

**Boston Scientific Česká republika s.r.o.**

**GENERAL TERMS AND CONDITIONS OF SALE**

In these General Terms and Conditions of Sale:

<b>"BUYER"</b>	means the person, firm or company which places an order with SELLER;
<b>"Contract"</b>	means a contract between SELLER and BUYER for the sale of PRODUCTS comprising these General Terms and Conditions of Sale and the relevant Order;
<b>"Force Majeure"</b>	has the meaning given to it in Article 9;
<b>"Order"</b>	means an order for the purchase of Products submitted by BUYER to SELLER in accordance with Article 1.3;
<b>"Products"</b>	means the products supplied or agreed to be supplied by SELLER to BUYER under any Contract; and
<b>"SELLER"</b>	means Boston Scientific Česká republika s.r.o., with its registered office at Praha 5 - Smíchov, Karla Engliše 3219/4, Postal Code 150 00, Identification Number 256 35 972, incorporated in the Commercial Register maintained by the Municipal Court in Prague, Section C, Insert 56799.

THESE GENERAL TERMS AND CONDITIONS OF SALE MAY NOT BE MODIFIED, ADDED TO, SUPERSEDED OR OTHERWISE ALTERED UNLESS APPROVED BY SELLER IN WRITING. THESE GENERAL TERMS AND CONDITIONS OF SALE SUPERSEDE ANY OTHER TERMS ISSUED BY BUYER AND ANY OTHER TERMS STIPULATED OR INCORPORATED OR REFERRED TO BY BUYER (WHETHER IN ITS ORDER OR OTHERWISE) ARE HEREBY REJECTED BY SELLER AND SHALL NOT FORM PART OF ANY CONTRACT.

**ARTICLE 1- QUOTATIONS / ORDERS**

- 1.1 All quotations are given and all Orders are accepted on and subject to these General Terms and Conditions of Sale.
- 1.2 No quotations by SELLER shall be effective unless in writing. Quotations are valid for the period as stated on the quotations unless withdrawn earlier by SELLER upon notice to BUYER. In no event shall a quotation constitute an offer for sale of a Product. Indications provided on SELLER's marketing and promotional documents are for information purposes only.
- 1.3 All Orders of BUYER shall be placed directly with SELLER's Customer Service Department via telephone, fax, mail, e-mail or other electronic method, or SELLER's qualified personnel where available. In case of an Order placement via telephone or in person to SELLER's qualified personnel, SELLER requests the BUYER to promptly confirm the Order in writing. Orders will normally not be accepted without an official Purchase Order Number which is provided by the BUYER.
- 1.4 All Orders are subject to acceptance by SELLER. Orders are deemed to have been accepted by SELLER by delivering the Products.

- 1.5 In the event of any inconsistency between these General Terms and Conditions of Sale and the Order they shall prevail in the following order to the extent of the inconsistency: (i) these General Terms and Conditions of Sale; and (ii) the Order.

#### **ARTICLE 2 - PRICES**

- 2.1 All Product prices quoted or otherwise provided by SELLER are exclusive of Value Added Tax and any and all applicable taxes, fees or charges of any kind which, to the extent applicable, shall be payable by the BUYER. All Product prices quoted or otherwise provided by SELLER are confidential and cannot be shared with anyone outside the BUYER's organisation without the SELLER's permission.
- 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 by SELLER upon, or at any time after, delivery of the Products in accordance with Article 4. BUYER shall pay all amounts duly invoiced and unless otherwise agreed in writing the terms of payment are thirty (30) days following issuance of the invoice. In addition to any other rights or remedies available to SELLER whether at law or otherwise, SELLER may charge interest on all overdue amounts in accordance with the provisions of the Governmental Decree No. 351/2013 Coll., as amended.
- 3.2 Payments must be made by BUYER in full with no deductions, withholdings, set offs, or counterclaims for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise (save as may be required by law) and regardless of any disputes between SELLER and BUYER.
- 3.3 The Invoice shall set out and govern the currency in which the payment shall be made.

