

Inspiration Healthcare Standard Terms and Conditions of Sale

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS IN CONDITION 9

1 Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Affected Party: has the meaning given in Condition 13.2.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Condition 14.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person, company, charity, hospital trust, university or firm who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given in Condition 13.1.

Goods: the goods (or any part of them) including services for repair, maintenance and support set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification: any specification for the Goods agreed in writing by the Customer and the Supplier.

Supplier: Inspiration Healthcare Limited a company incorporated in England and Wales (company number: 04753818) whose registered office is at Unit 2 Satellite Business Village, Fleming Way, Crawley, West Sussex, RH15 9NE, England.

VAT: value added tax.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a Party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2 Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue.

3 Goods

3.1 The Goods are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4 Delivery

4.1 The Supplier shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Customer shall collect the Goods from the Supplier's loading dock or such other location as may be advised by the Supplier prior to delivery (**Delivery Location**) within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the

Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If five (5) Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods 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 the Customer to cancel any other instalment.

5 Quality

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 conform in all material respects with the Specification;

5.1.2 be free from material defects in design, material and workmanship; and

5.1.3 be fit for any purpose held out by the Supplier.

5.2 Subject to Condition 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within twenty one (21) days of discovery that some or all of the Goods do not comply with the warranty set out in Condition 5.1;

5.2.2 the Supplier is given twenty one (21) days following receipt of a written notice from the Customer under Condition 5.2.1 to examine such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in Condition 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this Condition 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 5.1.

5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 Product liability

6.1 The Customer undertakes to maintain for seven years appropriate, up-to-date and accurate records to enable the immediate recall or withdrawal of any Goods or batches of Goods from the retail or wholesale markets. These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and email address). The Customer shall promptly provide the Supplier with copies of such records if a recall or withdrawal is initiated.

6.2 The Customer shall, at the Supplier's cost, give any assistance that the Supplier shall reasonably require to recall, as a matter of urgency, Goods from the retail or wholesale market.

6.3 The Customer shall:

6.3.1 take such action, institute such proceedings and give such information and assistance as the Supplier may reasonably request to:

6.3.1.1 dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or

6.3.1.2 enforce against any person (other than the Supplier) the rights of the Customer in relation to the matter; and

6.3.2 in connection with any proceedings related to the matter (other than against the Supplier), use professional advisers nominated by the Supplier and, if the Supplier so requests, allow the Supplier the exclusive conduct of the proceedings,

in each case on the basis that the Supplier shall indemnify the Customer for all reasonable costs incurred as a result of any request or nomination by the Supplier.

6.4 The Customer shall not initiate any proceedings, including a product recall, without the prior approval of the Supplier or if required to do so by law or by a regulatory authority in any relevant jurisdiction.

7 Title and risk

7.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with Condition 4.

7.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

7.2.1 the Goods; and

7.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

7.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

7.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in Condition 9.2; and

7.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 9.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8 Price and payment

8.1 The price of the Goods shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.

8.2 The Supplier may, by giving notice to the Customer at any time up to four weeks before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

8.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer, unless otherwise agreed in writing prior to costs being incurred.

8.4 The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, except in the provision of service contracts and the like, where the Supplier will invoice the Customer at the commencement of the contract for the contract period.

8.6 Unless agreed otherwise, the Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9 Customer's insolvency or incapacity

9.1 If the Customer becomes subject to any of the events listed in Condition 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of Condition 9.1, the relevant events are:

9.2.1 enters into compulsory or members voluntary liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that purpose (save for the purposes of solvent amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to the Contract);

9.2.2 has an administrative receiver or receiver appointed over all or any part of its assets or undertaking;

9.2.3 suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a partnership) has any partner to whom any of the foregoing apply or who is declared bankrupt;

9.2.4 is the subject of any judgment or order made against it or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets;

9.2.5 has any action, step, legal proceedings or other procedure taken in respect of it by its directors, shareholders, bankers, creditors or any person seeking to appoint a liquidator or an administrator or takes any such act or step itself;

9.2.6 ceases or threatens to cease to carry on business.

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

10 Limitation of liability

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation; or

10.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to Condition 10.1:

10.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

11 Returns

Goods ordered in error may be returned to the Supplier provided that they are returned within twenty eight (28) days of delivery in unused, unopened, good re-saleable condition to Inspiration Healthcare Limited, Gildor House, West Street, Earl Shilton, Leicester, Leicestershire, LE9 7EJ, England and subject to the Customer paying a charge to the Supplier equal to fifteen per cent (15%) of the price of the Goods whereupon any risk and title which has passed to the Customer shall pass back to the Supplier.

12 Compliance with laws and regulations

12.1 The Customer shall be responsible for obtaining any necessary import licences or permits necessary for the delivery of the Goods to the Customer. The Customer shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods.

12.2 The Customer warrants to the Supplier that it has informed the Supplier of all laws and regulations affecting the manufacture, sale, packaging and labelling of Goods which are in force within the territory in which the Goods will be delivered (or any part of it) at the date of the Order and shall give the Supplier as much advance notice as reasonably possible of any prospective changes in such laws and regulations up to and including the date of delivery.

12.3 The Customer agrees to keep full and proper books of account and records showing clearly all transactions and proceedings relating to the Products including accurate records (by batch number) of all Products supplied by the Customer to its customers, for a period of seven (7) years from the date of supply to the customers.

13 Force majeure

13.1 **Force Majeure Event** means any circumstance not within a Party's reasonable control including, without limitation:

13.1.1 acts of God, flood, storm, drought, earthquake or other natural disaster;

13.1.2 epidemic or pandemic;

13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

13.1.4 nuclear, chemical or biological contamination or sonic boom;

13.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

13.1.6 collapse of buildings, breakdown of plant or machinery, fire, explosion or accident;

13.1.7 any labour or trade dispute, difficulty or increased expense in obtaining workers, materials or transport, strikes, industrial action or lockouts;

13.1.8 non-performance by suppliers or subcontractors; and

13.1.9 interruption or failure of utility service.

13.2 Provided it has complied with Condition 13.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3 The Affected Party shall:

13.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract;

13.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and



13.3.3 as soon as reasonably possible after the end of the Force Majeure Event, notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under the Contract.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than eight (8) weeks, the Party not affected by the Force Majeure Event may terminate the Contract by giving thirty (30) days' written notice to the Affected Party.

14 General

14.1 Assignment and subcontracting

14.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

14.2 Notices

14.2.1 Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax.

14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address communicated by either Party from time to time; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

14.2.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance

14.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.4 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 Third party rights



A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

14.7 Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.