

TERMS AND CONDITIONS OF TRADE – AUSTRALIA

DEVICE TECHNOLOGIES AUSTRALIA PTY LTD ABN 40 058 091 973

including any of its subsidiary companies ("Device Technologies") will supply medical goods and services ("Goods") in accordance with the following terms and conditions ("Terms")

Modified: October 2023

1. INTERPRETATION

In these Terms:

- (a) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- (b) "Business Day" means a day in which banks are open for business and specifically excludes Saturdays, Sundays and Public Holidays in Sydney, NSW;
- (c) "Consumer" means the definition of Consumer in section 4B of the Competition and Consumer Act 2010 (Cth);
- (d) "Healthcare Professional" means the definition of Healthcare Professional in the Medical Technology Industry Code of Practice;
- (e) "Goods" means any medical goods and services supplied by Device Technologies;
- (f) "Grantor" means the grantor of any security interest in the Goods, and is usually the Purchaser;
- (g) "Order" means an order (whether in writing, orally or through the Website) by the Purchaser to purchase Goods from Device Technologies;
- (h) "Purchaser" means a Healthcare Professional that is the purchaser of the Goods;
- (i) "Purchase Order" means the written order provided to Device Technologies by the Purchaser;
- (j) "Warranty Period" means the warranty period for the Goods being in accordance with the manufacturer's warranty period; and
- (k) "Website" means the internet-based portals that Device Technologies uses to provide information about it as a company and to provide access to its digital services.

Nothing in these Terms will be read or applied so as to exclude, restrict or modify or have the effect of excluding or modifying any condition, warranty, guarantee, right or remedy implied by law (Including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

2. GENERAL

- 2.1. The Goods and all other products and services sold and/or provided by Device Technologies are supplied in accordance with these Terms.
- 2.2. These Terms (which may only be waived or amended in writing and signed by Device Technologies) will to the extent of any inconsistency prevail over all and any terms or conditions of the Purchaser's Order.
- 2.3. If the Purchaser accesses the Website, including for the purchase of Goods, the Purchaser is responsible for compliance with all applicable laws, regulations and policies of all relevant jurisdictions.
- 2.4. No right, title, interest or license in any of Device Technologies' intellectual property is granted to the Purchaser unless specifically stated in writing from Device Technologies.
- 2.5. Nothing contained or implied in these Terms will create a joint venture, partnership or principal and agency relationship between Device Technologies and the Purchaser.

3. QUOTATIONS

- 3.1. If a quotation is provided to the Purchaser by Device Technologies then unless withdrawn, this quotation is open for acceptance within the period stated on the quotation or, where no period is stated, within thirty (30) days after the date shown on the quotation.
- 3.2. A quotation does not constitute an offer to sell and/or provide Goods but is an invitation to treat only. Device Technologies reserves the right to refuse any Order based on its quotation within seven (7) Business Days after the receipt of a Purchaser's Order.
- 3.3. A contract will be formed between Device Technologies and a Purchaser on the acceptance by Device Technologies of a Purchaser's Order and not otherwise.

4. ONLINE ORDERS

- 4.1. Pricing of select Goods will be provided on the Website and for these Goods no quotation will be required.
- 4.2. Purchasers will have the option to purchase these Goods directly from the Website.
- 4.3. In order to submit an Order for the Goods through the Website, the Purchaser must create and subsequently log in to an account on the Website. By creating an account, the Purchaser agrees to providing Purchaser information, including but not limited to the Purchaser's name (or company name), a contact number, email address and address for delivery. This information will be subject to Device Technologies' privacy policy which can be accessed at <https://www.device.com.au/privacy-policy>.
- 4.4. Before Purchasers can submit an online Order for the Goods, Purchasers will be required to:
 - (a) confirm that they have read these terms and conditions and that they agree to be bound by them;
 - (b) where purchasing on behalf of a company, confirm that they have the appropriate permissions or authority to purchase the Goods; and
 - (c) insert a valid and appropriate Purchase Order number.
- 4.5. It is the responsibility of the account holder to ensure any persons who have access to the Website for the purpose of commercial transactions are authorised to do so, and the account holder is responsible for notifying Device Technologies of the termination of the user account or, where available, will use the system to terminate this user account themselves.
- 4.6. All transactions entered into on the Website will be treated by Device Technologies as genuine and valid orders and Device Technologies accepts no responsibility or liability for transactions or representations made by any user that does not have appropriate permissions or authority to enter into the transactions. Any representation made that a user is a Healthcare Professional will be taken as valid by Device Technologies and if found to be contrary will be treated as fraudulent misuse of the Website by the user.

