

1. INTERPRETATION

1.1 In these conditions:

BUYER means SURGICAL INNOVATIONS (registered in England and Wales under number 2682144).

SELLER means the person to whom the Purchase Order is addressed.

GOODS means the goods (including any instalment of the goods or any parts of them and all relating documentation) which the Seller is to supply in accordance with these Conditions including goods supplied as part of a Service.

SERVICE means the service(s) (including any parts of the service) which the Seller is to supply in accordance with these Conditions.

WRITING includes faxes and any non-transitory form of visible reproduction of words (and email) but not text messaging via a mobile phone.

PURCHASE ORDER means a document issued by the Buyer to the Seller which constitutes the exclusive statement of the Buyer's offer to seller to purchase Goods and/or Services.

INCOTERMS means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Purchase Order is issued. Unless the context otherwise requires any terms or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

1.2 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.

2. TERMS

2.1 The Purchase Order constitutes the exclusive statement of the Buyer's offer to Seller to purchase the Goods and/or Services subject to these terms and conditions (Hereinafter referred to as "these Conditions").

2.2 These Conditions shall apply to the Purchase Order to the exclusion of any additional or different terms and conditions stated by Seller in any quotation, confirmation of order, specification or other document

2.3 Acceptance of the Purchase Order by Seller is strictly conditioned on acceptance of these Conditions.

2.4 The Purchase Order shall be deemed to be accepted on the earlier of (i) by a written confirmation or acceptance issued and executed by the Seller's authorised representative; or (ii) by the Seller providing the Goods and/or Services.

3. DELIVERY AND INSPECTION

3.1 Time and date of goods deliveries/services provided are of the essence in the Purchase Order.

3.2 The Seller shall be responsible to the Buyer for ensuring the accuracy of the terms of any order submitted by the Buyer, so far as the quantity, quality, description of, delivery date and any specification shall be those set out in the Seller's order acknowledgement.

3.3 The Buyer reserves the right to make final inspection of Goods/outcome of services rendered upon receipt (notwithstanding any prior payment or acceptance of the Goods/services thereof) and, in addition to any other right and remedies available under law, to cancel the order and reject the Goods/services upon any default by the Seller in meeting or satisfying the terms of the Purchase Order including but not limited to quantity, quality, delivery dates or specifications.

3.4 The Seller shall be liable to the Buyer for any and all losses, costs and expenses sustained as a result of the Seller's failure to perform.

3.5 If the Seller fails to deliver Goods or perform Services in accordance with the stated time for delivery, the Seller shall pay the Buyer on demand or the Buyer may deduct from its payments to the Seller 1% of the price payable for such Goods or Services for each week's delay, up to a maximum of 10% as liquidated damages. The parties confirm that these sums represent a genuine pre-estimate of the Buyer's loss.

3.6 The Seller shall not be allowed additional time outside of the time stated for delivery without the express written consent of the Buyer.

3.7 Unless otherwise specified on the Purchase Order, all Goods shall be delivered FCA.

3.8 Risk of loss shall pass to the Buyer upon delivery of the Goods in an undamaged condition.

3.9 The Seller shall bear all risks and expenses for returning any rejected Goods or Goods requiring correction after notice of rejection including, but not limited to storage, freight, insurance, packing, materials and labour.

3.10 Delivery of Goods must equal exact amounts ordered unless otherwise agreed in Writing by the Buyer. If Goods are delivered to Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

3.11 On delivery, the Seller (or its appointed carrier) shall provide the Buyer with (i) such export or import licences and consents and documents as are required [from time to time]; (ii) certificates of origin as the Buyer may reasonably request; (iii) such other certificates or documentation as are specified on the Purchase Order; and (iv) a delivery note.

4. PACKING AND SHIPMENT (GOODS ONLY)

4.1 The Seller shall be responsible for ensuring that Goods are shipped in accordance with the Buyer's instructions and that (i) each container is marked with the Buyer's Purchase Order number and (ii) shipped with a packing note stating the Purchase Order number.

