

GENERAL TERMS AND CONDITIONS OF SALE

1. Formation of the Contract

1.1. These terms and conditions replace any previous terms and conditions and shall apply to all contracts entered into between Hemodia UK Limited ("HEMODIA") and the person, firm or company buying goods from HEMODIA ("the Customer"). Any order placed with HEMODIA ("Order"), whether communicated by telephone, fax or email, shall constitute an offer by the Customer to purchase HEMODIA goods ("Goods") subject to these terms and conditions, which shall prevail to the exclusion of any other terms which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, save as expressly agreed in writing by HEMODIA.

1.2. Each Order shall only be deemed accepted by HEMODIA upon the earlier of HEMODIA accepting it in writing or confirming dispatch of the applicable Goods for delivery (each and collectively an "Order Confirmation"), at which point the contract between the parties in respect of that order ("Contract") shall come into existence. HEMODIA reserves the right to refuse to accept an offer, at its absolute discretion.

1.3. Any quotation for the Goods given by HEMODIA shall not constitute an offer. Any quotation shall only be valid for a period of 20 Business Days (meaning any day other than a Saturday, Sunday or public holiday in England on which banks in London are open for business) from its date of issue.

1.4. The Contract constitutes the entire agreement between the parties.

1.5. HEMODIA's failure or delay to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy and shall not prevent or restrict the further exercise of that or any other right or remedy.

2. Orders

2.1. Once received by HEMODIA, Orders may only be cancelled with HEMODIA's written consent. Requests for changes to quantities and/or types of Products in any Order must be in writing (including by email) and received by HEMODIA no more than 8 days after the initial Order date. In the event HEMODIA accepts any changes to an Order it will be entitled to amend any agreed Delivery Dates (as defined below) to take into account such change(s).

2.2. Any Order with a total value of less than £300 (excluding VAT and delivery charges) shall be subject to an administration fee of £20 (plus VAT).

2.3. If HEMODIA reasonably believes the Customer will not be able to make any payment due under a Contract by the date due set out in the Order Confirmation, HEMODIA may at its discretion require payment in advance or the supply by the Customer of guarantees in favour of HEMODIA, in the absence of which HEMODIA may terminate the Contract without liability to the Customer.

3. Goods

3.1. The Goods are as described from time to time. HEMODIA reserves the right to amend the specification of the Goods (and the associated packaging) if required by any applicable statutory or regulatory requirements.

3.2. Any samples, drawings, descriptive matter, or advertising produced by HEMODIA and any descriptions contained in HEMODIA'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.

3.3. All intellectual property rights (including without limitation, copyright, design rights and trade marks) and all other rights in the Goods and the packaging shall be and shall at all times remain owned by, or licensed by, HEMODIA.

4. Delivery

4.1. Period

All agreed or quoted delivery dates and times, as set out in the applicable Order Confirmation, ("Delivery Date") are approximate only and the time of delivery is not of the essence. HEMODIA shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined below) or the Customers failure to provide HEMODIA with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.2. Process

4.2.1. Each delivery of the Goods shall be accompanied by a delivery note which shows the date of the Order, all relevant Customer and HEMODIA reference numbers, the type and quantity of the Goods, special storage instructions (if any).

4.2.2. HEMODIA shall arrange delivery of the Goods to the location set out in the Order Confirmation or such other location as the parties may agree in writing at any time prior to the Goods being dispatched (the "Delivery Location").

4.2.3. Delivery of the Goods shall be completed on the Goods arrival at the Delivery Location.

4.3. Risks

All Goods are transported at the Customers risk, regardless of which party arranges or pays for such transport, or the mode of transport, although HEMODIA will use reasonable endeavours to assist the Customer in pursuing any claim against the carriers used to transport the Goods. Risk in the Goods shall pass to the Customer when they are despatched for delivery, and the Customer shall keep the Goods insured against all risks for their full price from this point.

4.4. Shortfall or damage

Where there is a shortfall of, or damage to, the Goods, the Customer must notify the carrier and HEMODIA in writing by recorded delivery within 3 days of receipt of the Goods, otherwise the Goods will be treated as accepted.

4.5. Returns

4.5.1. Without prejudice to the Customers obligations under clause 4.4, any claims relating to apparent defects or shortages shall only be accepted by HEMODIA if made in writing, by recorded delivery, within a period of 6 days following the receipt of the Goods, and it shall be the Customers responsibility to provide any proof of the claimed defects or shortages. HEMODIA reserves the right to verify such claims (in person or through its representatives) at the Customers premises.

