

1. INTERPRETATION

In these conditions save where the context requires otherwise:

- 1.1 "Buyer" means the person with whom the company is contracting; "The Company" means d2d Implants Ltd; "the Goods" means the goods sold or to be sold by the Company to the Buyer;
- 1.2 headings are for ease of reference only and shall not affect construction; and
- 1.3 words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing whole shall be treated as including a reference to any part thereof.

2. CONDITIONS

- 2.1 These Conditions shall apply to all quotations given or contracts made or to be made by the Company for the sale of the Goods and shall supersede any other terms appearing in the company's catalogue or elsewhere. The giving by Buyer of any delivery instructions or the acceptance by Buyer of delivery of the Goods shall constitute unqualified acceptance by Buyer of these Conditions. Any Conditions submitted, proposed or stipulated by Buyer, whether in the order or in any negotiations or any course of dealing established between the company and the Buyer, and whether written or oral, are expressly waived and excluded.
- 2.2 Buyer acknowledges that there are no representations outside these Conditions which have induced it to enter into any contract to which these Conditions apply.
- 2.3 No changes to these conditions shall be binding unless expressly agreed in writing by the Company. The signing by the Company of any of Buyer's documentation shall not imply any change to these Conditions.
- 2.4 No contract to which these Conditions apply shall be a sale by sample.

3. QUOTATIONS AND ORDERS

- 3.1 Quotations are subject to withdrawal at any time before receipt of an unqualified order from Buyer and shall be deemed to be withdrawn unless so accepted within 30 days from their date.
- 3.2 All orders must be accompanied by an official order number.

4. PRICES

- 4.1 The price of the Goods shall unless otherwise expressly stated by the Company in writing be the list price of the Company current at the date of delivery. In the case of an order in delivery by instalments the price payable for each instalment shall be the list price of the Company at the date of despatch of such instalment.
- 4.2 Unless otherwise expressly agreed in writing by the Company, the price of the Goods is exclusive of costs and of packaging and delivery which must be paid at the same time as payment for the Goods.
- 4.3 Prices are exclusive of value added tax which, where applicable, will be separately charged at the appropriate rate.
- 4.4 The Company reserves the right by written notice given at any time before delivery to increase the price of Goods if, after the date of the contract, there is an increase of the cost of the Goods to the Company by reason of any circumstance out of control of the Company including (without limitation) increases in the cost of materials, labour or transport, exchange rate fluctuations, increases in levies or other taxes, war, hostilities or warlike operations. If the price of the Goods is increased pursuant to this Condition 4.4, Buyer may cancel the undelivered balance of the contract by written notice to the Company served within three days of receipt of the Company's notice hereunder.
- 4.5 If Buyer requests that the Goods are despatched by urgent means, the Company may make an additional charge for expedited delivery.

5. CANCELLATION

Buyer may not cancel any contract to which these Conditions apply without the prior written consent of the Company which, if given, shall be deemed to be on the express condition that Buyer shall fully and promptly indemnify the Company against all loss, damage, costs, claims or actions arising out of any such cancellation.

6. RETURNS

Without prejudice to Condition 5, the following provisions shall apply if Buyer wishes to return any Goods:

- (a) before returning any Goods, Buyer has to apply for return authorisation from the Company, requesting a return authorisation number and instructions. No goods may be returned without such authorisation.
- (b) goods can only be returned for credit if special permission is reached with the Clinical Director. Normally goods cannot be returned for credit and can only be returned for an exchange of goods to a similar value but not if (i) they or the wrapper is in any way defaced or damaged; or (ii) once they have been removed from their wrapper or undergone any sterilisation or disinfection process; or (iii) it is more than 6 calendar months from the date of the invoice.
- (c) goods supplied in accordance with Buyer's individual specifications, even if unopened, may not be returned under any circumstances.
- (d) a copy of the invoice or packing slip must accompany all returns
- (e) the Company will make an additional charge of up to 10% for handling returned Goods
- (f) exchange of returned Goods will only be issued upon determination of acceptable condition, the Company's decision being final regarding the condition of returned Goods.
- (g) goods supplied on a "sale or return" basis must be returned within 30 days of delivery in a full re-saleable condition, unopened and in their original packaging.