4.2 The Seller shall not use a shipping method that is different to the Buyer's instructions without the prior written authorisation of the Buyer.

4.3 All prepaid transportation charges must be advised by the Seller to the Buyer at the time of quotation. Any carriage charges will be paid by the Buyer as specified on the Purchase Order; and be accompanied by the original freight bill or a copy of the bill of lading.

4.4 The Seller shall be liable to the Buyer for prepaid transportation costs, where prepaid transportation costs are authorised and the Seller does not ship against the specified account.

4.5 If the Seller (i) delivers less than 90% of the quantity of Goods ordered, the Buyer may reject the Goods; or (ii) delivers more than 110% of the quantity of Goods ordered, the Buyer may at its discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Seller's risk and expense.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to raise an invoice upon delivery of the Goods and/or Services to the Buyer.

5.2 Unless otherwise agreed to in Writing by the Buyer, payment shall be made to the Seller after receipt of the Seller's invoice and all Goods and/or Services including all documentation as requested on the Purchase Order, on terms of end of month plus sixty (60) days provided that payment (i) shall not constitute acceptance of the Goods and/or Services; or (ii) impair the Buyer's right to inspection.

5.3 All applicable taxes, charges and transportation costs must be stated separately on the Seller's invoice.

5.4 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller.

5.5 If the Seller delivers more or less than the quantity of Goods/services ordered, and the Buyer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods/Services.

6. PRICES

6.1 The price for the Goods and/or Services ordered shall be as stated on the Purchase Order.

6.2 Any price increase must be approved in Writing by the Buyer prior to the shipment of Goods and/or performance of the Service.

6.3 The Buyer shall not be bound to any price increase which has not been expressly agreed to in writing by the Buyer.

6.4 The Seller warrants that the prices charged to the Buyer are no higher than prices charged on orders for similar Goods and/or Services to third parties for similar quantities. In the event that the Seller breaches this warranty, the prices of the Goods and/or Services shall be reduced accordingly, retrospectively to the date of the breach.

7. TITLE TO GOODS

7.1 The title to all the Goods/service reports purchased hereunder shall pass directly to the Buyer from the Seller at the point of delivery.

8. WARRANTIES AND LIABILITIES

8.1 The Seller warrants that for a period of no less than one (1) year after acceptance by the Buyer that the Goods covered by the Purchase Order shall be: (i) in full conformity with all specifications, drawings and/or other descriptions or samples, whether given or approved by the Seller, the Buyer or the customers of the Buyer (ii) merchantable (iii) fit for their intended purpose (iv) free from defects in design, materials and workmanship (v) in full compliance with all applicable statutory and regulatory requirements relating to their manufacture, labelling, packaging, storage, handling, shipment and delivery (vi) and do not infringe any patents, trademarks, copyrights or other intellectual property rights.

8.2 The Seller warrants that the Service(s) covered by the Purchase Order will be performed in accordance with best practice in the Seller's industry, profession or trade.

8.3 Such warranties in section 8.1 and 8.2 shall (i) be in addition to any other warranties implied or expressly given by the Seller, (ii) survive inspection, delivery, acceptance of and payment for the Goods and/or Services and (iii) extend to the Buyer, its successors, assigns and customers.

8.4 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Purchase Order.

8.5 The Buyer shall have the right to inspect and test any Goods/review any services at any time before or after delivery.

8.6 If following such inspection or testing the Buyer considers that the Goods/Services do not conform or are unlikely to comply with the Seller's undertakings at section 8.1/8.2, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.

8.7 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods/services and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Purchase Order, and the Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.

8.8 The Buyer may, at its option, either return for full credit or require prompt correction or replacement of defective or non-conforming Goods or parts thereof, or re-performance of the Services, which rights shall be in addition to such other rights the Buyer may have under applicable law.

8.9 Any Goods so replaced or repaired or Services re-performed will be subject to the same warranties outlined in sections 8.1 and 8.2.