4.5.2. The Customer may not return the Goods for any reason without the express written approval of HEMODIA, by fax or email. Returns must be by HEMODIA's selected carrier and shall be at the Customers expense except where HEMODIA accepts an apparent defect or shortage which has been properly notified to it.

4.5.3. Where HEMODIA accepts a claim relating to a defect or shortage, its liability shall be limited to replacing the defective Goods, or in the case of shortfall, providing the missing Goods, at its own cost.

4.5.4. The Customers acceptance of the Goods shall be evidence of the absence of any apparent defect or shortage. Any apparent defect or shortage must be notified according to the process specified in clause 4.5.1.

4.5.5. Any claim by the Customer relating to apparent defect or shortfall shall not suspend its payment obligations.

4.5.6. HEMODIA shall have no liability for any events during transportation including destruction, damage, loss or theft of the Goods, including where it selects or approves the carrier.

4.6. Suspension of deliveries

Where the Customer fails to make any payment under a Contract by the date due, HEMODIA may give the Customer 48 hours notice to pay such sum, following which, if HEMODIA has not received payment, it may suspend any current or future delivery of the Goods or cancel any outstanding Contracts.

4.7. Delays

If HEMODIA fails to deliver the Goods by the agreed Delivery Date, it shall (at HEMODIA's sole discretion) either notify the Customer of a revised delivery date, or shall arrange for a full refund of the price paid for the Goods to be made to the Customer.

4.8. Non-acceptance

Without prejudice to the Customers rights under clauses 4.4 and/or 4.5, if the Customer does not accept delivery of the Goods, HEMODIA may resell or otherwise dispose of part or all of the Goods.

5. Price

5.1. Prices listed

Any prices listed at HEMODIA's website (www.hemodia.com) are provided for information only. Unless otherwise agreed between the parties in writing, the price of the Goods shall be the price set out in the Order Confirmation, or, if no price is quoted, the price set out in HEMODIA's published price list in force as at the Delivery Date.

5.2. Price exclusions and charges

The prices shall exclude tax, delivery and packaging charges. HEMODIA may, by notice to the Customer, increase the price at any time following acceptance of the Order and prior to delivery to account for shortages, fluctuation of foreign currencies, increases in taxes and duties, carriage costs, packaging costs, the price of raw materials, any request by the Customer to change the Delivery Date(s) and/or the type and/or quantity of Products ordered, or Force Majeure Events (as described in clause 12).

6. Installation and Use

6.1. The Customer will be responsible for the installation and proper use of the Goods.

6.2. Where the Goods constitute electro-medical devices for use in an operating theatre, the Customer must have received prior training and certification in their use and installation by a HEMODIA approved trainer in order to place an Order for such Goods.

7. Terms and conditions of payment

7.1. Payment

HEMODIA's invoices are payable in full and cleared funds by electronic payment or bank transfer within 30 days of the end of the month in which delivery takes place. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

7.2. Default of payment

If the Customer fails to make any payment due to HEMODIA under the Contract it shall pay interest from the due date on the overdue amount at the rate of one and a half times the interest rate provided for by the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amounts.

8. Title

8.1. Without prejudice to clause 4.3, title in the Goods shall pass to the Customer when HEMODIA receives payment in full (in cash or cleared funds) of all sums due for the Goods and all other sums due to HEMODIA from the Customer.

8.2. Until title in the Goods has passed to the Customer, the Customer shall: store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as HEMODIA's property; maintain them in satisfactory condition; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; keep them insured against all risks for their full price from the date of delivery; not allow them to become subject to a charge; and give HEMODIA such information regarding the Goods as HEMODIA may require from time to time

8.3. If, before title in the Goods passes to the Customer under clause 8.1, the Customer becomes subject to any of the insolvency events set out in clause 9 or fails to make any payment by its due date then, without limiting HEMODIA's other rights or remedies, the Customers rights under clause 8.4 shall cease and HEMODIA may enter any premises of the Customer or of any third party where those unsold Goods are stored in order to recover them.

8.4. Subject to clause 8.3, the Customer may sell the Goods in the ordinary course of its business (but not otherwise) before title has passed to it under clause 8.1. Where the Customer sells the Goods before this time: it does so as principal and not as HEMODIA's agent; and title in the Goods shall pass from HEMODIA to the Customer immediately before the Customers sale. The Customers rights under this clause only apply while the unsold Goods held by the Customer are greater in value than the sum of any payments due and outstanding to HEMODIA.