7. PAYMENT

- 7.1 Unless otherwise agreed in writing by the Company and the subject to Condition 7.2, payment for the Goods shall be made in cash in full within 30 days from the end of the month in which the invoice is sent to Buyer. Time for payment is of the essence of the contract.
- 7.2 If any sums become overdue, the Company may (without prejudice to any other right or remedy available to it) suspend all further deliveries until payment in full thereof has been made or (at its option) cancel the contract as regards any Goods which remain to be delivered there under.
- 7.3 Buyer shall be in default if payment in full is not made by the due date. Without prejudice to any of the Company's rights, including the rights to demand immediate payment, the Company may at its discretion charge interest at 2 per cent, per month on any sum not paid on the due date, plus an accounting fee which reflects the cost to the Company of recovering the sum overdue. Such interest shall run from day to day and accrue after as well before any judgement and shall from time to time be compounded monthly on the sum overdue until payment thereof.
- 7.5 Buyer shall not be entitled to withhold payment in whole or in part on the ground that it has a claim, counterclaim or set-off against the Company.

8. DELIVERY

8.1 The time for delivery shall not be of the essence and delivery dates are intended of estimates only. The Company shall not be liable for any loss or damage whether arising directly or indirectly from any delay in delivery.

The Company shall be deemed to have delivered the Goods either when the Goods are delivered to the place in the United Kingdom specified by buyer or when the Company has notified Buyer that Goods are ready for collection at the Company's premises, as the case may be, and sub-sections (1) and (2) of section 32 of the Sale of Goods Act 1979 shall not apply to any contract to which these Conditions apply.

8.3 After the delivery the Goods shall be at the Buyer's sole risk in respect of all loss or damage arising from any cause whatsoever. Any liability of Buyer to the Company shall not be diminished or extinguished by reason of such loss or damage.

8.4 Unless otherwise agreed in writing by the Company, the Company may deliver the Goods by instalments and may invoice the Buyer for each such instalment.

8.5 If delivery is delayed through Buyer's default or if Buyer declines or delays in accepting delivery, then and in either such case the Company may (without prejudice to any other right or remedy available to it) do all or any of the following:

- (a) charge as part of the price of the Goods a reasonable storage fee and other costs incurred by the Company;
- (b) sell the Goods for the Company's account;

Cancel the contract as regards any Goods that remain to be delivered there under.

The Company's right under this clause shall not be prejudiced by the fact that any delivery has been affected after the estimated delivery date.

8.6 Each delivery shall be considered as a separate contract and the failure of any delivery shall not vitiate the contract as to others.

9. CLAIMS

9.1 To the extent permitted by law, all conditions, terms, warranties or obligations whether express or implied by statute, common law or otherwise are excluded and the provisions of these Conditions shall apply in lieu thereof.

9.2 Within the limits of its activity as a producer, Buyer shall:

- (a) provide patients with all necessary information to enable them to access the risks inherent in the Goods throughout the normal or reasonably foreseeable period of their use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks;
- (b) measures commensurate with the characteristics of the Goods to enable the Buyer to be informed of the risks which the Goods might present and to take appropriate action to avoid those risks;
- (c) provide to the Company such information as it may require from time to time to enable completion of a product lot tracking form in respect of the Goods used for each patient.

9.3 Within the limits of its activity of a distributor, the Buyer shall:

- (a) not supply the goods to any patient which Buyer knows, or should have presumed, on the basis of the information in Buyer's possession and as a professional, are dangerous products;
- (b) monitor the safety of the Goods and in particular pass on to patients information concerning the risks of the Goods and co-operate in the action taken by the Company to avoid those risks.

9.4 Whether acting as a producer or distributor, Buyer shall provide to the Company such information as shall enable the Company to be informed of the risks which the Goods might present and to take appropriate action.

9.5 Without prejudice to condition 9.3 Buyer shall inspect the Goods immediately on delivery thereof (and section 35 of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 and section 3 of the Sale and Supply of Goods Act 1994 shall not apply). The Company shall not be liable to damage to any of the Goods which would be reasonable apparent on such inspection or for such shortages unless such damage or shortage is:

- (a) notified to the Company within 3 days of delivery and confirmed in writing within the following 5 days; and

(b) recorded on the despatch document.

