

Medfor Products Ltd – Terms and Conditions of Sale

1. Definitions

- 1.1 In these conditions:
"Buyer" means the person, company, or organisation purchasing the Goods.
"Contract" means the Contract formed by the acceptance of the Order.
"Goods" means the subject(s) of the Order.
"Medfor" means Medfor Products Ltd of 84 Alexandra Road, Farnborough, Hampshire, GU14 6DD, United Kingdom
"Order" means the Buyer's instructions to Medfor to supply the Goods.
"Order Acknowledgement" means the acceptance by Medfor of the Order.
"Price" means the Price for the Goods (exclusive of Value Added Tax) ruling at the date they are despatched by Medfor.

2. Application of Conditions

- 2.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between Medfor and the Buyer with reference to the Goods to which this Contract relates.
- 2.2 Without prejudice to the generality of the above, Medfor will not be bound by any standard or printed terms supplied by the Buyer in any of its documents, unless the Buyer specifically states in writing separately from such terms that it intends such terms to apply and Medfor acknowledges such notification in writing.
- 2.3 Each Order for Goods by the Buyer from Medfor shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.4 No Order placed by the Buyer shall be deemed to be accepted by Medfor until a written Order Acknowledgement is issued by Medfor or (if earlier) Medfor delivers the Goods to the Buyer.
- 2.5 The Buyer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 2.6 Any quotation is given on the basis that no Contract will come into existence until Medfor despatches an Order Acknowledgement to the Buyer. Unless specified otherwise by Medfor, any quotation is valid for a period of 45 days only from its date, provided that Medfor has not previously withdrawn it.

3. Prices

- 3.1 All quotations given are not offers capable of acceptance so as to make a binding Contract and so are subject to amendment or withdrawal by Medfor.
- 3.2 All Orders placed with Medfor require Medfor's acceptance before any Contract arises.
- 3.3 The Price stated in Medfor's catalogues or price lists, or in the Order are subject to variation without notice and Goods will be invoiced at Prices and, where applicable, exchange rates ruling at the date of despatch.
- 3.4 Unless otherwise stated by Medfor, the Price of the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, booking-in, carriage and insurance which the Buyer shall pay in addition.

4. Quantity Supplied

- 4.1 Goods can only be supplied in the standard pack or case quantity or 'minimum buying quantity' (or multiples thereof) shown in Medfor's catalogues and price lists.
- 4.2 Medfor will endeavour to supply the quantity of Goods ordered but every Contract and delivery will be subject to the margins of tolerances (whether over or under the specified quantity) customary in the trade.

5. Changes

- 5.1 If, after receipt of the Order for Goods but before delivery, improvements are made in the design and/or specification of the Goods Medfor may, without giving notice to the Buyer, supply the improved Goods in place of those originally ordered.

6. Packaging

- 6.1 Prices shown in quotations or Contracts will include the cost of Medfor's normal packaging for destinations in the UK. Any other forms of packaging supplied at the Buyer's request will be charged extra and will be non-returnable.

7. Delivery

- 7.1 Unless otherwise stated, Medfor shall deliver or arrange delivery of the Goods to the Buyer's normal place of business or such other place agreed in writing with the Buyer.
- 7.2 Delivery shall be deemed to be effective when the Goods are unloaded at the delivery address nominated by the Buyer or his Agent for delivery, except where the Goods are to be collected by the Buyer or his Agent, when delivery shall be deemed to be effective when the Goods are loaded onto the vehicle collecting them.
- 7.3 Medfor reserves the right to deliver Goods by instalments and in such event each instalment shall be treated as a separate Contract provided that deliveries of further instalments may be withheld until the Goods or materials comprised in earlier instalments have been paid for in full.
- 7.4 Medfor shall make every effort to abide by any agreed delivery date but Medfor can accept no liability in respect of non-delivery or delayed delivery. If no date has been agreed, delivery will be within a reasonable time.
- 7.5 Subject to the other provisions of these Conditions, Medfor shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract.

8. Non-Delivery

- 8.1 The quantity of any consignment of Goods as recorded by Medfor upon despatch from Medfor's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 8.2 Medfor shall not be liable for any non-delivery of Goods unless written notice is given to Medfor within 10 days of delivery.

