

TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in writing, these terms and conditions (**Conditions**) govern all contracts for the sale of goods (**Goods**) by Heraeus Medical Australia Pty Limited (ACN 002 635 583) (**Company**) to the customer (**Customer**). All other terms and conditions, express or implied, are excluded to the fullest extent permitted by law, including any terms and conditions in the Customer's order for Goods (**Order**).

1. Quotations, Orders and creation of Contract

Any quotation from Company to Customer is submitted on a confidential basis and is an invitation to treat only, not a contractual offer. Company may, in its absolute discretion, reject any Order or accept any Order in whole or in part.

A contract for the sale of Goods (**Contract**) will be formed, in accordance with the Order and these Conditions, when Company commences the necessary actions on its part to supply the Goods ordered by Customer.

2. Prices and payment

Goods are invoiced in accordance with the relevant quotation or agreement between Company and Customer, or else from Company's price lists current at the date of delivery. Prices are quoted exclusive of GST and Customer agrees to pay GST in accordance with the tax invoice.

Unless otherwise agreed in writing, payment for Goods is due within 30 days of the end of the month in which an invoice is issued without deduction or set off. All payments are to be made by cheque, or direct deposit into the account notified by Company. Failure to pay an amount on the due date entitles Company to, without prejudice to any other remedy, suspend delivery of an Order or cancel any Contract. Customer will be liable for all costs and expenses incurred by Company in obtaining (or attempting to obtain) a remedy for any failure by Customer to pay on the due date.

3. Risk and delivery

Risk in the Goods will pass to Customer upon delivery. Delivery or dispatch dates are given or accepted by Company in good faith, but not guaranteed unless stated to be "guaranteed" in writing. Company will not be liable for any claim for loss or damages if Company is delayed or prevented from delivering Goods for any reason. Other Orders may incur a freight/handling charge.

4. Title

In this clause 4, 'PPSA' means the *Personal Property Securities Act 2009* (Cth) (as amended) and the terms 'Register', 'Security Agreement', 'Security Interest' and 'Purchase Money Security Interest' have the meanings given to them in the PPSA.

Company will retain ownership of the Goods until it has received payment in full for these and for all other goods supplied by Company. Until ownership passes to Customer, (a) Customer, (i) must insure the Goods against all usual risks to full replacement value and hold on trust for Company any insurance monies received for the Goods, (ii) must keep the Goods separate and clearly identified as Company's property, (iii) may sell or otherwise dispose of the Goods in the ordinary course of business, provided Customer holds any proceeds on trust for Company, and (b) where Customer processes or commingles the Goods into other property, Company takes title to that other property as well.

Customer acknowledges that each Contract constitutes a Security Agreement under the PPSA and that Company may Register its Security Interest in the Goods and any proceeds of the sale of the Goods as a Purchase Money Security Interest. Customer must promptly execute documents and take other actions required by Company to enable Registration of the Security Interest, or to perfect or correct any registration. Where the PPSA applies to action taken by Company in relation to the Goods, Customer, (a) agrees that sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply, and (b) waives its right to receive any notices Company is required to give under the PPSA (to the extent that the notice can be waived). In the circumstances described in clause 10, Customer's right to sell, use or part with possession of the Goods will terminate immediately and, without prejudice to Company's other remedies, Company has the right to enter Customer's premises and to regain possession of the Goods.

5. Returned Goods

Company will only accept returned Goods for credit if the Goods have an adequate shelf life, require no repackaging and are in an 'as-new' saleable condition, (a) within 7 days of the date of the invoice, or (b) on and from 7 days of the date of the invoice, for a restocking fee of 25% of the total value of the returned Goods (which may be deducted from the credit note). Return freight expenses will not be reimbursed.

6. Performance

Customer acknowledges, (a) it has relied on its own enquiries concerning the performance of Goods and not on any information, services or recommendation given by Company, and (b) that all descriptive specifications, data, dimensions and weights provided by Company or otherwise contained in Company's catalogues, price lists or other advertising material are approximate only and shall not form part of the contractual description of the Goods unless agreed to in writing by Company, in which case such specifications shall be subject to recognised trade tolerances.

7. Warranties and limitations on liability

Company will endeavour to transfer to Customer the benefit of any warranty or guarantee given by the manufacturer of the Goods. All other warranties and representations whether statutory or otherwise, express or implied, and/or oral or written, as to the state, quality or fitness of the Goods are expressly excluded except any implied conditions and warranties which are expressed to be incapable of exclusion by the *Competition and Consumer Act 2010* (Cth) (as amended) or any other statute. Where such statutory provisions apply, the obligation of Company is limited, to the extent permitted by law, to the cost of repairing or at the option of Company replacing the Goods.

8. Claims

Customer must inspect the Goods upon delivery to ensure the Goods have been delivered in full, are in good working order and free from damage and defects. Any claim by Customer of Goods damaged, lost in transit or short delivered must be made in writing to Company within 7 days of delivery (and must quote the invoice number). Customer must give notice of any defect in the Goods within 7 days of learning of the defect. All Goods that are alleged to be defective must be returned by Customer to Company, if requested, by Company's nominated carrier. Customer will bear the freight cost for the return of Goods which are found not to be defective.

9. Disclaimer

To the extent permitted by law, Company (and its officers, directors, employees, agents or successors) will not be liable for any loss, damage or expense sustained or incurred by Customer or any other party in consequence of or resulting directly or indirectly out of the supply of Goods by Company, the use or receipt of Goods, any breach by Company of any Contract, or the negligence of Company. It is understood that Customer will test and use the Goods as they are intended to be used according to the practices standard in the industry and in strict compliance with all applicable laws and regulations.

Without limiting the generality of the above, Company will not, in any circumstances (including any fault or negligence of Company), be liable for any indirect or consequential losses (including loss of goodwill, business or anticipated savings), loss of profits or use, any rectification costs or any third party claims in connection with Goods or a Contract.

10. Termination and suspension

If Customer defaults on a payment, becomes insolvent or bankrupt, calls a meeting of creditors or goes into liquidation, Company may, without prejudice to its other rights, suspend delivery, cancel any Order or require payment in cash on delivery of Goods.

11. Confidentiality

Customer acknowledges that the price of Goods set out in any quotation or Contract, any variation of the payment terms set out in clause 3 and any special conditions agreed in writing between Company and Customer are Confidential Information of Company. Customer may not disclose or otherwise make available such Confidential Information other than to their own employees involved in the Contract, except with Company's prior written consent.

12. Governing Law

Each Contract is governed by the laws of New South Wales, Australia and both parties submit to the non-exclusive jurisdiction of the courts of that State.