

## Terms and Conditions of Purchase

**DEFINITIONS.** "S&N" means Smith & Nephew Medical Ltd or other entity identified on this Order (as defined below) as the purchaser of Products and/or Services (as defined below). "Supplier" means the person or entity to whom this Order is addressed. "Products" and "Services" shall have the meanings set forth in the Terms and Conditions section hereof. S&N and Supplier are each at times referred to herein as a "Party" and collectively as the "Parties".

**TERMS AND CONDITIONS.** By accepting this purchase order ("Order") submitted by S&N, Supplier hereby agrees to provide the items, materials, or equipment (the "Products") and related services in connection with the supply of the Products (the "Services") solely upon the terms and conditions stated herein. No modified, additional, or different terms or conditions proposed by Supplier will be accepted by S&N and any such proposed modification, additional, or different terms or conditions shall be construed as proposals for additions to the Order and shall not become part of this Order unless indicated in a written instrument executed by S&N. The delivery of Products or performance of Services in response to this Order shall constitute acceptance of the terms and conditions stated herein.

**PRICES AND PAYMENT.** Except as otherwise agreed to by the Parties and set forth on the face of this Order, payment terms on all Orders shall be due net sixty (60) days from the date of receipt of a valid invoice by S&N, or, if later, from the respective delivery dates of the Products. S&N may withhold payment of any amounts which are disputed in good faith by S&N. Unless otherwise agreed by S&N in writing, all prices are fixed and are inclusive of all packaging and delivery, VAT (if applicable) and any other applicable duties and taxes and are not subject to escalation; and Supplier will not render an invoice until completion of delivery of all of the Products and performance of all of the Services which are the subject of the Order. S&N specifically reserves the right to deduct from any monies due to or become due to Supplier any monies due to S&N from Supplier. S&N is not liable for any orders or amendments to orders other than S&N's Order or an amendment expressly agreed in writing and signed by an authorized signatory of S&N. No payment of, or on account of, the Order price is to constitute any admission by S&N as to the proper performance by Supplier of its obligations.

**DELIVERY.** All Products supplied pursuant to an Order shall be properly packed and secured in such a manner as to reach their destination in good, non-damaged condition, and must (unless otherwise directed by S&N) be delivered by Supplier to the point of delivery specified in the Order, carriage or freight to such point of delivery paid, in accordance with S&N's instructions. Supplier shall ensure that all labelling and packaging conforms to any standards prescribed by S&N with respect to the Products from time to time. Delivery is to be completed when the Products have been unloaded at the point of delivery specified in the Order and the delivery has been accepted by S&N or its duly authorized agent. Unless otherwise stipulated in the Order, deliveries to S&N facilities shall only be accepted by S&N during normal business hours. Supplier shall ensure that each delivery is accompanied by a packing slip or other delivery note showing the Order number, Order line number and the nature (including the part number and part description), unit of measure, and quantity of items being delivered and, in the case of a partial delivery, the balance remaining to be delivered. Supplier shall invoice S&N upon, but separately from, delivery of the Products to S&N. Supplier will be liable for all damages, including, but not limited to, damages which it or its carrier causes to Products being delivered to S&N pursuant to an Order or damages to S&N's property resulting from Supplier's or the carrier's actions or inactions. In the case of Products manufactured or containing materials originating from outside the country in which the delivery address is situated, Supplier must ensure that accurate information is provided to S&N as to the country of origin of the Products and is to be liable to S&N for any additional duties, taxes, or other liability for which S&N may be accountable should the country of origin prove to be different from that advised by Supplier. Unless otherwise stated in the Order, Supplier is responsible for obtaining all export and import licenses for the Products and is responsible for any delays due to such licenses not being available when required. Where S&N agrees to accept delivery by instalments, failure by Supplier to timely deliver any one instalment shall entitle S&N at its option to treat the entire Order as repudiated. If Products are delivered to S&N in excess of the quantities ordered, S&N shall not be bound to pay for the excess, and any excess shall remain at Supplier's risk and shall be returnable at Supplier's expense. All Products supplied hereunder are to be shipped subject to S&N's examination and right of rejection for a reasonable time after delivery, but in no event less than seven (7) business days after S&N's receipt of such Products at the site designated by S&N, notwithstanding prior payment, if not as warranted herein.

