

Terms and Conditions of Trade

DEVICE TECHNOLOGIES AUSTRALIA PTY LTD ABN 40 058 091 973 including any of its subsidiary companies ("Device Technologies") offers to sell goods on the following terms and conditions ("Conditions")

1 INTERPRETATION

In these Conditions:

- (a) "Purchaser" means the purchaser of the Goods
- (b) "Goods" means any medical goods and services supplied by Device Technologies.
- (c) "Grantor" means the grantor of any security interest in the Goods, and is usually the Purchaser
- (d) "Warranty Period" means the warranty period for the goods being in accordance with the manufacturer's warranty period.

Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding or modifying any condition, warranty, guarantee, right or remedy implied by law (Including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

2 GENERAL

- 2.1 The Goods and all other products and services sold and/or provided by Device Technologies are sold on these Conditions
- 2.2 These Conditions (which may only be waived or amended in writing and signed by Device Technologies) shall to the extent of any inconsistency prevail over all and any conditions of the Purchaser's order.

3 QUOTATIONS

Unless previously withdrawn, a quotation from Device Technologies is open for acceptance within the period stated on the quotation or, where no period is stated, within thirty (30) days after the date shown on the quotation. A quotation does not constitute an offer to sell and/or provide Goods but is an invitation to treat only. Device Technologies reserves the right to refuse any order based on its quotation within seven (7) days after the receipt of a Purchaser's order. A contract shall be formed between Device Technologies and a Purchaser on the acceptance by Device Technologies of a Purchaser's order and not otherwise.

4 PRICES

- 4.1 All prices quoted are exclusive of all taxes, insurance and transport which shall be the sole responsibility of the Purchaser, unless otherwise agreed in writing.
- 4.2 Prices for Goods will be charged at:
 - (a) the price stated by Device Technologies on a non-expired quotation; or
 - (b) where there is no quotation, the pricing ruling at the date of dispatch.

5 DELIVERY

- 5.1 The Goods shall be deemed to be delivered to the Purchaser at the time the Goods arrive at the Purchaser's premises. Device Technologies may arrange for transport of the Goods to a destination nominated by the Purchaser and the cost of such transport shall be added to the price of those Goods.
- 5.2 Goods are at the Purchaser's risk from the time of delivery. The Purchaser shall be responsible for arranging any insurance over the Goods after delivery.
- 5.3 Device Technologies shall not be liable for any loss occasioned by delay in delivery of and/or the procuring of Goods, whether consequential or otherwise.
- 5.4 Any disputes as to the Proof of Delivery shall be made within seven (7) days of delivery.

6 PAYMENT

Device Technologies' terms of payment are thirty (30) days from the date of the relevant invoice, unless otherwise stated on such invoice. Device Technologies reserves the right to require payment with the order or satisfactory evidence of the ability of the Purchaser to pay for the Goods ordered by the Purchaser. Interest at 10.5% is payable on amounts which are more than thirty (30) days overdue. Credit cards are accepted but surcharges may apply.

7 TRANSFER OF PROPERTY

Property in Goods

- 7.1 Property in the Goods remains with Device Technologies until all monies owing to Device Technologies on any account have been paid or title in the property is vested in some other person by operation of law.
- 7.2 Until property in the Goods passes, the Purchaser shall keep them free from any charge, lien or other encumbrance.
- 7.3 Until Property in the Goods passes, the Purchaser shall:
 - a) hold them on a fiduciary basis as bailee for Device Technologies;
 - b) keep them separate from all other goods in its possession and marked in such a way that they are clearly identified as the property of Device Technologies;
 - c) upon request deliver up such of them (as have not ceased to be in existence or resold) to Device Technologies (for which purpose our employees or agents may enter your premises) and the Purchaser is obliged to deliver up the Goods if so directed by Device Technologies in accordance

- with the enforcement procedures outlined in Chapter 4 of the *Personal Property Securities Act 2009* (Cth); and
- d) not intermingle any sums it receives from any sale made by it or on its behalf of the Goods and shall hold such sums as trustee on behalf of Device Technologies and account fully to Device Technologies for such sums promptly as and when required by Device Technologies.

8 REGISTRATION OF SECURITY INTEREST

- 8.1 The Purchaser as Grantor, grants to Device Technologies, a security interest(s) in the Goods under the *Personal Property Securities Act 2009* (Cth). If applicable, this security interest(s) will be a purchase money security interest(s).
- 8.2 The Purchaser and Grantor (if different) acknowledge that Device Technologies may register the said security interest(s) in the Goods, at its discretion and that any related registration fees will be payable by the Purchaser.

