

BARRINGTON HEALTHCARE INTERNATIONAL LTD ("The Seller")  
CONDITIONS OF SALE 1995-2017

1. APPLICATION

- 1.1 These Conditions alone shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Seller with any customer ("the Buyer"). They shall apply in place of and prevail over any terms or conditions, (whether or not in conflict or inconsistent with these Conditions), contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically excluded or varied in writing by a director of or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished
- 1.2 Acceptance by the Buyer of delivery of the goods shall (without prejudice to Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 1.3 If, subsequent to any contract of sale which is subject to these Conditions, a contract of sale is made with the same buyer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions.

2. QUOTATIONS AND ACCEPTANCE

- 2.1 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller acceptance of the Buyer's order.
- 2.2 The Seller's acceptance of the Buyer's Order (including telephone orders) shall be effective only when the Seller sends to the Buyer a written order acknowledgement duly signed by an authorised representative of the Seller.

3. PRICES

- 3.1 The prices payable for the goods shall be those set out in the Seller's list prices current at the start of despatch. The Seller shall have the right at any time, upon giving the Buyer thirty (30) days written notice, to revise prices to take account of inflation and/or increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 3.2 Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price.

4. TERMS OF PAYMENT

- 4.1 Unless agreed otherwise in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the goods on or at anytime after delivery of the goods unless the goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.
- 4.2 Payment of invoices shall, unless otherwise agreed in writing, be made in full within thirty (30) days of the date of invoice. Time of payment shall be of the essence of all contracts between the Buyer and the Seller to which these Condition apply. The Seller reserves the right to suspend the provision of goods to the Buyer where any amounts are overdue under any contract with the Buyer until all such amounts have been paid.
- 4.3 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.
- 4.4 Interest shall be payable on overdue accounts at the rate of two per cent (2%) per month to run from the due date for payment until receipt by the Seller of the full amount (including any accrued interest) whether before or after judgment.
- 4.5 If in the opinion of the Seller the credit-worthiness of the Buyer shall have deteriorated prior to delivery of the goods the Seller may require full or partial payment of the price prior to such delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.
- 4.6 Notwithstanding any purported contrary apportionment by the Buyer all payments made by the Buyer to the Seller shall be apportioned first to goods which have been resold by the Buyer and then to goods which remain in the possession or under the control of the Buyer.

5. DELIVERY

- 5.1 Delivery or despatch dates mentioned in any quotation, order acceptance or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Time of delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by the service of any notice.
- 5.2 Delivery shall be EX-WORKS at the Seller's premises (in accordance with the provisions of INCOTERMS (1990) as revised from time to time) unless otherwise stipulated or agreed by the Seller. The Seller shall, at the Buyer's request arrange for suitable transport to the Buyer's premises (of such other premises as the Buyer may notify to the Seller from time to time), in which case the costs of transport incurred by the Seller shall be borne by the Buyer.
- 5.3 If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract or fails to take any action necessary on its part for delivery and/or shipment of the goods the Seller shall be entitled to terminate the contract with immediate effect, to dispose of the goods as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal of failure (including, without limitation, storage costs from the due date of delivery).
- 5.4 Unless otherwise expressly agreed the Seller may effect delivery in one or more instalments. Where delivery is effected by instalments each instalment shall be treated as a separate contract governed by these conditions.
- 5.5 Sector 32(2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in Section 32(3) of that Act.

6. RISK

- 6.1 Risk for the goods shall pass on delivery.
- 6.2 Any property of the Buyer in or under the Seller's possession or control and any property supplied to the Seller on behalf of the Buyer shall be held by the Seller at the Buyer's risk.
- 6.3 From the time of delivery until property in the goods passes to the Buyer in accordance with Condition 7, the Buyer shall insure the goods for their full value with a reputable insurance office. Upon request the Buyer shall use reasonable endeavours to have the Seller's interest in the goods noted on the insurance policy. Until property in the goods passes to the Buyer the Buyer shall hold the proceeds of any claim on such insurance policy on trust for the Seller and shall forthwith account to the Seller with such proceeds.