5. PRICES

- 5.1. All prices quoted either on the Website or included in a quotation are exclusive of all taxes, insurance and transport which will be the sole responsibility of the Purchaser, unless otherwise agreed in writing.
- 5.2. Prices for Goods will be charged at:
 - (a) where a quotation has been provided, the price stated by Device Technologies on a non-expired quotation; or
 - (b) where there is no quotation, the pricing ruling at the date of dispatch; or
 - (c) the pricing detailed on the Website.
- 5.3. All pricing on the Website is subject to change without notice.

6. DELIVERY

- 6.1. Device Technologies only delivers to addresses in Australia.
- 6.2. The Goods will be deemed to be delivered to the Purchaser at the time the Goods arrive at the Purchaser's premises. Device Technologies may arrange for transport of the Goods to a destination nominated by the Purchaser and the cost of such transport will be added to the price of those Goods.
- 6.3. Goods are at the Purchaser's risk from the time of delivery. The Purchaser is responsible for arranging any insurance over the Goods after delivery.
- 6.4. Device Technologies will not be liable for any loss occasioned by delay in delivery of and/or the procuring of Goods, whether consequential or otherwise.
- 6.5. If the Purchaser disputes proof of delivery, details of this dispute must be provided in writing to Device Technologies within seven (7) Business Days of delivery.

7. ADVERTISING

- 7.1. All information and advertising herein related to the supply of Goods is solely intended for Healthcare Professionals with a valid certification. A Healthcare Professional must rely on his or her own professional clinical judgment when deciding whether to purchase or use the Goods when treating a particular patient. Healthcare Professionals must be trained in the individual use of any of the Goods before use in a procedure or surgery. Healthcare Professionals must refer to the packaging, product label and/or instructions for use, including the instructions for cleaning and sterilisation (if applicable), before use of any Goods.
- 7.2. From time to time, Device Technologies may, at its sole discretion, choose to offer competitions or promotional terms and conditions ("Promotions") to a Purchaser. Promotions are intended to reward customer loyalty and it is the responsibility of the Purchaser to determine if Goods are suitable for their needs, or the particular needs of their patients. Promotions are based on measured criteria and may include cost-based rewards such as a price reduction, complimentary shipping and/or complimentary samples.
- 7.3. Device Technologies is a member of the Medical Technology Association of Australia Limited ('MTAA') and is required to adhere to the Medical Technology Industry Code of Practice <https://www.mtaa.org.au/code-of-practice>. As a member of MTAA, Device Technologies is committed to the improvement of patients' lives through the advancement of medical science and the contributions that high quality, effective and innovative Medical Technologies make in achieving these goals

8. PAYMENT

Payment for Orders through a quotation.

- 8.1. Where a quotation has been provided by Device Technologies and accepted by a Purchaser, Device Technologies' terms of payment are thirty (30) days from the date of the relevant invoice, unless otherwise stated on such invoice.
- 8.2. Device Technologies reserves the right to require payment with the Order or satisfactory evidence of the ability of the Purchaser to pay for the Goods ordered by the Purchaser. Interest at 10.5% is payable on amounts which are more than thirty (30) days overdue. Credit cards are accepted but surcharges may apply.

Payment for Orders through the Website

- 8.3. Where Goods are directly purchased from the Website by the Purchaser, the Purchaser will login to its account (as detailed in clause 4.3) and either pay on account (where this has been approved in advance), or through one of the other digital payment gateways offered. Payment gateways may or may not attract additional charges. Any additional fees or charges will be shown and need acceptance on checkout for the Order to be processed.
- 8.4. If the Purchaser has not been pre-approved to pay on account, then full payment for the Order must be processed through the Website before the Goods will be dispatched.
- 8.5. Once payment has been processed an order confirmation on screen or an email and receipt will be sent through to the Purchaser's email address.

9. TRANSFER OF PROPERTY

Title to Goods

- 9.1. Title to the Goods remains with Device Technologies until all monies owing to Device Technologies on any account have been paid or title to the Goods is vested in some other person by operation of law.
- 9.2. Until title to the Goods passes, the Purchaser will keep the Goods free from any charge, lien or other encumbrance.
- 9.3. Until title to the Goods passes, the Purchaser will:
 - (a) hold the Goods on a fiduciary basis as bailee for Device Technologies;
 - (b) keep the Goods separate from all other goods in its possession and marked in such a way that the Goods are clearly identified as the property of Device Technologies;
 - (c) upon request deliver up the Goods (or such part of them that have not ceased to be in existence or resold) to Device Technologies (for

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which purpose Device Technologies' employees or agents may enter the Purchaser's premises) and the Purchaser is obliged to deliver up the Goods if so directed by Device Technologies in accordance with the enforcement procedures outlined in Chapter 4 of the *Personal Property Securities Act 2009* (Cth); and

- (d) not intermingle any sums the Purchaser receives from any sale made by it or on its behalf of the Goods and will hold such sums as trustee on behalf of Device Technologies and account fully to Device Technologies for such sums promptly as and when required by Device Technologies.