9 WARRANTIES

- 9.1 Device Technologies warrants all Goods sold by it will be free of defective workmanship and materials.
- 9.2 Device Technologies Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 9.3 Device Technologies will, at its option either repair or replace any defective Goods or parts thereof with a new or remanufactured equivalent during the Warranty Period at no charge to the Purchaser for parts or labour during the Warranty Period.
- 9.4 The warranty described herein shall be the sole and exclusive warranties granted by Device Technologies and shall be the sole and exclusive remedy available to the Purchaser in addition to the rights and remedies of the Purchaser under a law in relation to the Goods to which this warranty relates.
- 9.5 All implied warranties including the warranties of merchantability and fitness are limited to the Warranty Period.
- 9.6 No other person or entity is authorised to make any warranties other than those described herein, or to extend the duration of any warranties beyond the Warranty Period on behalf of Device Technologies.
- 9.7 Correction of defects, in a manner and for the Warranty Period described herein, shall constitute complete fulfillment of all liabilities and responsibilities of Device Technologies to the Purchaser with respect to the Goods and shall constitute full satisfaction of all claims, whether based on contract, negligence and strict liability otherwise. In no event shall Device Technologies be liable, or in any way responsible, for any damages or defects in the Goods which were caused by repairs or attempted repairs performed by anyone other than Device Technologies or an authorised service provider.
- 9.8 This warranty does not apply to any appearance of the supplied Goods nor to any supplied Goods the exterior to which has been damaged or defaced, which has been subjected to misuse, abnormal service or handling, or which has been modified or altered in design or construction. In addition, the warranty coverage does not apply to defects caused by the supplied Goods being subjected to the following; unauthorised modifications or connections, unauthorised opening or repair, repair by use of unauthorised parts, accident, force majeure, or other acts beyond the reasonable control of Device Technologies.
- 9.9 This warranty does not cover death or injury to persons resulting from any cause other than proven negligence of Device Technologies, its employees or representatives.
- 9.10 In order to enforce the rights under this warranty, the Purchaser must provide proof of purchase to Device Technologies. The proof of purchase must state the date of the purchase, provide a description of the Goods and the price paid for the Goods.
- 9.11 A claim made by a Purchaser should be made in writing to Device Technologies along with the proof of purchase. The costs of transportation of the Goods will be borne by the Purchaser. If the claim is valid Device Technologies will reimburse the Purchaser for the costs.

10 EXCLUSION OF LIABILITY

- 10.1 Device Technologies' liability for breach of a condition or warranty implied by operation of the Competition and Consumer Act 2010 is hereby limited to:
- (a) in the case of Goods, any one the following:
- (i) the replacement of Goods or the supply of equivalent goods;
 - (ii) the repair of Goods;
 - (iii) the payment of the cost of replacing Goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services
- (i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

10.2 Except as otherwise herein provided, Device Technologies shall not be liable or in any way responsible for incidental or consequential, economic or property damage, except where Device Technologies is in breach of the guarantees provided to the Purchaser in accordance with Schedule Two of the *Competition and Consumer Act 2010* (Cth), or applicable legislation from time to time PROVIDED ALWAYS that nothing in this clause or elsewhere in these Conditions shall adversely affect the rights of the Purchaser under relevant legislation.

11 CANCELLATION OF ORDERS

No order shall be cancelled or deferred without the prior written consent of Device Technologies.

12 RE-STOCKING CHARGE

Goods may only be returned with the approval of and at the sole discretion of Device Technologies. Goods so returned will be subject to a re-stocking charge of 15% of their invoiced value.

13 GOVERNING LAW

These Conditions are governed by and shall be construed in accordance with the laws of New South Wales.

14 LEGISLATION

These Conditions are governed by the *Personal Property Securities Act 2009* (Cth) and *Competition and Consumer Act 2010* (Cth) ("Acts"), as amended from time to time. Any capitalised words, used in these Conditions, but not defined herein shall take on the meaning of such defined words in the Acts and if not defined in the Acts, then its ordinary meaning.

15 SEVERANCE

If any of these Conditions are held by a Court of competent jurisdiction to be invalid or otherwise unenforceable, that provision may be, at the sole discretion of Device Technologies, severed from the Conditions and the remainder of these Conditions will continue to be effective and valid notwithstanding such severance.