**TIME.** Subject to manufacturing lead times, if any, agreed upon by S&N and Supplier in writing, Supplier must comply with the timescale specified by S&N in the Order. If no timescale is specified, then delivery must be within a reasonable period not exceeding seven (7) days following the Order. TIME FOR DELIVERY SHALL BE OF THE ESSENCE. Without prejudice to any other remedy which S&N may have, failure by Supplier to adhere to any provision as to time contained in the Order shall entitle S&N at its option to treat the Order as repudiated in whole or in part and to cancel such Order upon written notice to Supplier.

**RISK AND TITLE.** Unless otherwise stated in the Order, risk in the Products purchased is to pass to S&N upon completion of delivery in accordance with the Delivery section hereof, and title to the Products (or any part of them) is to pass to S&N on the earlier of completion of delivery or the time of payment being made for them. Except as otherwise agreed to by S&N in writing, Supplier is to be responsible for transport and unloading costs and insurance of Products to their full value against all risk of damage or loss prior to completion of delivery. All tools, equipment and materials of Supplier required in the delivery of the Products or performance of Services are and remain at the sole risk of Supplier whether or not they are upon premises of S&N or other premises specified in the Order. Supplier represents and warrants that good and marketable title to the Products shall pass to S&N pursuant to the foregoing, free and clear of all liens and encumbrances.

**INSPECTION AND TESTING.** At any time prior to delivery of the Products or completion of the performance of the Services, S&N shall have the right to inspect and test the Products (whether or not the Products are complete or are still in the process of manufacture) or, as the case may be, any Services are being performed. S&N shall have the right to do so at any reasonable time either at Supplier's work site or at the work site of any sub-contractor. If, as a result of such inspection or testing, S&N is of the opinion that the Products or Services do not conform or are unlikely to conform with the Order or any specification or any designs or patterns provided by S&N to Supplier, then S&N shall inform Supplier and Supplier shall promptly take such action as is necessary to ensure conformity, and S&N shall have the right to require and witness further testing. Notwithstanding any such inspection or testing, Supplier shall remain responsible for ensuring that the Products or Services are in compliance with the Order and any such inspection or testing shall not of itself constitute acceptance or approval of all or any part of the Products or Services.

**QUALITY AND GUARANTEE/REPRESENTATIONS AND WARRANTIES.** In addition to, and not in lieu of, any other guarantee, representation, or warranty provided by Supplier, Supplier represents and warrants to S&N that all the Products shall, at the time of delivery and for a period of not less than 12 months thereafter, be (a) of merchantable quality; (b) free from defects and of good design, quality and workmanship; (c) of satisfactory quality and fit for its intended purpose; and (d) conform in all respects with the quantities, drawings, specifications, standards, requirements and stipulations contained or referred to in the Order. At all times while providing Products and/or Services to S&N, Supplier represents and warrants that: (i) it shall conduct its business and affairs in an ethical manner, consistent with the provisions of S&N Code of Conduct and Business Principles (a copy of which may be obtained at [http://global.smith-nephew.com/master/code\\_business\\_principles\\_3361.htm](http://global.smith-nephew.com/master/code_business_principles_3361.htm)) and shall comply with all applicable laws, including statutes, laws, ordinances, regulations, and industry codes and standards relating to the manufacture and supply of the Products and Services being provided hereunder, including, without limitation, those enforced by the United States Food and Drug Administration (including compliance with good manufacturing practices); (ii) all work and Services performed by Supplier shall be in accordance with recognized best commercial practices and standards and will be supplied with all due competence, care and skill and in accordance with S&N's instructions and will pass such inspection as may be required by S&N, its customers or their agents or any government department or agency concerned; and (iii) its expertise and confirms the accuracy of all statements and representations made in respect of the Products and Services prior to the Order. Supplier further represents and warrants that it is neither currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs, nor been convicted of a criminal offence that falls within the ambit of 42 U.S.C. Section 1320a-7(a), but not yet been excluded, debarred, suspended or otherwise declared ineligible. Supplier further represents, warrants and agrees that none of Supplier's employees, agents, subsidiaries and affiliated entities are currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs, or has been convicted of a criminal offence that falls within the ambit of 42 U.S.C. Section 1320a-7(a), but not yet been excluded, debarred, suspended or otherwise declared ineligible. Supplier agrees to immediately notify S&N if Supplier or any of Supplier's employees, agents, subsidiaries and affiliated entities become excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs, or is convicted of a criminal offence that falls within the ambit of 42 U.S.C. Section 1320a-7(a), but not yet been excluded, debarred, suspended or otherwise declared ineligible, while Supplier is providing Products and/or Services to S&N. Supplier represents and warrants that it shall not seek, accept, offer, give or permit any payment, service, gift or other value from or to any person or firm as a condition or result of doing business with Supplier or S&N, if doing so would be in violation of applicable law, including any law relating to bribery or corruption. Supplier represents and warrants that it shall not make facilitation payments in relation to the Products or Services being provided hereunder. Supplier represents and warrants that it shall ensure the propriety of all interactions with government officials, health-care professionals and other persons who might have authority or influence, directly or indirectly, over any matters relating to such Products or Services, including without limitation the sale, marketing, promotion, importation, licensing or distribution thereof. S&N's rights hereunder are in addition to and shall not detract from any conditions implied by statute or other applicable laws which are intended to protect, or which are otherwise in favour of, purchasers of goods and/or services which are similar to the Products and/or Services. Without prejudice to any other remedy which S&N may have, including, but not limited to, S&N's right to treat the Order as repudiated, where S&N notifies Supplier of any defective or damaged Products (whether due to defective design, materials or workmanship or otherwise) or faulty workmanship in the provision of the Services, Supplier shall replace at its own cost and expense, including, but not limited to, reimbursement of freight and disposition costs incurred by S&N, any Product that fails to comply with these terms and conditions. S&N shall notify Supplier of the existence and nature of any non-compliance and Supplier shall have a reasonable opportunity, not to exceed ten (10) days from receipt of the returned Product, to inspect such Product and provide S&N with detailed written instructions to return or dispose of such Product. S&N shall have no obligation to pay for any Product that is subject to such a claim of non-compliance. If Supplier fails to so inspect and instruct S&N as to the disposition of such defective Product, S&N may dispose of such defective Product as it sees fit and Supplier shall promptly replace such defective Product at its own cost and expense. If prompt replacement is not feasible or if S&N does not want a replacement Product, Supplier shall reimburse S&N for the cost of such Product. Supplier shall be responsible for all costs of delivery to the site designated by S&N and installation and all other costs and expenses incurred by S&N as a result of the replacement of the Product.

