

TERMS AND CONDITIONS - DIAGMED HEALTHCARE LIMITED

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

"**ADR Notice**" has the meaning given to it in clause 11.7.2;

"**Business Day**" means a day (other than a Saturday, Sunday or English public holiday) when banks in London are open for business;

"**CEDR**" means the Centre for Effective Dispute Resolution;

"**Conditions**" means the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6;

"**Contract**" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

"**Customer**" means the person or firm who purchases the Goods from the Supplier;

"**Customers Premises**" means the premises stated in the Customer's Order where Delivery is to take place;

"**Delivery**" means the Goods being placed at the Customer's disposal in accordance with the relevant Incoterm 2010 as set out in clauses 4.1 and 4.2;

"**due date**" has the meaning given to it in clause 7.7;

"**Force Majeure Event**" means has the meaning given in clause 10;

"**Goods**" means the goods (or any part of them) set out in the Order;

"**International Customer**" means a Customer whose premises, for the purposes of Delivery are outside the UK;

"**Order**" means the Customer's order for the Goods whether placed orally, or in writing;

"**Specification**" means any specification for the Goods, including any related plans and drawings, provided by the Supplier from time to time;

"**Supplier**" means Diagmed Healthcare Limited (registered in England and Wales with company number 04707660);

"**Supplier's Premises**" means at the Supplier's premises at Lumley Close, Thirsk Industrial Park, Thirsk, North Yorkshire, England YO7 3TD;

"**UK Customer**" means a Customer whose premises for the purposes of Delivery are in the UK;

"**VAT**" has the meaning given to it in clause 7.4; and

"Warranty Period" has the meaning given to it in clause 5.1.

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 and any subordinate legislation made under that statute or statutory provision;
- 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; and
- 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 Each Order by the Customer 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 are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted upon the earlier of:
 - 2.3.1 the Supplier issuing the Customer an invoice; or
 - 2.3.2 Delivery of the Goods,at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the Customer and the Supplier.
- 2.5 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.
- 2.6 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.
- 2.7 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless otherwise stated.

3. GOODS

3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.

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

4. DELIVERY

4.1 Where the Customer is a UK Customer, the Supplier will deliver the Goods DDP (Customer's Premises) Incoterms 2010, unless otherwise agreed in writing by the Supplier. Notwithstanding the foregoing, the Supplier shall be entitled to charge the Customer for the cost of Delivery to the Customer's Premises and may require payment in advance in respect of the costs of Delivery.

4.2 Where the Customer is an International Customer, the Supplier will deliver the Goods Ex Works (Supplier's Premises) Incoterms 2010. At the request of the International Customer, the Supplier may agree, at its absolute discretion to deliver the Goods DDP (Customer's Premises) Incoterms 2010.

4.3 Each Delivery of the Goods will be accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the delivery address, 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.

4.4 Delivery of the Goods shall be completed on the Goods' arrival at the delivery location as specified in accordance with the relevant Incoterms set out in clauses 4.1 or 4.2 (as applicable) and the Supplier shall ensure that the Goods are reasonably packaged prior to Delivery.

4.5 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 information or instructions that are relevant to the supply of the Goods.

4.6 If the Supplier fails to Deliver the Goods, the Customer shall immediately notify the Supplier of such failure, and if following a reasonable period after such notification the Supplier has still failed to Deliver the Goods its liability shall be limited to the price paid 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 information or instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept Delivery of the Goods within 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:

- 4.7.1 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;
 - 4.7.2 the Supplier shall store the Goods until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - 4.7.3 any costs related with re-delivery of the Goods shall be invoiced to the Customer.
- 4.8 If 10 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 Delivery costs, reasonable storage and selling costs, retain any for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 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, and for a period of 12 months from the date of Delivery ("**Warranty Period**"), the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Specification;
 - 5.1.2 be free from material defects in design, material and workmanship;
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's Premises at the Customer's cost,
- the Supplier shall, at its option, repair, replace or recondition the defective Goods and such action shall be the Customers' sole remedy in respect of such Goods.
- 5.3 The Customer shall within 10 Business Days of Delivery of the Goods verify in writing to the Supplier that the Goods delivered fulfil the requirement of the Order. Any discrepancy with the Order should be set out in writing to the Supplier within 10 Business Days of Delivery.
- 5.4 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- 5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- 5.4.2 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;
- 5.4.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.4.5 the defect arises as a result of fair wear and tear, consumable use, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.4.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 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.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods will pass in accordance with the relevant Incoterm 2010 in accordance with the provisions set out in clauses 4.1 and 4.2.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds in the currency specified in the Supplier's invoice) for:
 - 6.2.1 the Goods; and
 - 6.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and

6.3.6 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 only, but not otherwise.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, 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.

7. PRICE AND PAYMENT

7.1 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 in force as at the date of Delivery.

7.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 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);

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

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

7.3 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.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("**VAT**") or any replacement or equivalent sales tax. 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.

7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery unless the Supplier notifies the Customer in advance that payment will be required prior to Delivery.

7.6 The Customer shall pay each invoice in full and in cleared funds within 30 days of the date of the invoice unless otherwise specified by the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**due date**"), then the Customer shall pay interest on the overdue amount at

the rate of 8% per annum above the Bank of England's base rate from time to time, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 7.8 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.

8. INSOLVENCY

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, 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.

- 8.2 For the purposes of clause 8.1, the relevant events are:

- 8.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.4 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

- 8.2.6 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 8.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.7 (inclusive);
 - 8.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and
 - 8.2.10 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2 fraud or fraudulent misrepresentation;
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 9.1.4 defective products under the Consumer Protection Act 1987; or
 - 9.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 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:
 - 9.2.1.1 loss of profit; or
 - 9.2.1.2 loss of goodwill; or
 - 9.2.1.3 loss of business; or
 - 9.2.1.4 loss of business opportunity; or
 - 9.2.1.5 loss of anticipated saving; or
 - 9.2.1.6 loss or corruption of data or information; or

9.2.1.7 special, indirect or consequential damage,

arising under or in connection with the Contract; and

9.2.2 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 100% of the price of the Goods purchased under the Contract.

10. FORCE MAJEURE

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event, provided that nothing in this clause 10 shall relieve the Customer from any obligation to pay any sums due under the Contract. For the purposes of this Contract a "Force Majeure Event" means any event beyond the affected party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, shortage of goods nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10.2 If either party is unable to perform its obligations due to any circumstance set out in clause 10.1 they must inform the other party, in writing, within 5 Business Days of their failure or delay in performing its obligations.

10.3 Any delay (caused as a result of the circumstances set out in clause 10.1) that exceeds six months, shall entitle either party to cancel the Contract. This notice of cancellation shall be in writing, and shall set out the details of cancellation, including any details of complying with any outstanding obligations.

11. GENERAL

11.1 Assignment and subcontracting

11.1.1 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.

11.1.2 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.

11.2 Notices

11.2.1 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 clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; 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 or e-mail, one Business Day after transmission.

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

11.3 **Severance**

11.3.1 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.

11.3.2 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.

11.4 **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.

11.5 **Third party rights**

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

11.6 **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.

11.7 **Governing law and jurisdiction**

11.7.1 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.

11.7.2 If any dispute arises in connection with this Contract the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other party to the dispute requesting mediation. A copy of the

request should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.