10. REGISTRATION OF SECURITY INTEREST

- 10.1. The Purchaser as Grantor grants to Device Technologies, a security interest(s) in the Goods under the *Personal Property Securities Act 2009* (Cth). If applicable, this security interest(s) will be a purchase money security interest(s).
- 10.2. The Purchaser and Grantor (if different) acknowledge that Device Technologies may register the said security interest(s) in the Goods, at its discretion.

11. WARRANTIES

- 11.1. Device Technologies warrants all Goods sold by it will be in accordance with the relevant manufacturer's specifications.
- 11.2. Device Technologies' Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.3. Device Technologies will, at its option either repair or replace any defective Goods or parts thereof with a new or remanufactured equivalent during the Warranty Period at no charge to the Purchaser for parts or labour.
- 11.4. The warranty described in this clause 11 will be the sole and exclusive warranties granted by Device Technologies and will be the sole and exclusive remedy available to the Purchaser in addition to the rights and remedies of the Purchaser under a law in relation to the Goods to which this warranty relates.
- 11.5. All implied warranties are limited to the Warranty Period.
- 11.6. No other person or entity is authorised to make any warranties other than those described in this clause 11, or to extend the duration of any warranties beyond the Warranty Period on behalf of Device Technologies.
- 11.7. Correction of defects during the Warranty Period will constitute complete fulfillment of all liabilities and responsibilities of Device Technologies to the Purchaser with respect to the Goods and will constitute full satisfaction of all claims, whether based on contract, negligence and strict liability otherwise. In no event will Device Technologies be liable, or in any way responsible, for any damages or defects in the Goods which were caused by repairs or attempted repairs performed by anyone other than Device Technologies or an authorised service provider.
- 11.8. This warranty does not apply to any appearance of the supplied Goods nor to any supplied Goods the exterior to which has been damaged or defaced, which has been subjected to misuse, abnormal service or handling, or which has been modified or altered in design or construction. In addition, the warranty coverage does not apply to defects caused by the supplied Goods being subjected to the following; unauthorised modifications or connections, unauthorised opening or repair, repair by use of unauthorised parts, accident, force majeure, or other acts beyond the reasonable control of Device Technologies.
- 11.9. This warranty does not cover death or injury to persons resulting from any cause other than proven negligence of Device Technologies, its employees or representatives.
- 11.10. In order to enforce the rights under this warranty, the Purchaser must provide proof of purchase to Device Technologies. The proof of purchase must state the date of the purchase, provide a description of the Goods and the price paid for the Goods.
- 11.11. A claim made by a Purchaser should be made in writing to Device Technologies along with the proof of purchase. The costs of transportation of the Goods will be borne by the Purchaser. If the claim is valid Device Technologies will reimburse the Purchaser for the costs of transportation of the Goods.
- 11.12. To the extent that the Purchaser is considered a Consumer under the Australian Consumer Law, then the following statement applies, *"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."*

12. EXCLUSION OF LIABILITY

- 12.1. To the maximum extent permitted by law, Device Technologies' liability for breach of a condition or warranty given by Device Technologies or implied by operation of or guarantee under the *Competition and Consumer Act 2010* (Cth) is limited to:
- (a) in the case of Goods, any one of the following:
- (i) the replacement of Goods or the supply of equivalent Goods;
 - (ii) the repair of Goods;
 - (iii) the payment of the cost of replacing Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired.
- (b) in the case of services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 12.2. Except as provided in these Terms, Device Technologies will not be liable or in any way responsible for incidental or consequential, economic or

property damage, except where Device Technologies is in breach of the guarantees provided to the Purchaser in accordance with the Australian Consumer Law, or applicable legislation from time to time provided always that nothing in this clause or elsewhere in these Terms will adversely affect the rights of the Purchaser under relevant legislation.