#### **ARTICLE 4 - DELIVERY/TRANSFER OF RISKS/TRANSFER OF OWNERSHIP TITLE/QUALITY REQUIREMENTS**

- 4.1 Products shall be delivered and risk of any damage to the Products shall pass to BUYER according to the Incoterms 2010 term as specified on the invoice. Time limits for delivery 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. In any event, SELLER shall have no liability to BUYER for late delivery of the Products (or any of them) for whatever reason and time shall not be of the essence in this respect.
- 4.2 SELLER may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle BUYER to cancel any other instalment.
- 4.3 Notwithstanding the delivery of and passing of risk of any damage in any Product(s), ownership title to the Products(s) shall not pass to BUYER until all sums payable to SELLER under the relevant Contract for such Products(s) have been paid in full.

- 4.4 Until ownership title to the Products has passed to BUYER, BUYER shall: (a) hold the Products on a fiduciary basis as the SELLER'S bailee; (b) store the Products separately from all other goods and products held by BUYER so that they remain readily identifiable as SELLER'S property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on SELLER'S behalf from the date of delivery; (e) notify SELLER immediately if it becomes subject to any of the events listed in Article 10.4; and (f) give SELLER such information relating to the Products as SELLER may require from time to time. However, subject to compliance with the above, BUYER may use the Products in the ordinary course of its business.
- 4.5 If, before ownership title to the Products passes to BUYER, BUYER becomes subject to any of the events listed in Article 10.4, or SELLER reasonably believes that any such event is about to happen and notifies BUYER accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy SELLER may have, SELLER may at any time require BUYER to deliver up the Products and, if BUYER fails to do so promptly, enter any premises of BUYER or of any third party where the Products are stored in order to recover them.
- 4.6 SELLER has and requires of BUYER a primary commitment to patient safety and product quality. These include, without limitation, requirements regarding appropriate storage of the Product(s) maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions. These requirements shall survive the expiration or other termination of any Contract.

#### **ARTICLE 5 - INSPECTION AND WARRANTIES**

- 5.1 BUYER shall inspect the Products immediately on receipt thereof. Claims for non-receipt of Products or non-compliance with the terms of the Contract, must be made to SELLER in writing within fourteen (14) days of advised delivery in case of non-receipt and fourteen (14) days from delivery in other cases. If the Buyer fails to give written notice within fourteen (14) days from delivery that any Products do not comply with the terms of the Contract, BUYER shall be deemed to have accepted the Products.
- 5.2 SELLER warrants that each Product delivered to BUYER has been manufactured, packaged and tested according to the accompanying and/or published specifications and, on delivery to BUYER and unless expressly stated otherwise, the Product is considered to be free from defects in workmanship and material until the Product expiry date as affixed on the Product ("warranty period").
- 5.3 SELLER will have no liability for the non-compliance of any Product with the warranty in Article 5.2 to the extent that such non-compliance arises as a result of (a) BUYER's failure to follow SELLER'S oral and/or written instructions as to the storage, commissioning, installation, use and maintenance of such Product or (if there are no such instructions) good industry practices regarding the same; (b) SELLER following any drawing, design or specification supplied by BUYER; (c) BUYER having altered or repaired such Product without the written consent of SELLER; or (d) fair wear and tear, misuse, accident, abnormal storage or working conditions or wilful damage or negligence of or by BUYER, its employees, agents, or subcontractors.

- 5.4 In the event of the non-compliance of any Product with the warranty in Article 5.2 SELLER's shall repair or replace (at its option) the applicable Product. The BUYER shall inform the SELLER about the non-compliance of the Product and in case the BUYER will return the Product to SELLER, the BUYER shall ensure proper packaging and transportation of the Product. SELLER reserves the right to request BUYER to return the non-compliant Product. SELLER shall bear the costs for the transportation.
- 5.5 Any Product or Product components replaced under this Article 5 shall become the property of SELLER. Any replaced Product or replaced Product component under this Article 5 shall be subject to the Product expiry date of the replacement Product (as affixed on the replacement Product) and any repaired Product or Product component shall be subject to the remainder of the warranty as from the date of its repair by SELLER.
- 5.6 The express warranty in Article 5.2 sets out the exclusive liability of SELLER in relation to the Products and there are no conditions, warranties, representations or terms, express or implied, that are binding on SELLER except as specifically stated in this Article 5. Any condition, warranty, representation or term (including, without limitation, in relation to quality, merchantability or fitness for any particular purpose) which might otherwise be implied into or incorporated into any Contract is hereby expressly excluded.
- 5.7 Save as expressly provided in this Article 5, SELLER shall have no liability to BUYER in respect of the non-compliance of any Product with the warranty set out in Article 5.2 and the remedies set forth in this Article 5 shall be SELLER's exclusive liability and BUYER'S exclusive remedies in this respect.
- 5.8 SELLER ASSUMES NO LIABILITY WHATSOEVER FOR MULTIPLE USE OF PRODUCTS MEANT FOR SINGLE USE ONLY AND ANY LIABILITY THAT MAY OTHERWISE ARISE IN THIS RESPECT IS HEREBY EXPRESSLY EXCLUDED.