9.6 The Company shall not be liable for loss of the Goods unless buyer gives notice to the Company within 20 days of the invoice that it has not received the Goods.

9.7 The Company shall not be liable for defects in the Goods which were not reasonably apparent on inspection following delivery unless:

- (a) Buyer gives written notice to the Company as soon as possible and in any case within 30 days of delivery specifying with reasonable detail any matter whereof it is alleged that the Goods are defective;
- (b) the defective Goods are returned carriage paid at Buyer's risk to Company's premises (and section 36 of the Sale of Goods Act 1979 shall not apply).

9.8 The Company's liability under conditions 9.5-9.7 whether based on negligence or any other cause of action shall be limited, at the Company's option, to:

(a) repairing or replacing the lost, damaged or defective Goods; or

(b) repaying a corresponding proportion of the price paid by Buyer

and the Company shall not be under any other liability there under whatsoever.

9.9 No claim will be met by the Company under condition 9.4 if, in the opinion of the Company:-

(a) the defect is not due solely to defective materials or manufacture;

(b) the Goods have been misused or subjected to neglect, carelessness or abnormal conditions or involved in any accident or attempt at repair, replacement or modification or attached to components supplied other than by the Company or dealt with contrary to any directions issued in writing by the Company; or

(c) the terms of payment set out in condition 7.1 have not been complied with.

9.10 Without prejudice to any other right or remedy available to the Company, Buyer shall fully and promptly indemnify the Company against all damages, proceedings, claims, demands, liabilities, losses, charges, costs and expenses which Company may suffer or incur as a result (direct or indirect) of any failure by Buyer to comply with conditions 9.2 – 9.4.

9.11 The Company gives no warranty and makes no representation that any sale or use by Buyer of the Goods will be free from infringement of any patent or other intellectual property right owned or controlled by any third party and Buyer will in this respect accept such title as the Company may have.

9.12 For the purpose of this Condition 9, "producer", "distributor", "dangerous product", and "safe product" shall have the meanings given by The General Product Safety Regulations 1994.

10. RETENTION OF TITLE

10.1 Notwithstanding delivery the property in the Goods will remain in the Company and subject to the following provisions of this Condition Buyer will hold the Goods as bailee for the Company until payment in full of the price of the Goods and all other sums due from Buyer to the Company on any account whatsoever (in this condition referred to as "Payment")

10.2 If Buyer (before payment) sells the Goods to any third party it shall, as between Buyer and such third party sell as principal but as between Buyer and the Company, Buyer shall sell as the fiduciary agent of the Company.

10.3 Buyer shall not hold such part of the proceeds of any sale such as equates to the aggregate amount due from Buyer to the Company on any account whatsoever separate and for the Company's account pending payment or shall if the Company so requires authorise and direct such third party to pay to the Company a like part of the sum due to Buyer in respect of the Goods so sold and assign to the Company such part of the debt owed to Buyer by such third party.

10.4 Buyer shall keep the Goods in good condition, and separate and clearly identified as the property of the Company until payment.

10.5 After delivery and until payment Buyer shall keep the Goods fully insured with a reputable insurance company and if the Goods are lost, damaged or destroyed shall hold the proceeds of insurance for and to the order of the Company pending Payment.

10.6 The Company may at any time without notice recover possession of the Goods which are the property of the Company and Buyer grants to the Company irrevocable to enter for that purpose any premises then occupied by Buyer.

10.7 The Company shall be entitled to maintain an action for the price of the Goods, notwithstanding that the property in them has not passed to Buyer.

11. LIABILITY

11.1 All description, representations, specifications, samples, colours, illustrations and other particulars furnished or made orally by the Company or in catalogues, trade literature, price lists or other documents issued by the Company are given for general information purposes only and Buyer acknowledges that it is not entering into the contract in reliance upon any such description, representation, specification, sample or other particular.

11.2 Except to the extent specifically provided for in these Conditions, the Company shall not be liable for any loss, damage or injury however caused or arising (whether by the Company's negligence or otherwise) from any defect in, failure in, or unsuitability for any purpose of, the Goods.