8.10 If the Seller shall fail to repair or replace such defective Goods, or fail to re-perform defective Services, the Buyer has the right to have the work of repair or replacement or re-performance undertaken by a third party and recover the costs incurred from the Seller.

8.11 In the event that the Buyer brings a claim against the Seller to enforce performance of any section written under these Conditions, or should the Buyer be forced to defend a claim brought against it by the Seller, the Seller shall be liable for all costs and expenses incurred, including but not limited to legal fees.

8.12 In order to maintain compliance with Regulation (EU) 2017/745, the Buyer shall be informed when materials provided by the Seller contain substances identified as Substances of Very High Concern (SVHC) under REACH Regulation (EC) No. 1907/2006.

9. INDEMNIFICATION

9.1 The Seller shall indemnify and hold harmless the Buyer, its successors and assigns and their respective officers, directors, employees, agents and customers from all claims, demands, liabilities, costs and expenses (including legal fees) arising from any actual or alleged:

- 9.1.1 defect in the Goods and/or Services provided by the Seller hereunder;
- 9.1.2 failure of the Goods and/or Services to comply with all specifications;
- 9.1.3 failure of the Goods and/or Services to comply with the express or implied warranties of the Seller;
- 9.1.4 failure of the Goods and/or Services to comply with all applicable laws, rules and regulations;
- 9.1.5 bodily injury or death, direct or indirect damage to property or any loss of use of any tangible or intangible property (including loss of business profits) caused by the Goods and/or Services and/or the Seller's negligence;
- 9.1.6 infringement of any patents, trademarks, copyrights or other intellectual property rights;
- 9.1.7 failure by the Seller to provide import or export documents, certificates of origin or other certificates required or the provision of false or inaccurate documents or certificates;
- 9.1.8 Goods and/or Services supplied that do not conform with any export or import documents, certificate of origin or other certificates supplied by the Seller in relation to those Goods and/or Services; or
- 9.1.10 any breach by the Seller of these Conditions.

9.2 The indemnification and hold harmless obligations of this section shall survive delivery of the Goods and/or Services supplied under this Purchase Order.

10. BUYER'S PROPERTY

10.1 The Seller acknowledges that all and any materials, equipment and tools, drawings, specifications, and data supplied by the Buyer to the Seller (Buyer Materials) and all intellectual property rights in the Buyer Materials are and shall remain the exclusive property of the Buyer. The Seller shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer, and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.

10.2 All trademarks of the Buyer that the Buyer requests the Seller to affix to Goods purchased hereunder are owned by the Buyer and the Seller shall not acquire or claim any right, title or interest therein, or use any such trademarks for any other purpose.

11. CONFIDENTIALITY

11.1 Any drawings, data, tools, designs, specifications, equipment, software programs or other property supplied by the Buyer to the Seller shall, in connection with the Purchase Order remain the property of the Buyer and such information shall be kept confidential.

11.2 Such property shall (i) be used exclusively in connection with the Goods and/or Services ordered hereunder, (ii) maintained in first class condition and (iii) returned by the Seller to the Buyer on termination of the contract; or earlier if the Buyer should so request.

11.3 The Seller shall not make any news release or public announcement regarding a contract of purchase or business relationship with the Buyer without the prior written consent of the Buyer.

12. INSURANCE

12.1 The Seller shall maintain in force, with a reputable insurance company, comprehensive professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Purchase Order or the Seller's obligations under it or these Conditions, but the maintenance of such insurance shall not in any way limit the liability of the Seller.

12.2 Where performance of the contract requires entry on to any premises or facilities of the Buyer, or involves the use or operation of property furnished by the Buyer, the Seller shall also obtain and maintain property damage insurance to an amount sufficient to cover any loss.

12.3 Upon the request of the Buyer, the Seller shall produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance policy.

12.4 All insurance shall be primary and non-contributory.

13. TERMINATION

13.1 The Buyer may terminate the Purchase Order in whole or in part at any time upon the Buyer's written notice to the Seller (i) for any reason at the Buyer's convenience, (ii) for any default by the Seller hereunder (including but not limited to the Seller's failure to deliver Goods and/or Services within the time specified by the Buyer), (iii) in the event that the Seller becomes the subject of any claim or court proceeding or ruling for the relief of debtors or otherwise becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors.

