

1. Definitions

- 1.1 "The Buyer" means the purchaser of the Goods.
- 1.2 "The Company" means Ivor Shaw Ltd t/a Pennine Healthcare, City Gate, London Road, Derby, Derbyshire, DE24 8WY.
- 1.3 "The Conditions" means these terms and conditions of sale.
- 1.4 "The Goods" means medical, surgical and other products supplied in the normal course of business by the Company to the Buyer.
- 1.5 "The Order" means an order for the Goods addressed to the Company in accordance with these Conditions.
- 1.6 "The Price" means the Order Price for the Goods being either the relevant list price, the contract price or the agreed price confirmed by the Buyer or where an Order is the subject of call off by the Buyer the price will be the price relating to the Goods at the date of dispatch.

2. Entire Agreement

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other terms and conditions, including any terms and conditions which the Buyer may purport to buy under including any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions.
- 2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing signed by an authorised signatory of the Company.

3. Price and Payment

- 3.1 The Price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
 - 3.2 Payment of the Price and VAT shall become due within 30 days of the date of the Company's invoice and time for payment is of the essence.
 - 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of the 4% above base rate of Lloyds Bank with a minimum rate of 8% and shall accrue at such a rate after as well as before any judgement.
 - 3.4 The Company reserves the right to increase the Price by written notice to the Buyer between the order acknowledgement for the Goods and the dispatch date to reflect any increase in the cost to the Company which is due to factors occurring after the Buyer's order is acknowledged which are beyond the reasonable control of the Company (including without limitation foreign exchange fluctuations taxes and duties and increases in the manufactures costs).
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- 3.5 The Company reserves the right to charge a fee for delivery, postage and packaging which will be itemised on the Buyer's invoice.
- 3.6 Overdue payments shall entitle the Company to:
 - 3.6.1 Terminate the contract, or any other Order with the Buyer, or
 - 3.6.2 Suspend delivery until it receives payment in full.

4. Exchange of Goods and Returns

- 4.1 The Company shall at its discretion consider requests for exchange or return of Goods only within 30 days of the delivery of the Goods.

5. Account Facilities

- 5.1 If the Buyer does not have a credit facility ("Account Facility") with the Company:
 - 5.1.1 Payment may be made by cash, cheque or credit card; and
 - 5.1.2 The Company reserves the right to require a deposit or payment in full prior to delivery;
 - 5.1.3 Where payment by cheque is tendered, the Company shall not be bound to deliver the Goods until the Company has cleared funds
- 5.2 If the Buyer has an Account Facility and chooses to make a payment by credit card the Company reserves the right to levy an administration charge.
- 5.3 Account Facilities are set up solely at the Company's discretion on receipt of trade and credit references.
- 5.4 The Company reserves the right to refuse or withdraw Account Facilities without reason at any time.

6. Delivery

- 6.1 Unless notified otherwise agreed by the Company the Goods will be delivered ICC Incoterms® 2020 terms Ex-Works by the Company to the Buyer. and risk shall pass to the Buyer in accordance with the agreed ICC Incoterms® 2020.
 - 6.2 The Buyer may elect to collect the Goods from the Company premises or arrange for its own carrier to collect the Goods from the Company premises and risk shall pass to the Buyer on such collection from the Company's premises.
 - 6.3 Where a Buyer requires urgent delivery of Goods forming an Order or part of an Order then the Company reserves the right to make a reasonable delivery charge for such delivery.
 - 6.4 The Company may elect to deliver the Goods comprising the Order by separate instalments.
 - 6.5 The Company at its discretion may grant to the Buyer standing orders and call off facilities.
 - 6.6 The Company shall endeavour to deliver the Goods to the timescale(s) set out in the Order but those dates are not intended to be binding upon the Company. Time is not of the essence on any agreed delivery date.
 - 6.7 The Buyer agrees to inspect the Goods on delivery and to notify the Company in writing within 2 working days of delivery of any shortfall in delivery or incorrect or damaged Goods.
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- 6.8 Where specifically agreed, the Buyer agrees to make available for collection by the Company from the Buyer's premises all pallets, cages and other reusable packaging belonging to the Company ("the Containers") within 5 working days of delivery of the Goods and once the goods are unloaded not to use such Containers for the Buyer's own use.
- 6.9 The Buyer agrees to reimburse the Company for the cost of repair or replacement of any lost or damaged Containers where the Buyer or its carrier is at fault.