#### **ARTICLE 6 - PRODUCT RETURNS**

- 6.1 Should the BUYER wish to return any delivered Products for credit (the SELLER shall set-off the credited amount against the purchase price of any other Products purchased by the BUYER; hereinafter the "Credit") without the returned Products being non-compliant a return request must be made to SELLER's Customer Service Department. The return request must include details of the product number, batch/lot number, expiration date, invoice number and the date the Products were delivered. SELLER reserves the right to reject such return requests upon its own discretion.
- 6.2 Credit will be given only for Products that have not been defaced in any way, are unopened and undamaged, and have a six-month remaining shelf life, unless otherwise expressly agreed. An exception to this rule applies to products involved in a product recall. The SELLER reserves the right to charge a 10% handling charge (10% of the value of the products being returned).
- 6.3 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,

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is clearly marked on the outside packaging. No Credit will be given for Products that are received damaged or without a proper Return Authorisation Number.

- 6.4** SELLER understands that BUYER may be obliged by the General Data Protection Regulation 2016/679/EU of the European Union, to maintain the privacy of any data related to the health of its patients. Prior to BUYER returning the Equipment or SELLER OR ANY AFFILIATED COMPANY OF SELLER servicing the Equipment, BUYER shall delete any patient data, if any and if possible, from the Equipment. When receiving returned equipment, SELLER uses appropriate safeguards that reasonably protect the confidentiality of any patient information inadvertently remaining on the returned capital equipment, including, by ensuring the deletion of the patient data from the Equipment as a first step before any repair action.

#### ARTICLE 7 - RESALE AND EXPORT

- 7.1 In the exceptional case where the BUYER will be reselling the Products, the BUYER shall not actively resell or promote the resale of the Products into any geographical area located in the European Economic Area (EEA) in which the SELLER has appointed a distributor for the sale of the Products or, alternatively, has reserved the area to itself or its subsidiaries (the "Restricted Area"). Moreover, the BUYER shall not locate or utilize an office, branch, or distribution depot for the active resale or promotion of the resale of the Products into the Restricted Area. Nothing in these General Terms and Conditions or the Contract shall be construed as preventing the BUYER from reselling the Products within the EEA, provided that the BUYER has not actively sought such resale. BUYER shall not resell or export Products subject to these General Terms and Conditions of Sale or a Contract outside the EEA. For the purposes of this Article 7.1, Switzerland shall be considered as an EEA member.
- 7.2 BUYER acknowledges and expressly agrees that certain laws of the United States of America and other countries, including, without limitation, the United States Export Control Regulations, the United States Anti-Money Laundering laws, the United States Anti-Terrorism laws and the Foreign Corrupt Practices Act (collectively, "the Legislation"), may result in the imposition of sanctions on the SELLER or its affiliated companies in the event that, directly or indirectly, (i) Products are exported to various countries, including without limitation Cuba, Iran, North Korea, Syria, Sudan, or any country embargoed by Executive order or otherwise, or (ii) offers, promises, or payments are made to non-U.S. Government Officials or others for the purpose of influencing decisions favorable to SELLER.
- 7.3 BUYER acknowledges that it is familiar with the Legislation and expressly agrees, therefore, that it shall comply at all times with the Legislation and that it will not take any action that would cause either party to violate the Legislation or that would have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.
- 7.4 In the exceptional case that the BUYER will resell the Products, the BUYER is obliged to impose to its contractors the same obligations as the SELLER has imposed to the BUYER, especially but not limited to a primary commitment to patient safety and product quality as well as compliance with any regulatory requirements. The patient

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safety and product quality requirements shall include, without limitation, requirements regarding appropriate storage of the Products maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions.

