claim in accordance with this clause 9.1, the Goods shall be deemed delivered free of defects and in the correct quantity on the date for delivery notified by the Company to the Customer.
- 9.2 Without prejudice to clause 9.3, any claim which relates to Defective Goods shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery (in accordance with clause 6.1) or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Where the Customer does not notify the Company in accordance with this clause 9.2, the Goods shall be deemed delivered free of defects and in the correct quantity on the date for delivery notified by the Company to the Customer.
- 9.3 If delivery of Defective Goods is not refused, and the Customer does not notify the Company of any claim in accordance with the provisions of clause 9.1 or 9.2, as relevant, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such Defective Goods, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.4 The Customer shall have no right to reject any deliveries of Goods on the grounds of variation of quantity from the Customer's order where such variation is not more than 5% or not less than 5% of the quantity of Goods ordered.

## 10. Warranty, liability and remedies

- 10.1 The Company warrants that the Goods will correspond with their specification (including any relevant BS, EN, ISO applicable local standard) at the time of delivery and will be free from defects in material and workmanship at the time of delivery (in accordance with clause 6.1).
- 10.2 The above warranty is given by the Company subject to the following conditions:
- (a) the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
  - (b) the Customer makes any further use of such Goods after giving notice in accordance with clause 9.1 or 9.2 as relevant;
  - (c) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) in respect of (i) any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Company's instructions (whether oral or in writing and including instructions as to the use, storage, installation and maintenance); (ii) use of the Goods contrary to the Company's instruction manual or use otherwise than in accordance with the good trade practice and/or relevant BS, EN ISO or other standards regarding the same), (iii) alteration or repair of the Goods without the Company's approval; or (iv) any damage or defect arising in the course of transit of the Goods by the Customer or its courier or transport agent;
  - (d) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Goods differ from their description or specification as a result of (i) changes made to ensure they comply with applicable statutory or regulatory requirements (included any BS, EN, ISO or other industry standards) or (ii) the Customer's failure to check any acceptance, order confirmation or invoice provided by the Company's; and
  - (e) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 10.3 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall, at its sole discretion (and subject to clause 10.2 above), replace the Goods (or the part in question) free of charge or credit or refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer.

- 10.4 Save as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

#### *Liability and remedies*

- 10.5 The Customer acknowledges that it has entered into the Contract in reliance only on the representations, warranties promises and terms contained in the Contract and, save as expressly set out in the Contract, the Company shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently. The only remedy available in respect of any misrepresentation or untrue statement made by the Company (other than those made fraudulently) shall be a claim for damages for breach of contract under the Contract and, to the extent that any such representation or statement is not contained in the Contract, then it shall be deemed to be contained for the purpose of applying this provision.
- 10.6 The Customer shall inform the Company of any Default and afford the Company reasonable opportunity to correct the Default.
- 10.7 In relation to any Default the Company will accept unlimited liability for: (a) death or personal injury caused by the negligence of the Company; (b) any breach of its obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982; and (c) anything else for which the Company cannot at law limit or exclude its liability.
- 10.8 Except as provided in clause 10.7 the Company will not be liable for the following loss or damage arising directly or indirectly out of any Default and even if foreseeable by the Company: (a) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings; (b) loss arising from any claim made against the Customer by any other person; or (c) loss or damage arising from the Customer's failure to fulfil its responsibilities or any matter under the control of the Customer.
- 10.9 Except for the liabilities accepted by the Company under clause 10.7 the Company's liability for any one Default shall be limited to a sum equivalent to 125% of the price paid for the Goods which are the subject of that Default.
- 10.10 If any part of this clause is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.

## 11. Health and Safety

- 11.1 The Customer agrees to pay due regard to any information (including any revisions thereof) supplied by the Company (and is deemed to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that the Goods will be safe when they are being set, used, cleaned or maintained by the Customer or when they are being dismantled or disposed of, and the Customer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe for such use(s) at all times as mentioned above.

## 12. Force Majeure

- 12.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: (a) act of God or nature, explosion, flood, tempest, fire or accident; (b) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or third parties); (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargos; (e) difficulties in obtaining raw materials, labour, fuel, parts or machinery; (f) power failure or breakdown in machinery.

## 13. Intellectual Property and Confidentiality

- 13.1 The Goods include Intellectual Property Rights which, as between the Company and the Customer, are and shall remain the property of the Company. The Company owns Intellectual Property Rights all documents, drawings, specifications, designs, programmes or any other material prepared by the Company.
- 13.2 The Customer agrees that the Intellectual Property Rights in the Goods (and materials referred to in clause 13.1) may not be reproduced, disclosed or used in any way except with the prior written consent of the Company. The Customer agrees that it will not remove the copyright or trade mark notice(s) from any Goods supplied under the Contract or any materials referred to in clause 13.1.
- 13.3 The Company has not knowingly infringed any patent or other registered rights of any third party but does not warrant or give any assurance to the Customer that any Goods do not infringe the patent rights of any third party.