- 8.3 Any liability of Medfor for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

9. Specifications

- 9.1 The Buyer shall inspect the Goods immediately upon delivery and shall within 3 days of delivery notify Medfor in writing of any defect, damage, loss, shortage, or other particulars by reason of which the Buyer alleges that the Goods do not conform with the Order; if no such notice is given, the Goods shall be deemed to have been supplied in accordance with the Order and to have been accepted by the Buyer.
- 9.2 Goods may be returned which do not conform with the Order, only with the consent of Medfor in writing. Medfor reserves the right to impose a handling charge of 15% of net invoice value for these Goods. Medfor reserves the right to refuse to accept any Goods returned, for whatever reason, if after inspection such Goods or their packaging prove unsatisfactory in any way.
- 9.3 The Buyer is responsible for ensuring that any returns are free from biological and chemical hazard. Medfor reserves the right to refuse to accept Goods which in its view present a hazard to its staff or which may infringe the Health and Safety at Work Act.
- 9.4 Medfor warrants that the Goods delivered to the Buyer shall be free from defects in materials and workmanship and shall correspond with the description referred to in the Contract but Medfor's liability hereunder is limited to the Price of the Goods proved to be defective and for this purpose the Price shall be deemed to be the invoice Price of the Goods. Medfor shall be entitled in its absolute discretion to replace such Goods upon the terms hereof in settlement of its liability in lieu of making a cash settlement.

10. Payment

- 10.1 Unless otherwise agreed in writing the Price will be paid in Pounds Sterling.
- 10.2 Payment is due within 30 days of the date of Medfor's invoice.
- 10.3 Medfor reserves the right to require a remittance with Order.
- 10.4 All sums payable to Medfor under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 10.5 The Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 10.6 Should a well-founded doubt arise about the Buyers ability or willingness to pay invoices on the due date, Medfor reserves the right to cancel the Contract or postpone delivery until payment has been received.
- 10.7 If the Buyer fails to pay Medfor any sum pursuant to the Contract the Buyer will be liable to pay interest to Medfor on such sum from the due date for payment at the rate of 5% above the base lending rate from time to time of Medfor's bankers accruing on a daily basis until payment is made, whether before or after any judgment.

11. Export terms

- 11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Medfor) apply notwithstanding any other provision of these Conditions.
- 11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.3 Unless otherwise agreed in Writing between the Buyer and Medfor, the Goods shall be available ex works at Medfor's premises with the Buyer collecting or arranging collection of the Goods and Medfor shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Medfor's premises before shipment. Medfor shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.5 Payment of all amounts due to Medfor shall be made by irrevocable letter of credit by the Buyer in favour of Medfor and confirmed by a bank in the United Kingdom acceptable to Medfor, or if Medfor has agreed in writing on or before acceptance of the Buyer's Order to waive this requirement, by acceptance by the Buyer and delivery to Medfor of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of Medfor at such branch of the HSBC bank as may be specified in the bill of exchange.

12. Title

- 12.1 Ownership of the Goods shall not pass to the Buyer until Medfor has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Medfor from the Buyer on any account including any interest on such sums.
- 12.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as Medfor's bailee, store them separately to other Goods of the Buyer or any third party in a way that they remain readily identifiable as Medfor's property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods, maintain them in satisfactory condition insured for their full Price against all risks and hold the proceeds of insurance on trust for Medfor and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 12.3 Until the property in the Goods passes to the Buyer in accordance with the above conditions, Medfor shall have the right and is hereby irrevocably granted a Licence by the Buyer to enter any premises in the occupation of or under the control of the Buyer during normal business hours for the purpose of obtaining possession of the Goods.
- 12.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- 12.4.1 the Buyer has a bankruptcy Order made against it or makes an arrangement or composition with its creditors or (being a body corporate) convenes a meeting of creditors (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed

- or a petition presented for the winding up of the Buyer or for the granting of an administration Order in respect of the Buyer, or any proceedings are commenced relating to the insolvency of the Buyer; or the Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other Contract between Medfor and the Buyer, or is unable to pay its debts or the Buyer ceases to trade.
- 12.5 Medfor shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Medfor.

13. Risk

- 13.1 The risk passes to the Buyer when the Goods are delivered by Medfor to the Buyer or to a carrier (whether employed by Medfor or the Buyer) on leaving Medfor's premises.
- 13.2 The Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on the Buyer's own behalf in the ordinary course of the Buyer's business and the Buyer shall deal as principal when making such sale.

14. Use

- 14.1 It is the Buyer's responsibility to determine whether Goods are suitable for the contemplated use, whether or not such use is known to Medfor. Any technical advice offered by Medfor or its representatives or agents is given without charge and only on the basis that it is followed at the user's own risk.

