

Terms and Conditions of Sale of Infutech Limited

The Buyer's attention is in particular drawn to the provisions of condition 9

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

The Buyer: the person, firm or the company who purchases the Goods from the Company, **the Company:** Infutech Limited (registered the Company number 06188392), **Contract:** an order between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions, **Delivery Point:** the place where delivery of the Goods is to take place under condition 4, **Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

3 DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation, invoice, despatch note or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4 DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business as notified in writing by the Buyer to the Company.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

4.4 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.5 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5 RISK/TITLE

5.1 The Goods are at the risk of the Buyer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

5.2.1 the Goods; and

5.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

5.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

5.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

5.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

5.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

5.5 The Buyer's right to possession of the Goods shall terminate immediately if:

5.5.1 The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

5.5.2 The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

5.5.3 The Buyer encumbers or in any way charges any of the Goods.

5.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

5.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

5.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

6 QUALITY

6.1 Company warrants that on delivery the Goods shall:

6.1.1 conform in all material respects with their description;

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

6.1.3 comply with all applicable laws and regulations and are CE IVD approved as necessary

6.2 Subject to condition 6.3, if:

6.2.1 the Buyer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 6.1;

6.2.2 the Company is given a reasonable opportunity of examining such Goods; and

6.2.3 the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in condition 6.1 if:

6.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with condition 6.2;

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

6.3.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;

6.3.4 the Buyer alters or repairs such Goods without the written consent of the Company;

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

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

6.4 Except as provided in this condition 6, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 6.1.

6.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

7 PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery. The price for the Goods shall be exclusive of any value added tax.

8 PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling at the latest 30 days from the date of invoice.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9 LIMITATION OF LIABILITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 Save as expressly provided for in these conditions, no term, condition or warranty is made or implied, including as to the quality (satisfactory or otherwise) or fitness of the Goods supplied, or to the effect that the Goods will be suitable for any particular purpose or for use under any specific conditions which may be known or made known to the Company.

9.3 The Company shall not be liable in contract, tort (including negligence or breach of statutory duty) statute or otherwise for any indirect or consequential loss or damage of any kind or for any increased costs or expenses or loss of profit, business, use, contract, revenues or savings, whether or not the Company has been advised of the possibility of such loss and for the avoidance of doubt the Buyer hereby waives all and any rights to claim any contribution from the Company in respect of any liability on the part of the Buyer to any third party in respect of any loss and/or injury or damage for which the Company is also liable to such third party pursuant to the Civil Liability (Contribution) Act 1978.

9.4 The Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid by the Buyer in respect of the order under which the claim arose.

9.5 Nothing in these conditions shall exclude or restrict any implied conditions or warranties or exclude or restrict the Company's liability to the extent that such cannot be excluded or restricted by law.

10 RETURNS

10.1 The Buyer shall inform the Company of any Goods return plan and the Company must approve such plan.

10.2 The criteria for return are:

10.2.1 Return requests shall be received by the Company within 30 days of receipt of Goods;

10.2.2 Goods must be in their original packaging, unopened and undamaged; and

10.2.3 Seals of all implantable Goods must not be damaged or broken.

10.3 Credit will be granted to the Buyer only if and when returned Goods are accepted by the Company.

10.4 The Company reserves the right not to accept returns of Goods where the "use before date" is less than 24 months from date of the return request.

10.5 The Company shall not accept return of:

10.5.1 Goods which have been manufactured to a specific order (except by prior agreement);

10.5.2 Goods having their "use before date" expired or less than six months to run after the date of return or

10.5.3 Goods not in their original pack/box/set quantities.

11 THE BUYER TO PROVIDE NOTIFICATIONS

The Buyer shall notify the Company immediately in writing of any information coming to the attention of the Buyer relating to the performance and/or safety of the Goods, including (without limitation) information relating to failure, malfunction, deterioration in materials and/or performance.

12 TERMINATION

12.1 Without prejudice to any other right or remedy it may have, the Company may at any time by notice in writing to the Buyer terminate or suspend the Contract if:

12.1.1 the Buyer breaches any of its obligations under these conditions; or

12.1.2 the Buyer becomes subject to any of the procedures set out at clauses 5.5.1 or 5.5.2.

13 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or

delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 120 days, either party shall be entitled to give notice in writing to the other to terminate the Contract.

14 GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 14.6 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.