

GENERAL TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS OF SALE SHALL CONSTITUTE THE COMPLETE AND FINAL AGREEMENT BETWEEN THE BUYER AND SELLER RELATING TO THE SALE OF SELLER'S PRODUCTS (PRODUCTS) AND SHALL APPLY TO ALL QUOTATIONS AND PURCHASE ORDERS. NONE OF THESE TERMS AND CONDITIONS MAY BE MODIFIED, ADDED TO, SUPERSEDED OR OTHERWISE ALTERED UNLESS APPROVED BY SELLER IN WRITING (such as for example specific terms in cases of Public Tenders). SELLER SHALL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO OBJECT TO PROVISIONS APPEARING IN, INCORPORATED BY REFERENCE IN, OR ATTACHED TO BUYER'S PURCHASE ORDER. BUYER'S SILENCE OR ACCEPTANCE OR USE OF PRODUCTS RELATED TO ANY PURCHASE ORDER SHALL CONSTITUTE AN ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE.

ARTICLE 1 - QUOTATIONS / ORDERS

No quotations by SELLER shall be effective unless in writing. Quotations are valid for 60 days unless terminated earlier by SELLER upon notice to BUYER. Indications provided on SELLER's documents are for information purposes only. All orders of BUYER shall be placed directly in BUYER's country with SELLER's local Customer Service Department via telephone, fax, mail, e-mail. Orders will normally not be accepted without an official Purchase Order Number. All orders of BUYER are subject to acceptance by SELLER and shall come into force therefrom.

ARTICLE 2 - PRICES

- 2.1 All Product prices herein are subject to the addition of any and all applicable taxes, fees or charges of any kind including delivery costs. SELLER shall have the right, to increase or decrease the prices payable under the specific order by any and all taxes, including VAT, at rates applicable at time of shipment.
- 2.2 In case of European Union transactions, BUYER undertakes to provide SELLER with all information and documents which could be required for Value Added Tax purposes.

ARTICLE 3 - PAYMENTS

- 3.1 Products shall be invoiced upon delivery EX Works (International Chamber of Commerce INCOTERMS 2000) (EXW). Unless otherwise agreed in writing, terms of payment are as provided on the invoice. In addition to any other rights at law, SELLER may charge interest on all overdue accounts at the published interest rate applicable at that time.
- 3.2 Payments must be made with no deductions, withholdings, set-offs or other charges whatsoever, regardless of any disputes between SELLER and BUYER.
- 3.3 The Contract (i.e. the accepted order) shall govern the currency in which the payment shall be made. It shall also state on which official conversion rates the prices have been established and the conditions under which readjustments shall be made in the event of fluctuation of such rates.
- 3.4 All payments for the Products which require a documentary letter of credit shall be made by means of an irrevocable documentary credit equal to the total price of the Contract, to be opened in favour of and at no cost to SELLER within twenty (20) days from the acceptance of an order by SELLER, and to be confirmed by a first class bank, approved by SELLER. This documentary credit shall be payable at sight with the confirming bank: 1/3 thereof as advance payment upon acceptance of an order, and 2/3 thereof upon EXW delivery.

ARTICLE 4 - DELIVERY/TRANSFER OF RISKS

Products shall be delivered EXW. Time limits of performance are SELLER's best approximation of such date, and shall not be deemed to represent a fixed or guaranteed date. Such dates shall be automatically extended in the event of delay which is not attributable to SELLER, or in a case of Force Majeure which makes it impossible for SELLER to perform all or part of any contract.

ARTICLE 5 - WARRANTY- LIMITATIONS OF LIABILITIES/INSURANCE

The warranty period shall be 12 months as from delivery. Any Product or Product components which are replaced under this article shall become the property of SELLER. The Product or Product component repaired or replaced under this article shall be warranted for a thirty (30) day period as from the date of their repair or replacement by SELLER. Claims for non-receipt of goods, discrepancies or damage, must be made to SELLER within fourteen (14) days of advised delivery in case of non-receipt and fourteen (14) days from delivery in other cases. Seller warrants that each Product has been manufactured, packaged and tested with reasonable care and will be free from defects in workmanship and material. SELLER will not be liable for any incidental, special or consequential loss, damage or expense resulting directly or indirectly from the use of its products. SELLER's sole obligation shall be to repair or replace at its option, any Product that SELLER determines was defective at time of delivery. BUYER assumes all liability, whether based upon warranty, contract, negligence or otherwise, for damages resulting from the handling, possession, use or misuse of the SELLER's product. Because SELLER has no control over the operation, inspection, maintenance, or use of its products after sale and has no control over selection of patients, THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND OF ANY OTHER OBLIGATION ON THE PART OF THE SELLER. The remedies set forth in this article shall be the exclusive remedy available to any person. SELLER ASSUMES NO LIABILITY WHATSOEVER FOR MULTIPLE USE OF PRODUCTS MEANT FOR SINGLE USE ONLY NOR FOR PRODUCTS WHICH HAVE BEEN RSTERILIZED BY ANY PARTY OTHER THAN SELLER.