7. Limitation of Liability

- 7.1 All terms conditions and warranties (whether implied or made expressly) whether by the Company or its servants or agents or otherwise relating to the quality and/or fitness for purpose of the Goods or any of the Goods are excluded.
- 7.2 The Buyer shall inspect the Goods on delivery and within 2 working days notify the Company of any alleged defect, damage or failure to comply with description or sample and shall afford the Company the opportunity to inspect any Goods the subject of such notification. If the Buyer fails to comply with these provisions then the Goods shall be conclusively presumed to be in accordance with the Order and free from any defect or damage that would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
- 7.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Company making good any shortage or replacing such Good's or if the Company elects by refunding a proportionate part of the Price.
- 7.4 The Company shall be under no liability whatsoever to the Buyer for any loss of profit, loss of use, loss of revenue, or any indirect or consequential loss suffered by the Buyer arising out of a breach by the Company of these Conditions provided that nothing in these Conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Company.
- 7.5 Given the specialised medical uses of the Goods the Company shall be under no liability to the Buyer in respect of the particular suitability of any of the Goods for any medical use
- 7.6 From time to time the Company may provide the Buyer with promotional material produced by manufacturers of the Goods and makes no warranty as to the accuracy of such material.
- 7.7 To the extent permitted by law, the Company's total liability in contract tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Order, shall be limited to the Price for the Order.

8. Cancellation

- 8.1 The Buyer may only cancel an Order at the Company's sole discretion.
- 8.2 The Company reserves the right, in its discretion, to charge the Buyer an appropriate handling fee of no less than 12.5% of the aggregate Price.
- 8.3 Where goods are ordered or manufactured specifically for the Buyer, then the Company reserves the right to charge the Buyer 100% of the order value upon cancellation.

9. Retention of Title

- 9.1 Property in the Goods shall pass when:
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- 9.1.1 The Buyer has paid the Price and VAT in full; and
 - 9.1.2 No other sums whatever are due to the Company.
- 9.2 Until property in the Goods passes to the Buyer in accordance with Clause 8.1 the Buyer shall:
 - 9.2.1 Hold the Goods and each of them on a fiduciary basis as bailee for the Company;
 - 9.2.2 Store the Goods (at no cost to the Company) separately from all other goods in its possession;
 - 9.2.3 Clearly identify them as the Company's property;
 - 9.2.4 Upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company and if the Buyer fails to do so the Company may enter upon the Buyer's premises and repossess the Goods;
 - 9.2.5 Insure and keep insured the Goods to the Price against 'all risks' to the reasonable satisfaction of the Company; and
 - 9.2.6 Whenever requested to by the Company, to produce a copy of such insurance policy.
- 9.3 Notwithstanding that property in any of the Goods has not passed from the Company, the Company shall be entitled to recover the Price and VAT.

10. Licences and Certificates

- 10.1 By making an Order the Buyer warrants that it is in possession of all current licences or certificates or any other requisite documentation to receive and deal in the Goods.

11. Notices

- 11.1 Any Notices pursuant to the Conditions shall be sent to the Company at Ivor Shaw Ltd t/a Pennine Healthcare, City Gate, London Road, Derby, Derbyshire, DE24 8WY, or the Buyer at the address notified to the Company from time to time.

12. Assignment

- 12.1 The Company may licence or sub-contract all or any part of its rights and obligations under these Conditions without the Buyer's consent.

13. Force Majeure

The Company shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control.

14. Dispute Resolution

- 14.1 If any dispute arises in connection with this Agreement, a Director from each of the parties or another senior representative with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
 - 14.2 If the dispute is not wholly resolved within 30 days of that meeting, the dispute shall be submitted to mediation in accordance with the CEDR Model Mediation Procedure.
 - 14.3 No party may commence any Court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation
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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.

15. Jurisdiction

- 15.1 The validity, construction and performance of these Conditions shall be governed by English Law.
 - 15.2 All disputes arising out of these Conditions shall be subject to the exclusive jurisdiction of the courts of England and Wales.
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