

PROMEDICS ORTHOPÆDICS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS TO TRADE CUSTOMERS

1. Definitions

- 1.1 "Contract" means the contract for the sale and purchase of Goods in accordance with these Terms. "Customer" means the person, firm or company whose order for Goods is accepted by Promedics in accordance with these Terms. "Goods" means the goods (including any instalment of the goods) which Promedics is to supply in accordance with these Terms. "Promedics" means Promedics Orthopædics Limited, (company number 06455477) whose registered office is at Mentor House, Ainsworth Street, Blackburn, Lancashire, BB1 6AY and whose main trading address is Port Glasgow Industrial Estate, Gareloch Road, Port Glasgow, Scotland, PA14 5XH, and whose registered VAT number is 927148511. "Terms" means the standard terms of sale set out in this document as amended from time to time and (unless the context otherwise requires) includes any special terms agreed in writing between the Customer and Promedics. "Website" means the website operated by Promedics with web address <https://promedics-healthcare-professionals.co.uk/>.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1 Promedics shall sell and the Customer shall purchase the Goods in accordance with these Terms. These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 No variation to these Terms shall be binding unless agreed in writing between an authorised representative of Promedics and the Customer.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Promedics (including information on the Website) shall be subject to correction without any liability on the part of Promedics.

3. Orders and acceptance

- 3.1 Prior to placing orders, the Customer shall be required to complete an application form provided by Promedics. The Customer shall ensure that all information provided to Promedics on such application form is complete and accurate in all respects.
- 3.2 The Customer may place an order by telephone or email or, where agreed between Promedics and the Customer, via Electronic Data Interchange (EDI). Each order is an offer by the Customer to buy the Goods specified in the order subject to these Terms.

- 3.3 Where Promedics acknowledges receipt of an order, such acknowledgement shall not constitute acceptance of the order. No order submitted by the Customer shall be deemed to be accepted by Promedics, and the Contract shall not come into existence, unless and until:
- 3.3.1 in the case of custom-made Goods, acceptance is confirmed in writing by Promedics's authorised representative by issuing an order confirmation; or
 - 3.3.2 in the case of Goods that are not custom-made, acceptance is confirmed by Promedics despatching the Goods, or by Promedics informing the Customer that the Goods are ready for collection (where applicable), or by Promedics's authorised representative issuing an order confirmation, whichever is the earlier.
- 3.4 Each order accepted by Promedics shall constitute a separate Contract, formed in accordance with these Terms.
- 3.5 The Customer shall be responsible for ensuring that any order and any specification or design (where applicable) submitted by the Customer is complete and accurate.
- 3.6 Where the Customer's order refers to Goods which are unavailable, or refers to prices of Goods or delivery charges which are incorrect or not then current, Promedics shall contact the Customer and agree an amended order, after which Promedics's authorised representative will confirm acceptance of such order in writing by issuing an order confirmation, at which point the Contract shall come into existence.
- 3.7 The Customer shall be responsible to Promedics for ensuring the accuracy of the terms of any order confirmation, and shall carefully check any order confirmation provided by Promedics on receipt thereof and promptly inform Promedics of any discrepancies therein. Failure to inform Promedics promptly (and in any event prior to despatch of the Goods or any instalment thereof) of any discrepancies within an order confirmation shall be deemed to be acceptance by the Customer of the accuracy of such order confirmation.
- 3.8 The quantity, quality and description of the Goods shall be as set out in Promedics's despatch note.
- 3.9 Promedics reserves the right to make any changes in the specification of the Goods, which do not materially affect their quality or performance, or which are required to ensure they comply with applicable safety, statutory or regulatory requirements.
- 3.10 No order which has been accepted by Promedics may be cancelled or amended by the Customer except with the agreement in writing of Promedics and on terms that the Customer shall indemnify Promedics in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Promedics as a result of such cancellation or amendment.
- 3.11 The Customer acknowledges that Promedics is not obliged to accept orders submitted by the Customer.

