

Terms & Conditions of Sale 2020

1. AGREEMENT

- a. This agreement is made between Teleflex Medical New Zealand (**Supplier**) and the Customer (**Customer**) described in the purchase order or any other document to which these terms apply which set out the Customer's details (**Purchase Order**).
- b. In consideration of the Customer paying the Supplier the amount charged by the Supplier for the Goods (**Payment**), the Supplier agrees to supply the Goods to the Customer on the terms and conditions set out below.
- c. Each party agrees to comply with the terms and conditions of this agreement.

2. PURCHASE ORDERS

- a. To order Goods from the Supplier, the Customer must place a Purchase Order with the Supplier (in the format provided by the Supplier).
- b. The Purchase Order must include the following information:
 - i. Purchase Order number;
 - ii. Billing and delivery address
 - iii. Delivery mode (for example, normal or urgent);
 - iv. Teleflex product catalogue number, description, pricing and quantity of goods;
 - v. Any special instructions; and
 - vi. Such other information as reasonably required by the Supplier.

3. MINIMUM ORDER VALUE & DELIVERY TERMS

- a. The Customer agrees that unless otherwise stated in the Purchase Order, a minimum order surcharge of \$50 plus GST will apply to any order for Goods under \$500.
- b. Customers requesting despatch outside the Supplier's usual modes of delivery (for example urgent orders or orders outside usual delivery hours) will be charged with additional costs incurred by the Supplier. These will be notified to the Customer by the Supplier in advance.

4. RISKS AND TITLE

- a. The risk in the Goods supplied by the Supplier will pass to the Customer upon delivery of the Goods by the Supplier to the location nominated on the order form.
- b. Title in the Goods remain vested in the Supplier until Payment for the Goods has been paid in full by the Customer. The Supplier or any person nominated by the Supplier will be entitled to enter the Customer's premises and retake possession of the Goods if Payment has not been made in accordance with this agreement. The Supplier will provide the Customer with prior written notice (being a minimum period of 48 hours) of the Supplier's intention to repossess the Goods and the Customer must ensure that the Supplier or the Supplier's nominee can gain access to the Customer's premises or any other premises where the Goods are stored. The Supplier will comply with the Customer's reasonable security arrangements while on the Customer's premises.
- c. While the Goods are stored on the Customer's premises (without having been used for their intended purpose) and title has not passed to the Customer, the Customer must hold the Goods separate from other goods as to enable them to always be readily identified as the property of the Supplier.

5. PAYMENT TERMS

- a. In consideration of the Supplier supplying the Customer with the Goods, the Customer must pay the Supplier by the 20th of the next month following invoice.
- b. In the event that the Customer does not pay the Supplier in accordance with this agreement, the Customer agrees to pay the Supplier all collection charges on demand, including, but not limited to, all debt collectors' expenses, court costs and solicitors' fees.
- c. The Supplier may suspend the performance of this agreement in part or in full if the Customer fails to pay the Supplier as set out in this clause.
- d. All Payments due to the Supplier under this agreement are exclusive of GST.
- e. Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). Terms used in this clause have the meanings given to them in the *A New Tax System (Products and Products Tax) Act 1999* (Cth).

6. PAYMENT OPTIONS

The Customer must use the following payment option to pay the Supplier. All other payment methods must be approved by the Supplier prior to such method being used.

- a. Electronic Funds Transfers (direct deposit):
BANK: HSBC New Zealand
NAME: Teleflex Medical New Zealand Ltd
BSB: 302904
ACCOUNT NO: 0309536-061

7. INSPECTION AND CREDIT CLAIMS

- a. The Customer shall inspect all Goods promptly upon receipt at point of delivery and may reject only those Goods which are damaged or do not meet specifications set out in this agreement.
- b. The Customer must comply with clause 8 and the Supplier's Return Products Policy when returning the Goods to the Supplier.

8. RETURNED PRODUCTS POLICY

a. Clauses applying to return of all Goods

- i. The Customer acknowledges that the Customer has been provided with the Teleflex Return Products Policy and must (in addition to this agreement) comply with the terms of that policy (as may be updated from time to time) when returning the Goods to the Supplier.
- ii. For all claims in relation to Goods, authorisation must be obtained from the Supplier's customer service representative prior to returning any Goods. When phoning or writing for the authorisation and a return goods authorisation number (**RGAN#**), the Customer must provide the customer service representative with:
 1. the Customer's name or customer number, as it appears on the invoice;
 2. the Customer's phone number and person to contact;
 3. the Customer's applicable Order Number;
 4. the product catalogue number and description;
 5. lot or serial number of Goods;
 6. quantity of Goods being returned;
 7. the reason for the return; and
 8. the Supplier's invoice number and date.
- iii. Returns must be shipped to the Supplier (at the Customer's risk), unless otherwise authorised by the Supplier at its discretion.
- iv. All Goods sent to the Supplier must be accompanied by the following information:
 1. the information provided to the customer service representative under clause 8.b.ii; and
 2. RGA Number.
- v. All returned Goods must be sent to the following address:
Teleflex Medical New Zealand
C/O: Expeditors
21 Airpark Drive,
Auckland Airport 2022
New Zealand
- vi. Goods authorised for return by the Supplier must be sent by road freight with a carrier approved by the Supplier (as advised by the Supplier at the time the RGA Number is allocated). The Customer will be liable for all freight costs unless otherwise agreed. The Supplier:
 1. may pay freight for Goods returned under clause 8.c if the Customer uses the Supplier's approved carrier;
 2. will not pay freight on Goods returned to the Supplier by any non-approved carrier.