13.2 In the event of termination, the Buyer may further notify the Seller that all right, title and interest in and to all of any portion of material acquired by the Seller and paid for by the Buyer for the performance of the Purchase Order, work in progress and/or completed items specified in such notice shall pass immediately to the Buyer.

13.3 The Buyer shall have no liability to the Seller for Goods (whether finished or unfinished) that are readily useable, reusable or saleable.

13.4 In the event of termination under section 13.1(ii) or (iii), the Buyer may purchase similar Goods and/or Services elsewhere or secure the manufacture and delivery of Goods and/or performance of Services by contract or otherwise, and the Seller shall be liable for any excess cost incurred by the Buyer.

13.5 Termination of the Purchase Order, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.6 Clauses which expressly or by implication survive termination shall continue in full force and effect.

14. TOOLING (WHERE APPLICABLE)

14.1 Where the Buyer has agreed to make a contribution towards the Seller's costs in relation to tooling required to manufacture the Goods, the Seller agrees that as a condition of that contribution it shall not use that tooling other than in relation to production of the Goods to be provided to the Buyer, unless and until it has been expressly agreed to in Writing by the Buyer.

15. INTELLECTUAL PROPERTY

15.1 Where the Buyer appoints the Seller to provide Goods or Services embodying the Buyer's intellectual property, the Buyer grants the Seller an exclusive royalty-free licence to use the Buyer's intellectual property for the purpose only of providing the Goods or Services.

15.2 All existing and future rights, titles and interests in any and all inventions or discoveries arising, or to arise from such Goods or Services shall vest in the Buyer to the fullest extent permissible by law. The Seller fully and irrevocably assigns to the Buyer, with full title guarantee and free from all third party rights, the intellectual property rights and all other rights, titles and interests in all works written, drawn or otherwise recorded, originated, conceived or made by the Seller in connection with the Goods or Services (the "Works") including all documents, products and materials developed by the Seller or its agents, subcontractors, consultants and employees in relation to the Goods or Services in any form, including computer programs, data, reports and specifications (including drafts).

15.3 Insofar as they do not so vest automatically by operation of law or under these Conditions, the Seller holds legal title in such intellectual property rights and all other rights, titles and interests in all such Works on trust for the Buyer. As and when requested by the Buyer the Seller will execute such assignment/transfer documents as the Buyer requires in order to transfer legal title to the Buyer and to record such transferred title at any relevant official intellectual property office.

15.4 The Seller waives any moral rights to which it is now or may at any future time be entitled in any of the Works, and shall obtain waivers of any moral rights in any and all such Works to which any individual is now or may at any future time be entitled, under Chapter IV of the Copyright and Designs and Patents Act 1988 or any similar provision of law in any jurisdiction.

16. AMENDMENTS & CHANGES

16.1 By the Buyer: The Buyer shall have the right at any time by giving notice in Writing to Seller, to make changes in any one or more of the following:

- 16.1.1 quantity;
- 16.1.2 method of shipping or packing;
- 16.1.3 drawings, designs or specifications;
- 16.1.4 place of delivery; and/or
- 16.1.5 delivery schedule.

If any such changes cause an increase or decrease in the cost of or the time required for the performance of the work, an equitable adjustment shall be agreed in Writing by the parties to the price and/or delivery schedule and the Purchase Order shall be amended accordingly. No such adjustment shall take effect unless and until it has been expressly agreed to in Writing by the Buyer.

16.2 By the Seller:

If the Seller provides the Buyer with materials/parts, then, in the case of any changes in the material/parts, the Seller must inform the Buyer with immediate effect and prior to fulfilment of contracts/orders in place by the Buyer. If this change in material/parts, when evaluated by the Buyer is not suitable for the Buyer's requirements, the Buyer has the right to cancel any outstanding orders/contracts.