7. TITLE

- 7.1 Notwithstanding delivery and passing of risk, the goods shall remain the property of the Seller until such time as the Buyer shall have paid to the Seller the agreed price (together with any accrued interest) and all other amounts owed by the Buyer to the Seller in respect of any other contract for the sale of goods.
- 7.2 Until property in the goods has passed the Buyer shall be in possession of the goods in a fiduciary capacity and shall:
- 7.2.1 not part with possession of the goods otherwise than in accordance with Condition 7.1;
- 7.2.2 take proper care of the goods and take all reasonable steps to prevent any damage to or deterioration of them;
- 7.2.3 keep the goods free from any charge, lien or other encumbrance and store the goods in such a way to show clearly that they belong to the Seller;
- 7.2.4 notify the Seller forthwith upon the happening of any of the events set out in Condition 7.2.1; and
- 7.2.5 give the Seller such information relating to the goods as the Seller may from time to time require.
- 7.3 The Seller reserves the right to repossess and resell any goods to which it has retained title and the Seller's consent to the Buyer's possession of the goods and any right the Buyer may have to possession of the goods shall in any event cease:
- 7.3.1 if any sum owed by the Buyer to the Seller (whether in respect of the goods or otherwise) is not paid to the Seller by the date when it is due; or
- 7.3.2 upon the happening of any of the events set out in Condition 7.2.1; or
- 7.3.3 if the Buyer commits a breach of any contract with the Seller.
- 7.4 The Buyer hereby grants an irrevocable right and licence to the Seller and its servants and agents to enter upon all or any of the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any resort of any contract which is subject to these Conditions and is without prejudice to any accrued rights of the Seller under such contracts or otherwise.
- 7.5 Whilst the Buyer is in possession of the goods with the Seller's consent (but not otherwise) the Buyer may in the ordinary course of its business sell the goods provided that:
- 7.5.1 as between the Buyer and its sub-buyer or customer the Buyer shall sell the goods as principal and the Buyer shall not and shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person;
- 7.5.2 as between the Seller and the Buyer, the Buyer shall sell the goods in a fiduciary capacity as agent for the Seller, and
- 7.5.3 notwithstanding any agreed period of credit for payment of the price of the goods the Buyer shall pay the proceeds of such sales to the Seller forthwith upon receipt.
- The Buyer acknowledges that as a consequence of its fiduciary relationship with the Seller it is under a common law duty to the Seller to hold the proceeds of any such sales on trust for the Seller and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the terms of these Conditions.
- 7.6 The Buyer agrees immediately upon being so requested by the Seller to assign to the Seller all rights and claims which the Buyer may have against its sub-buyers or customers arising from such sales until payment is made in full as stated above.
- 7.7 Notwithstanding the provisions of this Condition 7 the Seller shall be entitled to bring an action against the Buyer for the price of the goods in the event of non-payment by the Buyer by the due date even though property in the goods has not passed to the Buyer and/or shall have the right by notice to the Buyer at any time after delivery to pass property in the goods to the Buyer as from the date of such notice.

8. THIRD PARTY RIGHTS

- 8.1 The Buyer shall indemnify the Seller against any and all losses, liabilities and costs incurred by the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.
- 8.2 In respect of international supply contracts (as defined by Section 26 of The Unfair Contract Terms Act 1977) only, the Seller shall have no liability to the Buyer in the event of goods infringing or being alleged to infringe the rights of any third party.