13.4 Except as required by law or by any relevant regulatory or government authority, or to the extent that information has entered the public domain through no fault of the receiving party, each party shall treat as strictly confidential all information of a confidential or proprietary nature relating to the Contract or arising from any negotiations between the parties and shall only release such information to those of its employees as shall have a need to know. The obligations under this clause 13.4 shall apply for 12 months from the date of the Customer's most recent order accepted by the Company.

13.5 The Customer warrants that no information or specification or instructions or materials given to the Company shall give rise to any actual or alleged infringement of the Intellectual Property Rights of any third party.

#### 14. Insolvency of Customer

14.1 This clause applies if: (a) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction); (b) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Customer; (c) the Customer ceases, or threatens to cease, to carry on business; or (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

14.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### 15. General

15.1 The Company may at its sole discretion at any time appoint one or more sub-contractors to carry out all or any of its obligations hereunder provided that the acts and omissions of any sub-contractor so appointed shall (save for the avoidance of doubt the acts and omissions any delivery agent appointed (whether by the Company or the Customer) to whom Goods are delivered in accordance with clause 6.1), for the purposes of the Contract, be deemed to be an act or omission of the Company.

15.2 Any notice to either party under the Contract shall be in writing in English signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at or sent by prepaid first class post (or airmail, if abroad), prepaid recorded delivery (or international equivalent) to the address of the party as notified in writing from time to time. A notice shall be deemed to have been served at the time of delivery, if delivered personally, [if sent by email, 12 hours after the email is sent], or on the second Business Day after posting within the United Kingdom and the fifth Business Days after posting for international delivery.

15.3 Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under the Contract by the other party without in any way prejudicing or affecting its rights in respect of any other liability or right not so released, compounded, compromised, waived or postponed. No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.

15.4 To the extent that any provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction (and without prejudice to clause 10.10, that provision shall be deemed not to be a part of these Conditions, it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

15.5 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

15.6 The headings in these Conditions are for convenience only and shall not affect their interpretation.

15.7 This Contract (together with any relevant written order confirmation(s) and invoice(s)) sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Contract. In the event of any conflict between the provisions of these Conditions and any INCOTERM, letter of credit, or terms of the Customer, the provisions of these Conditions shall prevail.

15.8 Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 16. Governing law and jurisdiction

16.1 These Conditions shall be governed by and construed in accordance with English law and each of the parties irrevocably submits for all purposes in connection with these Conditions to the exclusive jurisdiction of the courts of England.

## 17. Buyers outside of the United Kingdom

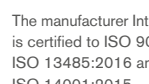
17.1 For the purposes orders for delivery outside of the United Kingdom, the following additional provisions apply:

- (a) Quotations: Prices quoted are subject to the current edition of the INCOTERMS from time to time. The Company can provide quotations for CFR and CIF sea and air freight on request.
- (b) Minimum order values: For the purposes orders for delivery outside of the United Kingdom, minimum order values of £1,000 (ex vat) shall apply.

- (c) Payment. (i) The Company shall be entitled to require non-account Customers to make payment in full and in cleared funds and in advance of the dispatch of the Goods in respect of any order under £15,000 (ex VAT and carriage). (ii) The Company shall be entitled to refuse payment by letter of credit for any order (whether of an account Customer or non-account Customer) under £15,000 (ex VAT and carriage). Where the Company in its sole discretion agrees to accept payment by letter of credit the Customer shall: (A) provide the Company with a draft copy of the letter of credit for the Company's approval prior to confirmation of such letter by the Customer's bank; (B) ensure that such letter of credit is irrevocable, payable at sight and governed by English law; (C) pay the Company's fee (as determined in its sole discretion) in respect of its administration and bank charges relating to such letter of credit (such fee not typically exceeding £1,000 (ex VAT) per letter). (iii) The Customer shall pay the Company's costs and charges associated with any documentation requirements relating to delivery of the Goods (including certificates of origin or legislation and registration costs).
- (d) Delivery. The Customer shall specify in their order the preferred terms of delivery by reference to the current edition of the INCOTERMS (from time to time) and any associated delivery instructions shall include all requisite customs broker information and courier account details and all relevant customs clearance documentation for import clearance purposes. Unless otherwise agreed between the parties, all orders over £15,000 (ex VAT) to be delivered in a single shipment shall be sent out on FOB terms via the Company's preferred courier and the Company, on behalf of the Customer, shall liaise with the courier to collect the Goods for transit to the Company.



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The manufacturer Intersurgical Ltd is certified to ISO 9001:2015, ISO 13485:2016 and ISO 14001:2015

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T&Cs • 04.20