11.3 The Company shall not in any event be liable for any indirect or consequential loss whatever and however caused.

11.4 Nothing in these conditions shall exclude or restrict any liability for death or personal injury resulting from the Company's negligence, as that expression is defined in section 1 of the Unfair Contract Terms Act 1977.

12. INSOLVENCY

Where Buyer is:

(a) a company, if an order is made or an effective resolution passed for the winding up of the Buyer or if an encumbrancer takes possession or a receiver, administrative receiver, receiver and manager or similar officer is appointed in respect of any of the property, assets or undertaking of Buyer or if a distress, execution, sequestration or other process is levied or enforced upon or against any of the assets of Buyer or if the Buyer ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1886 or if the Buyer makes any arrangement or composition with its creditors or if any equivalent or similar event arises in relation to Buyer in any jurisdiction; or

(b) a partnership, if the partnership is dissolved or ceases to carry on its business or substantially the whole of the business or any of the acts, things or event referred to in condition 12 (c) occurs in respect of any partner in the partnership; or

(c) an individual, if he ceases to carry on his business or substantially the whole of his business or a petition for bankruptcy is presented to the court in respect of that individual or such person makes a proposal for a voluntary arrangement as defined in section 253, Insolvency Act 1986 or enters into any other composition or arrangement with his creditors or any of them, or commits any act of bankruptcy, or a receiver, manager, trustee or other officer is appointed by any person of all or any part of his property, assets or undertaking, or takes or suffers any other action in consequence of debt including, without limitation, giving notice to his creditors or any of them that he has suspended or is about to suspend payment or he is unable to pay his debts for the purposes of section 267 and 268, Insolvency Act 1986, or a proposal or threat to do any of the above acts or things is made, or an event analogous to any of the aforesaid occurs; then, in any such event, payment of the Goods shall become due immediately and the Company may (without prejudice to any other right or remedy available to it) terminate any contract to which these Conditions apply with immediate effect.

13. WAIVER

No failure or delay by the Company in exercising any right under these conditions shall operate as a waiver thereof or extend to or affect any other or subsequent event or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of the Company under these Conditions.

14. ASSIGNMENT

Buyer shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person.

15. SEVERANCE

If any Condition or part of Condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity and unenforceability shall in no way impair or affect any other Condition or part of any Condition all of which shall remain in full force and effect. The offending condition may be construed where possible as if amended to confirm to legal requirements, failing which it shall be construed as if any such offending provision were omitted.

16. NOTICES

Any notice to be given under these Conditions may be delivered, or be sent by first class pre-paid addressed to the party to be served at the address for such party last known to the party giving the notice or may be transmitted by facsimile or by telex to the facsimile or telex number of the party to be served last known to the party giving notice. Notices delivered personally shall be deemed served at time of delivery, notices served by post shall be deemed served 48 hours after posting, notices served by facsimile shall be deemed served 24 hours after transmission and notices served by telex shall be deemed served 24 hours after the recipient's or telex machine shall have acknowledged receipt.

17. FORCE MAJEURE

17.1 If the Company shall be prevented from producing or effecting deliveries of the Goods or any of them by any reason outside the Company's control including (without limitation), Act of God, insurrection, riot, war, hostilities, warlike operations, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock out of workmen, fire, floods, droughts, earthquakes, mechanical breakdown, storage of or inability to obtain materials, equipment or transportation or any other circumstances (whether of a nature similar to those specified, or not) regardless of whether or not whether the circumstances in question could have been foreseen at any time, the obligation of the Company to effect deliveries under these Conditions shall be suspended whilst such prevention shall continue.

17.2 Should any deliveries under the contract be suspended under this Condition Buyer shall nevertheless accept delivery and pay for such of the Goods as the Company shall be able to deliver. The Company shall not be liable for any loss or damage of any kind resulting from the causes mentioned above.

17.3 If the Company has contracted to provide identical or similar goods to more than one buyer and is prevented from fully meeting its obligations by reason of any of the clauses referred to in condition 17.1, the Company may determine which contracts it will honour and to what extent at its own discretion.

18. GOVERNING LAW

These conditions shall be governed by and construed in accordance with English law and Buyer submits to the exclusive jurisdiction of the English Courts but any judgement may be enforced in the courts of any competent jurisdiction.

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