15. Import Licences

- 15.1 The Buyer shall be responsible for obtaining any necessary import licences, details of which should be noted on the Buyer's Order.

16. Availability

- 16.1 All Goods are offered at all times subject to availability.

17. Acceptance

- 17.1 Acceptance of Goods implies acceptance of these conditions

18. Force Majeure (Events beyond Medfor's control)

- 18.1 If the commencement, continuation or complete performance by Medfor of its obligations under this Contract is prevented, hindered, delayed or rendered uneconomic by reason of Force Majeure then Medfor shall not be responsible to the Buyer for any loss or damage incurred or sustained by the Buyer as a result. For the purpose of this condition the term Force Majeure shall include any factor affecting the performance of this Contract attributable to acts, events, non happenings, omissions or incidents beyond the reasonable control of Medfor and in particular (without limiting the generality of the above) the following: strikes, lock-outs, riots, civil revolution, war, state of national emergency, trade dispute or labour disturbance, accident, breakdown of plant or machinery, difficulty or increased expense in obtaining workmen, materials or transport, fire, explosions, storm, flood, earthquake or other natural physical disaster or circumstances affecting the supply of the Goods (or raw materials) by Medfor's normal source of supply or the delivery of the Goods by Medfor's normal route or means of delivery.

19. Warranty

- 19.1 Medfor warrants (subject to the other provisions of these Conditions) that upon delivery the Goods will comply with Medfor's specification for the Goods.
- 19.2 Medfor shall not be liable for a breach of the warranty in condition 19.1 unless:
- 19.2.1 the Buyer gives written notice of any defect to Medfor within 3 working days of delivery; and
- 19.2.2 Medfor is given a reasonable opportunity of examining the Goods and the Buyer (if asked to do so by Medfor) returns the Goods to Medfor's place of business at the Buyer's expense for the examination to take place there.
- 19.3 Medfor shall not be liable for a breach of the warranty in condition 19.1 if:
- 19.3.1 the Buyer makes any further use of the Goods after giving notice of any defect; or
- 19.3.2 the defect arises because the Buyer failed to follow Medfor's instructions as to the storage or use of the Goods; or
- 19.3.3 the Buyer alters or repairs the Goods without the written consent of Medfor.
- 19.4 Subject to conditions 19.2 and 19.3, if any of the Goods do not conform with the warranty in condition 19.1 Medfor shall at its option repair or replace such Goods (or the defective part) or refund the Price of such Goods at the pro rata Contract rate and shall have no further liability for breach of the warranty in condition 19.1 in respect of such Goods. If Medfor so requests, the Buyer shall, at the Buyer's expense, return the Goods or the parts of such Goods which are defective to Medfor.

20. Limitation of Liability

- 20.1 Except for death or personal injury caused by the negligence of Medfor, Medfor's aggregate liability to the Buyer however arising whether for negligence, breach of Contract, misrepresentation or otherwise shall under no circumstances exceed the cost of the defective damaged or undelivered Goods which give rise to such liability as determined by the net Price invoiced to the Buyer in respect of any occurrences or series of occurrences.
- 20.2 Subject to condition 19, the following provisions set out the entire financial liability of Medfor (including any liability for the acts or omissions of its employees, agents and sub-Contractors) to the Buyer in respect of:
- 20.2.1 any breach of these Conditions; and
- 20.2.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 20.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 20.4 Nothing in these Conditions excludes or limits the liability of Medfor for death or personal injury caused by Medfor's negligence or fraudulent misrepresentation.

20.5 Subject to conditions 20.3 and 20.4:

- 20.5.1 Medfor'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 Contract shall be limited to the Price of the Goods the subject of the Contract; and Medfor shall not be liable to the Buyer for loss of profit or any type of indirect or consequential loss or damage (whether loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

21. General

- 21.1 The Buyer shall not assign the Contract or any part of it without the prior written consent of Medfor.
- 21.2 Medfor shall be entitled to assign the Contract or any part of it to any person, firm or company.
- 21.3 The Buyer shall not use Medfor's name, logo or other intellectual property rights in advertising or publicity without Medfor's prior written consent.
- 21.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 21.5 Failure or delay by Medfor in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 21.6 Any waiver by Medfor of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 21.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 21.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 21.9 Any dispute arising under or in connection with these Conditions or the sale of the Goods, shall be referred to arbitration by a single arbitrator appointed by agreement, or (in default) nominated on the application of either party, by the President for the time being of The Law Society of England and Wales.