#### **ARTICLE 8 – LIABILITY**

- 8.1 SELLER's maximum aggregate liability to BUYER under or in connection with any Contract, whether arising under statute or arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed 125% of the total price payable by BUYER for the Products under that Contract.
- 8.2 SELLER shall not be liable to BUYER for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising under statute or arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.
- 8.3 Nothing in these General Terms and Conditions of Sale or in any Contract shall exclude or in any way limit SELLER's liability to BUYER for any liability that may not be excluded or limited as a matter of law.
- 8.4 BUYER is liable for providing prices/price changes to any authorities including reimbursement authorities. BUYER shall indemnify SELLER and keep it fully and effectively indemnified against any and all liabilities, claims, actions, costs, proceedings, losses, damages and expenses (including legal expenses) incurred by SELLER which arise (directly or indirectly) out of or in connection with any negligent act or omission or wilful misconduct of or by BUYER, its employees, agents, or subcontractors.

#### **ARTICLE 9 - FORCE MAJEURE**

SELLER shall not be responsible for any loss or damage suffered or incurred by BUYER arising from SELLER's failure to perform or delay in performing any obligation under any 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 of Force Majeure. If a Force Majeure event prevents SELLER from performing its obligations under a Contract within three (3) months as of the event, both parties shall meet and try in good faith to find a suitable solution. If no such solution is obtained within the following thirty (30) days, either party may terminate the applicable 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 of the applicable Contract prior to termination.

#### **ARTICLE 10 - SUSPENSION - TERMINATION**

- 10.1 In case of BUYER's default under any Contract, including the non-payment of any invoice by its due date, SELLER shall be entitled to suspend its performance of such Contract until cure of such default and BUYER shall be liable for SELLER's losses, costs, damages and expenses, including, without limitation, loss of profits, reasonable attorney's fees, costs of collection, together with interest (in accordance with Article 3.1), in addition to other remedies, whether available at law or otherwise. In the event that SELLER exercises its right to suspend its performance, the time limits for SELLER's performance of the applicable Contract shall automatically be extended for the duration of such suspension.
- 10.2 In all cases, where the payment is not made under a Contract within thirty (30) days following its due date, SELLER shall be entitled to terminate the Contract.
- 10.3 Notwithstanding any other provision herein, in the event one party breaches the terms of a Contract, the other party shall have the right to terminate such Contract or part thereof, upon written notice to the first party, if such breach has not been cured within a thirty day period after receipt of written notice by the defaulting party requiring the same.
- 10.4 SELLER shall be entitled to terminate all or any Contract(s) if BUYER ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of such Contract(s)), or becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.

#### **ARTICLE 11 - ASSIGNMENT - SUB-CONTRACTING - EXPORT**

- 11.1 The BUYER may not assign, transfer, novate, sub-licence, sub-contract or otherwise dispose of all or any part of its rights and/or obligations under any Contract without SELLER's prior written consent.
- 11.2 SELLER may assign, transfer or novate all or any of its rights and/or obligations under any Contract. Further, SELLER reserves the right to sub-contract to one or more subcontractors all or part of its obligations under any Contract.
- 11.3 BUYER is not entitled to sell or export Products subject to these General Terms and Conditions of Sale outside the European Economic Area. For the purposes of this Article 11.3, Switzerland shall be considered as an EEA member.

#### **ARTICLE 12 - DISPUTE SETTLEMENT**

- 12.1 Should a dispute, controversy or claim arise between the parties in connection with these General Terms and Conditions of Sale or a Contract (a "Dispute"), 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.