- In respect of all other sales, if at any time any allegation of infringement of letters patent, copyright or design rights is made in respect of the goods or if in the Seller's reasonable opinion such allegations likely to be made, the Seller may at its option and at its own expense:
- 8.2.1 modify or replace the goods without detracting from overall performance thereof, so as to avoid the infringement or
- 8.2.2 procure for the Buyer the right to continue to use the goods; or
- 8.2.3 repurchase the goods at the price paid by the Buyer less depreciation at such rate as is applied by the Seller to its own equipment.
- 8.3 The Buyer shall notify the Seller forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance as the Seller may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.
9. LIABILITY
- 9.1 The Seller shall not be liable to the Buyer:
- 9.1.1 for non-delivery unless a written claim is received by the Seller within seven (7) days from the date of the Seller's invoice or advice note, whichever is the earlier;
- 9.1.2 for shortages in quantity delivered unless the Buyer notifies the Seller of any claim for short delivery within fourteen (14) days of receipt of the goods and such notification is accompanied by correctly signed and marked delivery notes;
- 9.1.3 for damage to or loss of the goods or any part of them in transit (where the goods are carried by the Seller's own transport or by a carrier on behalf of the Seller);
- 9.1.4 for defects in the goods caused by fair wear and tear, abnormal or unsuitable conditions of storage on use or any act, neglect or default of the Buyer or of any third party;
- 9.1.5 for other defects in the goods unless notified to the Seller within **fourteen (14) days** of receipt of the goods by the Buyer or where the defect would not be apparent on reasonable inspection within **ninety (90) days** of installation.
- 9.2 Where liability is accepted by the Seller under Condition 9.1 the Seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods found to be damaged or defective and/or to refund the cost of such goods to the Buyer.
- 9.3 The Seller shall not be liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without the Seller's prior written approval and the Buyer shall indemnify the Seller against any and all claims and costs arising out of such claims to the extent that such repairs or remedial work have been performed by the Buyer or its agents.
- 9.4 The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstance exceed the cost of the defective, damaged or undelivered goods which give rise to such liability as determined by net price invoiced to the Buyer in respect of any occurrence or series of occurrences.
- 9.5 Subject to this condition 9:
- 9.5.1 All conditions, warranties and representations expressed implied by statute, common law or otherwise in relation to the goods are hereby excluded;
- 9.5.2 The Seller shall, unless provided otherwise by law, be under no liability to the Buyer for any loss, damage or injury, direct or indirect resulting from defects in design, materials or workmanship or otherwise howsoever arising (and whether or not caused by the negligence of the Seller, its employees or agents);
- 9.5.3 The Seller shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, howsoever caused, and including without limitation loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
10. PACKAGING
- The Buyer shall meet the cost of any special packaging requested by the Buyer or any packaging rendered necessary by delivery by any means other than the Seller's normal means of delivery. The Buyer shall unless otherwise agreed be solely responsible for the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
11. LICENCES AND CONSENTS
- If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods by the Buyer, the Buyer shall obtain the same at its own expense and if requested produce evidence of the same to the Seller on demand. Failure to obtain any licence or consent shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.
12. FORCE MAJEURE
- 12.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control ("force majeure circumstances") including but not limited to strikes, lockouts, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workers, materials or transport or other circumstances affecting the supply of the goods or of raw materials by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the goods by the Seller's normal route or means of delivery.
- 12.2 In force majeure circumstances the Seller may in its sole discretion terminate any contract for the supply of goods pursuant to these Conditions or cancel delivery of goods to the Buyer or may, with the agreement of the Buyer, deliver goods at an agreed rate of delivery commencing after any suspension of deliveries.
- 12.3 If due to force majeure circumstances the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.
13. SAMPLES
- Any samples supplied to the Buyer are supplied solely for information and in no way import any express or implied conditions or warranties as to quality, description, fitness for purpose or satisfactory quality and the Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the goods.
14. TERMINATION
- 14.1 If the Buyer (being an individual) enters into a voluntary arrangement or if a petition is presented for the making of a bankruptcy order against him or if he compounds with his creditors or if (being a company) an application for an order is made or a resolution is passed for the winding-up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Seller) or if a meeting is called to approve the appointment of a liquidator to the Buyer or if a petition is presented in the Court for the appointment of a liquidator to the Buyer or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Buyer or over any part of the Buyer's undertaking or if circumstances arise which might entitle the Court or a creditor of the Buyer to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt or commits a breach of any contract between the Seller and the Buyer the Seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries to the Buyer and/or exercise its rights under Condition 7 and/or by notice in writing to the Buyer terminate any contract with the Buyer.
- 14.2 Upon termination of any contracts pursuant to Condition 14.1 any indebtedness of the Buyer to the Seller shall become immediately due and payable and the Seller shall be relieved of any further obligation to supply any goods to the Buyer pursuant to such contracts.
15. ASSIGNMENT
- None of the rights or obligations of the Buyer and under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Seller.
16. LIEN
- The Seller shall be entitled to a general lien on all goods and property owned by the Buyer in the Seller's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any goods sold and delivered to the Buyer under any contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sums owed to the Buyer by the Seller.
17. HEARINGS
- The headings of these Conditions shall not affect the interpretation of these Conditions.
18. SEVERABILITY
- If any of these Conditions is held to be invalid, illegal or unenforceable in any respect, whether in whole or in part, such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of a Condition affected.
19. WAIVER
- Failure by the Seller to exercise or in exercising any right or remedy under any contract subject to these Conditions shall not constitute a waiver of the right or remedy or any other rights or remedies and no single or partial exercise of any right or remedy shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
20. NOTICES
- Any notice under or in connection with a contract subject to these conditions shall be in writing and may be delivered personally or sent by first class post pre-paid recorded delivery (and airmail if overseas) or by telefax to the party concerned at its last known address. Notices delivered personally shall be deemed to have been duly given when delivered, notice sent by first class post shall be deemed to have been duly given two (2) days after posting (six (6) days if given by airmail) and notices sent by telefax shall be deemed to have been duly given on the date of despatch.
21. GOVERNING LAW
- Any contract to which these Conditions apply shall be governed by, and construed in accordance with, English law.