13. RETURNS AND EXCHANGES

- 13.1. The Purchaser must inspect the Goods as soon as is reasonably practicable after delivery.
- 13.2. If any or all of the Goods delivered were damaged, defective, or incorrect when delivered, then the Purchaser must give Device Technologies written notice of that fact within seven (7) Business Days after the delivery date.
- 13.3. For further information, refer to Device Technologies' Return and Exchange Policy.

14. CANCELLATION OF ORDERS

No Order can be cancelled or deferred without the prior written consent of Device Technologies.

15. FORCE MAJEURE

Device Technologies will not be liable for any failure to carry out an obligation under the Terms to the extent that the failure was caused by events or circumstances beyond its reasonable control ("Force Majeure Event") including, but not limited to, acts of God, fire, accident, pandemic, interruptions to energy supply, strike, riot, civil commotion or war whether declared or not. While Device Technologies will do all things reasonably necessary to mitigate the effect of the Force Majeure Event on the performance of its obligations, it may cancel or defer Orders at its sole discretion. In a Force Majeure Event, Device Technologies will endeavor to provide notice to the Purchaser which sets out in reasonable detail the nature of the Force Majeure Event and the steps taken to mitigate its effect.

16. RE-STOCKING CHARGE

Goods may only be returned with the approval of and at the sole discretion of Device Technologies. Goods so returned will be subject to a re-stocking charge of 15% of their invoiced value.

17. PRIVACY

- 17.1. All transactions will be governed by Device Technologies' privacy policy which can be found at <https://www.device.com.au/privacy-policy>.
- 17.2. If the Purchaser uses any of the services provided on the Website, specifically to set up an account to purchase the Goods, Device Technologies will require the Purchaser to provide certain information about the Purchaser, including the Purchaser's name, address, email address and phone number. This information is required to enable Device Technologies to process the Order/s correctly and effectively. Device Technologies may also use the information provided by the Purchaser to conduct a credit check, the approval of which will be required before the Purchaser has the ability to pay on account.
- 17.3. The Purchaser must comply with all applicable laws which apply to the collection, use and disclosure of personal information including, but not limited to, obtaining and recording relevant patient consent for personal information to be disclosed to Device Technologies or to an offshore entity for the provision of technical support services.
- 17.4. Device Technologies will only ask for and use personal information reasonably necessary for or directly related to Device Technologies' functions and activities as a provider of medical devices.
- 17.5. When a Purchaser visits the Website, the web server automatically logs certain non-personally identifiable data about the visit.
- 17.6. Device Technologies uses software to measure and audit activity on the Website.
- 17.7. The Purchaser may contact Device Technologies' Privacy Officer at privacy@device.com.au to find out what information Device Technologies has collected.
- 17.8. Device Technologies' online payment portal uses a secure transaction environment to ensure that Purchaser information is safe and secure at all times. The technology employed works by encrypting the Purchaser's information which the Purchaser enters in on the Website which prevents the information being intercepted by an unauthorised party. No payment details are stored in Device Technologies' database.
- 17.9. Device Technologies will not provide the Purchaser's personal information to third parties without the Purchaser's prior written consent.

18. MODIFICATION

Device Technologies may modify the Terms from time to time in our sole discretion by updating the Terms on this Website. The "Modified" date at the top of these Terms will indicate when the latest changes were made. An Order which occurs following the posting of a new version constitutes acceptance of the version currently in effect.

19. GOVERNING LAW

These Terms are governed by and will be construed in accordance with the laws of New South Wales. Any legal action or proceeding against Device Technologies shall be brought exclusively in the courts of New South Wales and of the Commonwealth of Australia, and the Purchaser agrees to submit to the personal and exclusive jurisdiction of such courts.

20. LEGISLATION

These Terms are governed by Australian law, including but not limited to the *Therapeutic Goods Act 1989* (Cth) *Personal Property Securities Act 2009* (Cth), *Competition and Consumer Act 2010* (Cth) and the *Privacy Act 1988* (Cth) ("Acts"), as amended from time to time. Any capitalised words, used in these Terms, but not defined in these Terms will take on the meaning of such defined words in the Acts and if not defined in the Acts, then its ordinary meaning. Device Technologies and the Purchaser must comply with the relevant laws and further assist in any investigation or audit as relevant to or in connection with these Terms, including, but not limited to the legislative requirements in the; *Modern Slavery Act 2018* (Cth); *Privacy Act 1988* (Cth); and *Medical Technology Industry – Code of Practice Edition 13* available at <https://www.mtaa.org.au/code-of-practice>.

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21. SEVERANCE

If any of these Terms are held by a Court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed from the Terms and the remainder of these Terms will continue to be effective and valid notwithstanding such severance.