If the Seller changes the manufacturing process for the material/part which is supplied to the buyer, then they must inform the Buyer with immediate effect and prior to fulfilment of contracts/orders in place by the Buyer. If this change in manufacturing process when evaluated by the Buyer is not suitable for the Buyer's requirements, the Buyer has the right to cancel any outstanding orders/contracts.

If the Seller carries out a processing service on parts/devices supplied by the Buyer and changes the processing materials and/or methods, then the Seller must inform the Buyer with immediate effect and prior to fulfilment of any contracts/orders in place by the Buyer. If this change in processing materials and/or methods, when evaluated by the Buyer is not suitable for the Buyer's requirements, the Buyer has the right to cancel any outstanding orders/contracts.

17. VARIATION

17.1 Except as set out in these Conditions, any variation to these Conditions and/or the contract between the parties, including the introduction of any additional terms and conditions, shall only be binding when expressly agreed to in Writing by the Buyer.

18. HEALTH AND SAFETY

18.1 When on the Buyer's premises or the Buyer's customer premises, the Seller shall comply with the Buyer's policies outlined in the Buyer's most current edition of 'Surgical Innovations' HEALTH AND SAFETY MANUAL' which shall be provided to the Seller upon request.

19. ANTI-BRIBERY AND ANTI-CORRUPTION

19.1 The Seller, its subsidiaries and affiliates, and all their respective directors, officers, employees and authorised agents and any other person associated with or acting on behalf of the Seller shall:

- 19.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 19.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 19.1.3 comply with the Buyer's Anti-bribery and Anti-corruption Policies (a copy of which will be provided to Seller upon request), as the Buyer may update them from time to time (Relevant Policies).
- 19.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause
- 19.1.5, and will enforce them where appropriate;
- 19.1.6 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of the Purchase Order; and
- 19.1.7 immediately notify the Buyer (in Writing) if a foreign public official becomes an officer or employee of the Seller or acquires a direct or indirect interest in the Seller and the Seller warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of the Purchase Order).

19.2 The Seller shall ensure that any person associated with the Seller who is performing services or providing goods or services in connection with the Purchase Order does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this Section 17 (Relevant Terms). The Seller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Buyer for any breach by such persons of any of the Relevant Terms.

20. WAIVER

20.1 Any failure or delay on the part of the Buyer to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

20.2 Any waiver by the Buyer of any breach of, or any default under, any provision of these Conditions shall not be deemed a waiver of any subsequent breach or default of the same or any other provision and shall in no way affect the other terms of these Conditions.

21. GOVERNING LAW

21.1 The rights and obligations of the parties hereunder shall be governed by and construed in all respects in accordance with the Laws of England and Wales

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Purchase Order or its subject matter or formation (including non-contractual disputes or claims).

22. ASSIGNMENT

The Seller shall not be entitled to assign, subcontract, charge or otherwise deal with the Purchase Order or any part of it without the prior written consent of the Buyer (such consent is not to be unreasonably withheld or delayed). The Buyer may assign the Purchase Order or any part of it to any other party.

23. QUALITY AND AUDITS

23.1 Where required by the Buyer, a Quality Agreement covering any quality requirements additional to those set out in this Supply agreement may be agreed with the Seller by the Buyer.

23.2 The Buyer reserves the right to perform audits of the Seller's premises and Quality System at a frequency determined by the Buyer. Timing and duration of audits will be mutually agreed by the Buyer and Seller.

23.3 If the Seller is considered to be a critical subcontractor or crucial supplier by the Buyer and/or the notified body of the Buyer, they may be subject to planned or unannounced audits by the notified body of the Buyer. The Supplier agrees to participate in these audits under this contract.

24. GENERAL

24.1 Each right or remedy of a party under these Conditions is without prejudice to any other right or remedy of that party whether under these Conditions or not.

24.2 If any provision of these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of these Conditions and the remainder of the provision in question shall continue in full force and effect.

24.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party or its Registered Office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

24.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Purchase Order.