9. Termination

9.1. If the Customer becomes insolvent or if an order is made or a resolution is passed for the winding up of the Customer, or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Customers assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt or if the Customer shall fail to pay for any Goods on the due date and remains in default not less than 14 days after being notified in writing to make such payment. HEMODIA may immediately and without notice terminate all Contracts and refuse to accept Orders without prejudice to any rights which may be accrued to it prior to such termination

9.2. On termination of a Contract for any reason, the Customer shall immediately pay to HEMODIA all of HEMODIA's outstanding unpaid invoices and interest which has accrued under clause 7.2.

9.3. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.4. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. Warranty

10.1. HEMODIA shall pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable to the Goods. The Customer accepts that it shall not remove, alter or otherwise tamper with any trade marks, trade names, logos, numbers or other means of identification on the Goods, or the packaging of such Goods

10.2. HEMODIA warrants that those Goods whose title has passed to the Customer shall: (i) be free from material defects; (ii) conform in all material respects with their description; and (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), following their first use: for a period of 6 months for electro-medical devices; and for a period of 6 days for all other devices.

10.3. Subject to clause 10.4, if:

10.3.1. the Customer gives notice in writing to the HEMODIA within 5 Business Days following first use, together with sufficient evidence of first use (to HEMODIA's reasonable satisfaction (and in any event first use shall be deemed to have occurred 3 months following the Delivery Date)), of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.2;

10.3.2. HEMODIA is given a reasonable opportunity of examining such Goods (where the Customer (as requested by HEMODIA) returns such Goods to HEMODIA's place of business at the Customer's cost or makes such Goods available for inspection at the Customers place of business); and

10.3.3. HEMODIA confirms in writing to the Customer that such Goods are defective, HEMODIA shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

10.4. HEMODIA shall not be liable for the Goods' failure to comply with the warranty set out in clause 10.2 in any of the following events:

10.4.1. (where the Goods are made according to the Customers design instructions) any defect arises from design faults;

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

10.4.3. the defect arises because the Customer failed to follow HEMODIA'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;

10.4.4. the Customer alters or repairs such Goods without the written consent of HEMODIA;

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

10.4.6. the Customer makes any further use of such Goods after giving notice in accordance with clause 10.3.

10.5. Except as provided in this clause 10, HEMODIA shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.2

10.6. These Conditions shall apply to any repaired or replacement Goods supplied by HEMODIA.

10.7. HEMODIA's warranty in clause 10.2 shall replace all conditions and warranties on the part of HEMODIA implied by statute, common law or otherwise, all of which are expressly excluded to the fullest extent allowed by law. The Customers sole remedy under the warranty shall be the replacement or repair of the defective Goods.

11. Liability

11.1. HEMODIA shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit (whether direct or indirect), or for any indirect or consequential loss arising under or in connection with the Contract and HEMODIA's total liability to the Customer in respect of all other losses arising under or in connection with the Contract not governed by the warranty at clause 10.2 shall be limited to the price paid or payable by the Customer for the Goods under the Contract

11.2. Nothing in these conditions excludes or restricts HEMODIA's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; or any matter in respect of which it would be unlawful for HEMODIA to exclude or restrict liability.

12. Force majeure

12.1. HEMODIA shall not be liable for any breach of the Contract due to:

12.1.1. the Customers failure to provide HEMODIA with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or

12.1.2. causes beyond its control including without limitation accidents, fire, flood, storms, machine breakage, act of God, acts of terrorism, war, epidemics, labour dispute, shortages of supplies, failure of any means of transport, failure of utilities, failure of communications services or failure of banking services ("Force Majeure Event")

12.2. Where a Force Majeure Event applies, HEMODIA shall notify the Customer and reserves the right to postpone delivery of the Goods or to cancel the Contract by notice to the Customer.

13. Indemnity

The Customer shall indemnify HEMODIA against all costs and expenses (including but not limited to all interest and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by HEMODIA arising out of or in connection with the Customers breach of its obligations under the Contract.

14. Notices

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

14.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.1; 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 e-mail, one Business Day after transmission.

15. General

15.1. 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 agree that the courts of England and Wales will have exclusive jurisdiction to settle such disputes or claims

15.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without HEMODIA's prior written consent.

15.3. A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.4. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.5. No variation of these terms and conditions (save for updates to these terms and conditions issued by HEMODIA) shall be effective unless in writing and signed by HEMODIA.