- vii. All returns of Goods are subject to inspection by the Supplier (either upon delivery or within a reasonable time after receipt of the Goods by the Supplier). In the event that the inspected Goods do not conform with the requirements of this clause 8 (as applicable) the Supplier will not be obliged to accept the return of such Goods. All returns of Goods must be in complete boxes and within the minimum shelf life period.

b. Returning non-defective Goods

- i. This clause applies in circumstances where the Customer wishes to return non defective Goods to the Supplier (for example, where the Customer changes its mind). Where the Customer wishes to return the Goods in these circumstances the Customer acknowledges and agrees as follows:
 - 1. all such returns are at the Supplier's discretion;
 - 2. the Customer will only be entitled to receive a credit (i.e. no refunds will be issued); and
 - 3. all Goods are subject to a 20% re-stocking fee (being 20% of the Payment for the applicable Goods).
- ii. Requests for credit of Goods in the following circumstances will be considered at the Supplier's sole discretion:
 - 1. Goods received by the Customer and kept for longer than 14 days or any claims made 14 days from the tax invoice date (whichever period is longer);
 - 2. sterile package products;
 - 3. special order instruments or Goods;
 - 4. etched or engraved instruments;
 - 5. obsolete or discounted Goods;
 - 6. instruments which have been used, are not in their original packaging, are damaged or defaced, or are not complete as shipped.

c. Returning defective Goods

- i. This clause applies in circumstances where the Customer wishes to return Goods which are defective or do not comply with the Supplier's specifications as set out in this agreement.
- ii. The Supplier will not be obliged to accept a claim for such Goods in any of the following circumstances:
 - 1. where the Customer or its personnel has failed to use, store or handle the Goods in accordance with recommended specifications;
 - 2. where the Customer or its personnel has caused or contributed to the defect (to the extent of the contribution);
 - 3. any misuse by the Customer or its personnel, including any intentional, negligent or unlawful act; and
 - 4. Goods for which the manufacturer's warranty has expired being a period referred to in clause 11. a.
- iii. The Supplier's liability to the Customer under this clause will be limited to (at the Supplier's discretion):
 - 1. replacing the defective Goods;
 - 2. issuing the Customer with a credit to the value of the Goods; or
 - 3. issuing the Customer with a refund.

9. TERMINATION

- a. The Supplier may terminate this agreement at any time by providing the Customer with written notice effective immediately.
- b. This agreement commences when the Purchase Order is accepted by the Supplier and ends when the parties have fulfilled their obligation.
- c. This clause survives the expiry of this agreement.

10. CONFIDENTIALITY

- a. "Confidential Information" means confidential information of a party and includes information whether verbal, written or in some other form, including electronic form, relating to:
 - Knowledge or information regarding the business transactions, affairs, clients or supplier's property, policies, procedures or activities of a party;
 - any document which is marked confidential; and
 - any document or information which a party advises the other party is confidential.
- b. The Customer must not disclose to any person any of the Supplier's Confidential Information for any purpose other than to perform the Customer's obligations under this agreement, except as required by law, court order or any governmental or regulatory authority.
- c. This clause survives the expiration or termination of this agreement.

11. WARRANTY

- a. The Supplier warrants that the Goods will be free from defects in materials and workmanship for the shelf life of the Goods indicated by the lot number and the expiry date on the Goods.
- b. The Supplier does not warrant against failures or damages to Goods caused by erosion, corrosion, misuse or improper use or application of the Goods by the Customer or its personnel, use of the Goods not in compliance with instructions or use of Goods by untrained or unqualified persons.
- c. Except as set forth above, the Supplier makes no other warranties concerning the Goods whatsoever.
- d. Except in circumstances where such warranties cannot be excluded by an applicable law, the Supplier does not make any other warranties (express or implied) in relation to the Goods, exclude all other warranties.

12. LIABILITY

Whilst all care is taken in undertaking the provision of Goods, to the full extent permitted by law, the Supplier (including its directors, officers, employees, agents or contractors) will not be liable to the Customer (or its officers, employees or agents) for any liability, loss or cost incurred in relation to this Agreement, whether under contract, negligence or other tort, equity or otherwise. To the extent that such liability cannot be excluded at law, the Supplier's liability to the Customer is limited to the actions set out in clause 8.c.iii.

13. GENERAL

- a. This agreement is governed by the laws of the State of New South Wales, Australia.
- b. Disputes will, as far as possible, be resolved by the parties undertaking negotiation in good faith. This clause does not prohibit a party to seek urgent interlocutory relief.
- c. This agreement constitutes the entire agreement between the parties and extinguish all previous drafts, agreements, arrangements and understandings, whether written or oral.
- d. All notices issued under this agreement must be made in writing and addressed to a party at the address shown in the Purchase Order.
- e. The Customer must not assign its rights and obligations under this agreement without the Supplier's prior written consent which must not be withheld unreasonably.
- f. In the event of any inconsistencies between this agreement and any other agreement between the parties or any attachments (if any) this agreement prevails to the extent of that inconsistency.
- g. The relationship between the parties is that of independent contractors and not of employer and employee, partners, joint venturers, fiduciaries or principal and agent.
- h. In this agreement, unless the context otherwise requires:
 - i. words importing the singular meaning include the plural and vice versa;
 - ii. references to any legislation or to any provision of any legislation shall include any modification or re-enactment;
 - iii. a reference to a party to a document includes that party's legal personal representatives, executors, successors and permitted assigns;
 - iv. a reference to "\$" or "dollars" is to New Zealand currency;
 - v. headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement; and
 - vi. "including" and other similar words are not words of limitation.

Last Updated 21st June 2020