**INDEMNITY AND LIMITATION OF LIABILITY.** Supplier shall indemnify S&N, its parent, its subsidiaries and affiliates, and their respective officers, directors, shareholders, members, and employees, in full against losses, whether direct or indirect (and including, without limitation, legal and other professional fees and expenses) awarded against or incurred or paid by S&N as a result of or in connection with: (a) any breach of the terms of the Order or these terms and conditions by Supplier; (b) any infringement, alleged infringement, or misappropriation of any intellectual property rights caused by the use, manufacture or sale of the Products (except where all specifications and designs necessary for the manufacture of the Products have been supplied solely by S&N and the Products have been manufactured in accordance with such specifications and designs); (c) a defect or failure in any Product or the negligent performance or any failure in performance by Supplier; or (d) all claims arising out of any error or omission in drawings, calculations, packing details or other particulars provided by Supplier. IN NO EVENT SHALL S&N BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, ANY ORDER, WHETHER OR NOT S&N WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**INSURANCE. AT ALL TIMES WHILE SUPPLIER IS PROVIDING PRODUCTS AND/OR SERVICES TO S&N,** and for a period of five (5) years thereafter, Supplier shall obtain and maintain, at its sole cost and expense, the following insurance coverages: (1) Commercial General Liability insurance, including Products & Completed Operations liability, that meets the following requirements: (a) the insurance shall insure Supplier against all liability related to the Products (whether liability arises from Supplier's conduct or by virtue of a Party's participation hereunder), including liability for bodily injury, property damage, wrongful death, and any pertaining contractual indemnity obligation imposed hereunder; (b) the coverage territory for this insurance shall be world-wide, including the United States and Canada; and (c) the insurance shall be in an amount that is required by operation of law and reasonable and customary in the industry for companies of comparable size and activity, but not less than Ten Million US Dollars (US\$10,000,000.00) per occurrence, such limits can be met using primary and excess insurance; (2) where vehicles are used in providing products and services hereunder, insurance for the risk of third party bodily injury and property damage in a form and type customary for the territory where the vehicles are operated with limits not less than Five Hundred Thousand US Dollars (US\$500,000); and (3) Employers Liability/Workers Compensation or the equivalent in the territory where the work is being performed to meet the minimum statutory requirements thereof. For claims arising from the Products and Services provided hereunder, Supplier shall name S&N as an Additional Insured (or the equivalent type of protection that extends S&N direct rights to defense and indemnity from the insurer for claims arising from the products and services provided hereunder to the extent that Supplier is required to indemnify S&N under this agreement) on any such policies, and Supplier's insurance shall be primary to any insurance provided by S&N, which shall be strictly excess of Supplier's insurance. Supplier shall be solely responsible for any deductibles and/or self-insured retentions under Supplier's insurance policies. Supplier shall procure an endorsement whereby its insurer shall immediately notify S&N in the event of any material reduction or termination of coverage that affects coverage during the period for which Supplier is required to maintain insurance. S&N shall be provided with evidence of such insurance upon reasonable request; however failure to request such evidence shall in no way waive the requirements herein.