- 12.2 If an amicable settlement is not reached within thirty (30) days after such notification, the parties hereby agree to submit to the exclusive jurisdiction of the courts of Czech Republic to resolve the Dispute, provided that SELLER shall have the right, as claimant, to initiate proceedings against BUYER in the court competent according to the place where the SELLER has its registered office.
- 12.3 The official text of each Contract and any notices given thereunder shall be Czech. In the event of any dispute concerning the construction or interpretation of a Contract, reference shall be made only to the Contract as written in Czech and not to any translation into any other language.
- 12.4 The construction, validity and performance of these General Terms and Conditions of Sale, all Contracts and all non-contractual obligations arising from or connected with the same, shall be governed by Czech law to the exclusion of its rules on conflicts of law, in particular by Act No. 89/2012 Coll, the Civil Code, as amended. Both BUYER and SELLER acknowledge the applicability of, and agree to comply with, the Czech anti-corruption legislation (included but not limited to the Act No. 40/2009 Coll., the Criminal Code and No. 253/2008 Coll., on Certain Measures against Legalization of Proceeds from Illegal Activity).

#### **ARTICLE 13 - LICENCES, PERMITS AND COMPLIANCE WITH SPECIFIC LAWS**

The BUYER shall obtain and maintain in full force and effect, at its own expense, all licences, permits and authorisations necessary for the use, sale or distribution of the Products by BUYER and associated services performed by BUYER. BUYER shall further comply with all applicable laws, statutes, regulations and other legal requirements, local medical industry association guidelines, which are applicable to all third party intermediaries (such as the MedTech Europe Code of Ethical Business Practice), in connection with the Products, its obligations under each Contract and in all matter relating thereto, and shall not do or permit anything to be done which might cause or otherwise permit anything to be done which might cause or otherwise result in a breach by SELLER of the same or place the SELLER in jeopardy of not complying with any such requirements.

#### **ARTICLE 14 - MISCELLANEOUS**

- 14.1 SELLER welcomes monthly standing Orders or periodic call off Orders, thus providing BUYER with scheduled deliveries using a single purchase order number, usually over a twelve (12) month period.
- 14.2 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.
- 14.3 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 Products of like specification.

IN RELATION TO ANY CONTRACT, THESE GENERAL TERMS AND CONDITIONS OF SALE AND THE ORDER SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN



THE PARTIES REGARDING ITS SUBJECT MATTER AND SHALL SUPERSEDE AND REPLACE ANY AND ALL PRIOR AGREEMENTS, UNDERSTANDINGS OR ARRANGEMENTS BETWEEN THE PARTIES, WHETHER ORAL OR IN WRITING, RELATING TO THE SUBJECT MATTER OF THE CONTRACT. NO REPRESENTATION, UNDERTAKING OR PROMISE SHALL BE TAKEN TO HAVE BEEN GIVEN OR BE IMPLIED FROM ANYTHING SAID OR WRITTEN IN NEGOTIATIONS BETWEEN THE PARTIES PRIOR TO THE DATE OF ANY CONTRACT EXCEPT AS EXPRESSLY STATED IN THAT CONTRACT. NEITHER PARTY SHALL HAVE ANY REMEDY IN RESPECT OF ANY UNTRUE STATEMENT MADE BY THE OTHER UPON WHICH THAT PARTY RELIED IN ENTERING INTO A CONTRACT (UNLESS SUCH UNTRUE STATEMENT WAS MADE FRAUDULENTLY OR WAS AS TO A FUNDAMENTAL MATTER INCLUDING AS TO A MATTER FUNDAMENTAL TO THE OTHER PARTY'S ABILITY TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT) AND THAT PARTY'S ONLY REMEDIES SHALL BE FOR BREACH OF CONTRACT AS PROVIDED IN THE CONTRACT.

#### **ARTICLE 15 – EUROPEAN GENERAL DATA PROTECTION REGULATION**

In order to comply with the General Data Protection Regulation 2016/679 of the European Union SELLER informs BUYER that any personal data that could be contained in an invoice derived from this contract, will be included in an automated database of which SELLER is data controller with the main purposes of financial and logistical management with a server located in the United States. To transfer data outside the EU, Boston Scientific has obtained the EU-US Privacy Shield certification. BUYER remains responsible for the lawful sharing with SELLER of patient data for invoices (i.e. obtaining patient prior consent). BUYER can exercise the rights of access, rectification, deletion, portability and opposition by contacting SELLER or the SELLER's European data Protection Officer at [Europeprivacy@bsci.com](mailto:Europeprivacy@bsci.com)