

## CONDITIONS OF SALE

### 1. INTERPRETATION

- 1.1 In these conditions 'BUYER' means the person who accepts a Quotation of the Seller for the sale of the Goods or whose Order for the Goods is accepted by the Seller.  
'GOODS' means the Goods to be supplied or the service to be performed as specified in any Quotation issued by the Seller to the Buyer.  
'SELLER' means The TPS Healthcare Group Ltd.  
'ORDER' means Order placed by the Buyer for the supply of Goods.  
'CONDITIONS' means the terms and Conditions set out in this document and (unless the context otherwise requires) includes any special terms and Conditions agreed in Writing between the Buyer and the Seller.  
'CONTRACT' means the Contract for the purchase and sale of Goods entered into between the Buyer and the Seller.  
'QUOTATION' means any Quotation for the supply of Goods issued by the Seller.  
'WRITING' includes telex cable facsimile transmission and comparable means of communication.
- 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.
- 1.3 The headings in these Conditions are for convenience only and shall not affect the interpretation.

### 2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written Quotation of the Seller and subject to the Conditions which shall govern the Contract to the exclusion of any other terms and Conditions subject to which any such Quotation is accepted or any such Order is made is made or purported to be made by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely upon such representation save in the contents of the Quotation.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical clerical or other error or omission in any sale literature Quotation price list acceptance offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. ORDER AND SPECIFICATIONS

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The Buyer declares that he has read the Quotation for the Goods in these Conditions and accepts the same as constituting the whole of the agreement between the parties.
- 3.4 The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's Quotation or as otherwise agreed in Writing.
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Seller shall indemnify the Seller against all loss damages and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any person which results from the Seller's use of the Buyer's specification.
- 3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.
- 3.7 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

### 4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's price list current at the date of acceptance of the Order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without notice to the Buyer.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the seller which is due to any factor beyond the control of the Seller (such as without imitation any foreign exchange currency regulation alteration of duties significant increase in the costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any Quotation or in any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices given are inclusive of carriage.
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be liable to pay to the Seller.

### 5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall not be the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make payment on the date due then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:
- 5.3.1. cancel the Contract or suspend any further deliveries to the Buyer;
- 5.3.2. appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other Contract between the Buyer and Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 4 per cent per annum above Barclays Bank Plc base rate time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)
- 5.3.4. a surcharge of £20 in respect of administration costs.

### 6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Seller to the Buyer's premises or if agreed by the Seller to some other place as requested by the Buyer.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:

- 6.5.1. store the Goods until actual delivery and charge the Buyer reasonable costs (including insurance) of storage or;
- 6.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract.

### 7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer when the Goods leave the Seller's premises or if the Buyer wrongfully refused to accept delivery of the Goods at the time when the Seller is in a position to effect delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds in payment in full of the price of the Goods.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods properly stored protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge in any way charge by the way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

### 8. WARRANTIES AND LIABILITY

- 8.1 Subject to the Conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2 No guarantee can be given or implied as conditions of use are beyond the Seller's control.
- 8.3 Subject as expressly provided in these Conditions (except where the Goods are sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977) all warranties Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold under a consumer transaction as defined by the Consumer Transaction (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss or profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform and of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as cause beyond the Seller's reasonable control:
- 8.6.1. Act of God explosion flood tempest fire or accident.
- 8.6.2. war or threat of war sabotage insurrection civil disturbance or requisition.
- 8.6.3. acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority.
- 8.6.4. import or export regulations or embargoes.
- 8.6.5. strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).
- 8.6.6. difficulties in obtaining raw materials labour or machinery.
- 8.6.7. power failure or breakdown in machinery.

### 9. SECRECY

- 9.1 The Buyer shall keep secret and shall not divulge to any further third party an information (technical or otherwise) given by the Seller relating to the Goods supplied without the prior written consent of The TPS Healthcare Group Ltd

### 10. INSOLVENCY OF BUYER

- 10.1 This clause applies if:
- 10.1.1. the Buyer make any voluntary agreement with its creditors or becomes subject to administration Order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise for the purpose of amalgamation or reconstruction); or
- 10.1.2. an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
- 10.1.3. the Buyer ceases or threatens to cease to carry on business; or
- 10.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyers and notifies the Buyer accordingly.
- 10.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.

### 11. GENERAL

- 11.1 Any notice required or permitted to given by either party to the other under these Conditions shall be in Writing addressed to that party at 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.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part of the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.4 Any dispute arising under or in connection with these Conditions or in the sale of these Goods shall referred to arbitration in accordance with Arbitration Acts 1950 to 1979 by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 11.5 The Contract shall be governed by the Laws of Scotland.
- 11.6 This Agreement embodies and sets forth the entire agreement and understanding of the parties and supercedes all prior oral or written agreements understandings or arrangements related to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement understanding or arrangement which is not set forth in this Agreement.