**CONFIDENTIALITY.** During the course of its performance hereunder, Supplier may have access to proprietary business information and to trade secrets of S&N including, but not limited to, process and/or product specifications, material compositions, and customer lists ("**Confidential Information**"). Supplier shall use the Confidential Information solely to perform pursuant to the Order and shall not disclose or use any such Confidential Information, directly or indirectly, for any other purpose. Supplier further agrees to take all steps necessary or advisable to preserve and protect such Confidential Information. Except to the extent required by law, Supplier shall make no reference, advertisement, or promotion regarding S&N including, without limitation, displaying Products incorporating or manufactured using S&N's Confidential Information as part of a display or tradeshow demonstration, without the prior written consent of S&N. Supplier agrees that a breach of this obligation of confidentiality shall give S&N the right to seek and obtain preliminary and permanent injunctive relief, in addition to monetary damages.

**CANCELLATION.** Without prejudice to any other right available to it, S&N shall be entitled to cancel an Order, in whole or in part, at any time by giving written notice to Supplier whereupon all work under the Order (or the cancelled part) shall be discontinued and S&N shall pay to Supplier such proportion of the Order price as may be fair and reasonable having regard to the Products previously delivered and the value of Services performed under the Order. On such payment no further sum or sums shall be due by way of damages, loss of profits or otherwise from S&N to Supplier by reason of such cancellation. In the event of S&N's cancellation hereunder, Supplier shall immediately, but in no event later than thirty (30) days from the effective date of cancellation, refund to S&N any amounts paid but unearned for Products or Services provided hereunder.

**INTELLECTUAL PROPERTY AND FIXED ASSETS.** All designs, inventions, patents, know how, new technology, improvements and all similar matters made, designed or developed by Supplier specifically in connection with the Order shall be the sole property of S&N and Supplier must procure at no charge to S&N the execution of any and all papers necessary to perfect ownership by S&N. All material, drawings, samples, specifications and other technical data prepared or provided by S&N in connection with the Order, and all tooling, fixtures, gauges or other fixed assets shall be at all times remain the property of S&N which S&N is entitled to use, reproduce, assign, transfer, and dispose of at any time for any purpose whatsoever. Supplier must not use any such data or fixed assets except in order to perform Orders for S&N.

**GENERAL.** S&N may assign any and all of its rights or delegate any or all of its obligations under this Order to one or more third parties without the consent of Supplier. Supplier may not assign or otherwise transfer any of its rights or obligations hereunder to any third party without the prior written consent of S&N. Any waiver by S&N of any breach or default of Supplier shall not be deemed a waiver of any subsequent breach or default of Supplier from any liability under the Order or these terms and conditions. Each Party will bear its own expenses in performing its obligations under the Order, except as may be otherwise expressly provided herein. No waiver or amendment of an Order shall be binding unless in writing and signed by an authorized representative of each Party. The Order and these terms and conditions shall be governed by and interpreted in accordance with the laws of the state and country shown in S&N's address on the face of the Order without regard to its conflict of laws principles. The Parties specifically agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods, as may be amended from time to time, shall not apply to the Order or these terms and conditions. Unless otherwise agreed in writing by the Parties, all notices shall be in English. Any dispute or claim (regardless of its legal or equitable theory) arising in connection with the Order, or any act or omission in its performance shall be resolved solely and finally by binding arbitration conducted by a single arbitrator in accordance with the Rules of Arbitration of the International Chamber of Commerce ("the ICC") The seat of the arbitration will be London. The arbitration language shall be English.