BUYER shall indemnify SELLER and keep it fully and effectively indemnified against any and all liability claims, costs, proceedings, loss or damage caused by any negligent act or omission or wilful misconduct of BUYER, its employees, agents, or subcontractors.

ARTICLE 6 - NON COMPLYING PRODUCT RETURN.

Should the delivered products not comply with the agreed terms and conditions (Non Complying Product), a return request must be made to SELLER's Customer Service Department within fourteen (14) days of delivery. The return request must include details of the product number, batch/lot number, expiration date, invoice number and the date the products were delivered. Credit will be given only for Products that have not been defaced in any way, are unopened and undamaged, have a six-month remaining shelf life, have been delivered less than three months prior to return. An exception to this rule applies to products involved in a product recall. It is the BUYER's responsibility to ensure that the returned products have adequate protective packaging to ensure that they are received in a resellable condition and that the Return Authorisation Number, received from SELLER's Customer Service Department, is clearly marked on the outside packaging. No credit will be given from product received damaged or without a proper Return Authorisation Number. **All returns due to customer ordering error may be subject to a 10% handling charge.**

ARTICLE 7 - FORCE MAJEURE

SELLER shall not be responsible for its non-compliance with any obligation under the Contract if so prevented or delayed by cause(s) beyond its reasonable control including but not limited to acts of God, fire, flood, typhoon, earthquake, riots, wars, hostilities, governmental restrictions, strike for whatever causes, lock-out, stoppage or delay in transport, actions by governments or any agency thereof, boycott or trade embargoes ("Force Majeure"). SELLER shall give notice to BUYER of a Force Majeure event and specify the estimated extent of the event. SELLER's time of performance shall automatically be extended for the duration of the event. If a Force Majeure prevents SELLER from performing its obligations for more than three (3) months, both parties shall meet and try in good faith to find a suitable solution. If no such solution is obtained within one (1) month, either party may automatically terminate the Contract upon written notice to the other party. In such a case, BUYER shall pay for all costs incurred by SELLER in connection with its performance prior to termination.

ARTICLE 8 - SUSPENSION - TERMINATION

In case of BUYER's default hereunder, including the non-payment of any invoice by its due date SELLER shall be entitled to suspend its performance until cure of such default and BUYER shall be liable for SELLER's costs, damages, including loss of profits, reasonable attorney's fees, costs of collection, together with interest, in addition to other remedies available under law. If such default is the result of non-payment of an invoice, the time limits for SELLER's performance shall automatically be extended for the duration of BUYER's delay in making such payment, and the amount of such payment shall be increased by the costs incurred by SELLER as a result of the late payment including interest on the day the account is overdue. In all cases, where the payment is not made within 30 days following its due date, SELLER shall be entitled to terminate the Contract. Notwithstanding any other provision herein, in the event one party breaches the terms hereunder, the other party shall have the right to automatically terminate any order of part thereof, upon thirty (30) days written notice to the first party, if such breach has not been cured within such thirty day period after receipt of the written notice of default.

ARTICLE 9 - ASSIGNMENT - SUB-CONTRACTING - EXPORT

- 9.1 The BUYER may not assign all or part of its rights and obligations in connection with the Contract without SELLER's prior written consent.
- 9.2 SELLER reserves the right to sub-contract to one or more sub-contractors all or part of its obligations hereunder.
- 9.3 BUYER shall not sell or export Products subject to these Terms of Sale outside the European Economic Area.

ARTICLE 10 - DISPUTE SETTLEMENT

Should a dispute, controversy or claim arise between the parties in connection with the interpretation and/or the implementation of any of the terms hereunder, the parties shall notify each other of the reasons for the dispute by registered letter and meet promptly, in good faith to attempt an amicable settlement for such dispute.

In case such amicable settlement is not reached, within 30 days after such notification, the dispute shall be submitted to the Commercial Courts of Sellers place of business. The language shall be English. Unless otherwise agreed in writing, the applicable Law shall be the Swiss Law to the exclusion of its rules on conflicts of Law to the merits of the dispute.

ARTICLE 11 - LICENSES, PERMITS AND AUTHORIZATIONS

The BUYER shall obtain and maintain in full force and effect all government licenses, required licenses, permits and authorisations necessary for the use, sale or distribution of the Product by BUYER or for services performed. BUYER acknowledges that SELLER's Products may only be sold by or on the order of a physician and recognises SELLER's right to request a notification that BUYER is in compliance with this requirement.

ARTICLE 12 - MISCELLANEOUS.

- 12.1 SELLER welcomes monthly standing orders or periodic call off orders, thus providing BUYER with scheduled shipments using a single purchase order number, usually over a twelve (12) month period.
- 12.2 List prices are subject to change without notice, although SELLER endeavours to maintain price stability over periods of twelve (12) months. Any variation from the price list must be authorised by SELLER's Customer Services Department or the local Regional Business Manager, and the appropriate reference made on the purchase order, prior to dispatch of the product.
- 12.3 Catalogue/order numbers as well as product references or codes may change from time to time, reflecting obsolescence and a continual policy of product upgrade. SELLER reserves the right to substitute new product of like specification as this process occurs.