

Medical Wire and Equipment Co (Bath) Limited Conditions of Sale

The Buyer's attention is in particular drawn to the provisions of condition 10.

1. INTERPRETATION

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

Buyer: the person, firm or company who purchases the Goods from the Company.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Company: Medical Wire and Equipment Co (Bath) Limited.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 2.3.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Customer Packaging: means any specific packaging required by the Customer in relation to the Goods (including pallet type).

Delivery Point: the place where delivery of the Goods is to take place under condition 4.1.

Force Majeure Event: an event, circumstance, or cause beyond a party's reasonable control.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Minimum Order Value: in the case of orders where delivery takes place within the United Kingdom, £75 and in the case of orders where delivery takes place outside the United Kingdom, £150.

Restocking Charge: an amount equal to 30% of the price paid by the Buyer for such Goods which the Company agrees may be returned to the Company.

Special Documents: any documentation required by the Buyer in relation to the Goods other than an invoice.

1.1 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.

1.2 Words in the singular include the plural and in the plural include the singular. 1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 and subject (where applicable) to the terms of any agreement between the parties appointing the Buyer as a distributor of the Company, 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 in accordance with 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.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order or (if earlier) the Company delivers the Goods to the Buyer. Any quotation is valid for the period of time specified in the quotation or, where no period is specified, 30 days from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation, acknowledgement of order or, where no quotation or acknowledgement of order is issued by the Company, as set out in the order placed by the Buyer.

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 nor have any contractual force and this is not a sale by sample.

3.3 The Company reserves the right to amend the specification of the Goods if required

by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company:

(a) for United Kingdom domestic Buyers delivery of the Goods shall take place at the location set out in the order;

(b) for Buyers outside of the United Kingdom delivery of the Goods shall take place at the Company's place of business unless a separate location is set out in the order.

4.2 Where delivery of the Goods take place at the location set out in the order, the Company shall deliver the Goods at any time after it notifies the Buyer that the Goods are ready and delivery is completed on the completion of unloading of the Goods at the Delivery Point.

4.3 Where delivery of the Goods takes place at the Company's place of business, the Buyer shall take delivery of the Goods within 3 days of the Company giving it notice that the Goods are ready for collection and delivery is completed on the completion of loading of the Goods at the Delivery Point.

4.4 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. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate instructions that are relevant to the supply of the Goods.

4.5 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.6 If for any reason the Buyer fails to accept or take delivery (as the case may be) of any of the Goods within 3 days of the Company notifying the Buyer that they are ready for delivery (except where such failure or delay is caused by a Force Majeure Event), or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:

(a) the Goods shall be deemed to have been delivered at 9.00 am on the third day after the day on which the Company notified the Buyer that the Goods were ready; and

(b) the Company may store the Goods until delivery takes place, and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 If ten days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

4.8 If the Goods are delivered in accordance with condition 4.1(b) the Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.9 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity ordered, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.10 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.

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

4.12 The Company shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the order, all relevant Buyer and Company reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.13 The Company shall be under no obligation to take back or offer refunds to the Buyer in respect of Goods ordered in error but may from time to time, by separate agreement in writing between the parties, enter into such an arrangement provided that the parties are able to agree relevant terms which shall include (without limitation) the payment by the Buyer of the Restocking Charge which the Company shall be entitled to set off against any refund due to the Buyer.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from completion of delivery.

6.2 Title to the Goods shall not pass to the Buyer until (the earlier of):

(a) the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account; and

(b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in condition 6.4.

6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

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

(b) 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; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; (d) 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; (e) notify the Company immediately if it becomes subject to any of the events listed in condition 11.1(b) to 11.1(d); and (f) give the Company such information as the Company may reasonably require from time to time relating to (i) the Goods; and (ii) the ongoing financial position of the Buyer. 6.4 The Buyer may resell the Goods before the Company receives payment for the Goods, solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (b) 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 and not as the Company's agent, and title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

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

6.6 At any time before title to the Goods passes to the Buyer, the Company may require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6.7 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.

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 order, or, if no price is quoted, the price set out in the Company's price list published on the date of delivery or deemed delivery or the Minimum Order Value (whichever is the higher).

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage, Special Documents, Customer Packaging and insurance, all of which amounts the Buyer shall (if applicable) pay in addition when it is due to pay for the Goods.

7.3 The Company may, by giving notice to the Buyer at any time up to 21 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

(b) any request by the Buyer to change the delivery date(s) or quantities or types of Goods ordered.

7.4 The Company may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any delay or other amendments caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

8. PAYMENT

8.1 The Company may invoice the Buyer for the Goods at any time after the acceptance of an order.

8.2 Subject to condition 8.5, unless otherwise agreed in writing payment of the price for the Goods is due in pounds sterling within 30 days of the date of the relevant invoice.

8.3 Time for payment shall be of the essence.

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

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.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

9. QUALITY

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 The Company warrants that (subject to the other provisions of these Conditions) on delivery, the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

(b) conform with their description;

(c) be free from material defects in design, material and workmanship; and

(d) be fit for any purpose held out by the Company.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless:

(a) the Buyer gives written notice of the defect to the Company, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and 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 for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if: (a) the Buyer makes any further use of such Goods after giving notice in accordance with condition 9.3; or

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

(c) the Buyer alters or repairs such Goods without the written consent of the Company;

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

(e) the defect arises as a result of damage during transit; or

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

9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, as the Company so requests, the Buyer shall, at the Company's expense, either return the Goods or the part of such Goods which is defective to the Company or permanently destroy the Goods and certify to the Company in writing that the Goods have been destroyed in accordance with any regulatory requirements.

9.6 Except as provided in this condition 9, the Company shall have no further liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 9.2.

9.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.8 These Conditions shall apply to any Goods replaced or repaired by the Company.

10. LIMITATION OF LIABILITY

10.1 The restrictions on liability in this condition 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in these Conditions excludes or limits any liability of the Company which cannot be legally limited, including liability:

(a) for death or personal injury caused by the Company's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) for fraud or fraudulent misrepresentation.

10.3 Subject to condition 10.2:

(a) the Company's total 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 the Contract shall be limited to an amount equal to 150% of all sums paid by the Buyer under the Contract; and

(b) the Company shall not be liable to the Buyer for: (i) loss of profit; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) depletion or damage of goodwill or (vi) indirect or consequential loss, which arise out of or in connection with the Contract.

10.4 This condition 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in condition 11.1(b) to condition 11.1(d), or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

11.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

11.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. ASSIGNMENT

12.1 The Company may assign the Contract or any part of it to any person, firm or company. 12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the priorwritten consent of the Company.

13. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. including (but not limited to), acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic or 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 180 days, the party not affected shall be entitled to give notice in writing to the party affected 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 or part-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 be deemed deleted and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision. 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 parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 This 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 submit to the exclusive jurisdiction of the English courts.

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid post or sent by e-mail:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the Buyer (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

15.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid post, three Business Days) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by e-mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

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