4. Price of the goods

- 4.1 Subject to clause 2.3, the price of the Goods shall be the prices shown on the current price list agreed between the Customer and Promedics. Where no price list has been agreed, or where a price list has expired or been cancelled by Promedics, the prices set out in Promedics's then-current standard price list shall apply. Notwithstanding the foregoing, the price for custom-made Goods shall be the price set out on Promedics's order confirmation.
- 4.2 In the case of custom-made Goods, the price for the Goods shall be the price agreed between the Customer and Promedics in relation to such custom-made Goods.
- 4.3 Prices for Goods may change from time to time without notice.
- 4.4 Notwithstanding condition 4.1, Promedics reserves the right, by giving written notice to the Customer at any time before despatch of the Goods, to increase the price of the Goods or the delivery charges to reflect any increase in the cost to Promedics which is due to any increase in the cost of delivery charges, a change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any of the Customer's instructions or failure by the Customer to give Promedics adequate information or instructions.
- 4.5 Unless otherwise agreed between the Customer and Promedics in writing, the Customer shall be liable to pay the delivery charges (which may include the cost of insurance where applicable) in respect of each shipment of the Goods. Such delivery charges shall be as set out on the current price list agreed between the Customer and Promedics, or where such charges are not set out on such price list, as set out on the order confirmation, or where such charges are not set out on the order confirmation, in accordance with Promedics standard delivery charges in force from time to time. Any delivery information set out on the Website (including details of delivery charges) is indicative only and shall not be binding on Promedics.
- 4.6 If the Customer orders Goods for delivery to a destination outside of the UK, such order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that Promedics has no control over these charges and cannot predict their amount.
- 4.7 Unless otherwise agreed between the Customer and Promedics in writing, the Customer is responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing an order.
- 4.8 The Customer must comply with all applicable laws and regulations of the country for which the Goods are destined. Promedics will not be liable or responsible if the Customer breaks any such laws or regulations.
- 4.9 The price of the Goods is exclusive of any applicable value added tax, which, where applicable, the Customer shall be additionally liable to pay to Promedics.

5. Terms of payment

- 5.1 Subject to any special terms agreed in writing between the Customer and Promedics, Promedics will raise an invoice at or after the time of despatch of the Goods, or the time at which Promedics notifies the Customer that the Goods are ready for collection, as the case may be.
- 5.2 Unless otherwise agreed between the Customer and Promedics in writing, the Customer shall pay the full amount invoiced to it by Promedics within 30 days of the date of Promedics's invoice and in the currency shown on the invoice. Promedics shall be entitled to recover the price of the Goods and delivery charges (where applicable) notwithstanding that delivery of the Goods may not have taken place.
- 5.3 Notwithstanding condition 5.1 and condition 5.2, Promedics may require a deposit or payment in full from Customers prior to the despatch or making available of Goods. In such cases, Promedics will issue an invoice to the Customer which will be payable immediately on receipt.
- 5.4 All payments shall be made by the Customer without any deduction or set off by electronic transfer into a bank account nominated by Promedics from time to time. The time of payment of the price shall be of the essence of the Contract.
- 5.5 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Promedics, Promedics may:
 - 5.5.1 terminate the Contract or suspend any further deliveries to the Customer;
 - 5.5.2 appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and Promedics) as Promedics may think fit (notwithstanding any purported appropriation by the Customer);
 - 5.5.3 withhold and/or offset amounts due from Promedics to the Customer against amounts due from the Customer to Promedics under any other contract between Promedics and the Customer (notwithstanding any terms of the Customer to the contrary); and
 - 5.5.4 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above the Bank of England's base rate from time to time, but at 3 per cent per annum for any period when that base rate is below zero per cent, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The parties agree that this constitutes a substantial remedy in terms of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 Where Promedics terminates the Contract in accordance with condition 5.5.1, the Customer shall immediately pay to Promedics all of Promedics's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Promedics shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 5.7 Where Promedics has agreed to provide the Customer with a limited credit facility, Promedics may refuse to accept any further orders from the Customer where the Customer has exceeded the agreed credit facility at the time of such

order(s), or where such order(s) may increase the sums due from the Customer beyond the agreed credit facility.

- 5.8 Promedics may withdraw or reduce credit facilities at any time and without notice.

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Customer or a carrier on behalf of the Customer collecting the Goods at Promedics's premises at any time after Promedics has notified the Customer that the Goods are ready for collection, or, if some other place for delivery is agreed in writing by Promedics, by Promedics delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and Promedics shall not be liable for a delay however caused. Time for delivery shall not be of the essence of the Contract. The Customer may specify a preferred delivery date when placing an order, however this preferred delivery date shall not be binding on Promedics. The Goods may be delivered in advance of the quoted or requested delivery date on giving reasonable notice to the Customer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by Promedics to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4 If, following acceptance of an order by Promedics, Promedics fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Promedics's reasonable control or the Customer's fault, and Promedics is accordingly liable to the Customer, Promedics's liability shall be limited to the cost to the Customer (in the cheapest available market) of similar goods to replace those Goods not delivered, less the price of those Goods not delivered, where such liability shall be limited to a sum equivalent to the price of the Goods not delivered.
- 6.5 If the Customer fails to take delivery of the Goods or fails to give Promedics adequate delivery instructions for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Promedics's fault) then, without limiting any other right or remedy available to Promedics, Promedics may:
- 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.
- 6.6 Damage on delivery ascertainable on reasonable inspection, and errors in the quantity or specifications of the Goods delivered against the applicable despatch note, must be reported to Promedics and the carrier within 21 days of delivery. Failure to report damage/errors within this period (specifying invoice or despatch note number and date of delivery) may lead to the Customer being charged the full amount of the corresponding invoice or the full price of the Goods (whichever

is the higher), and the provisions of condition 6.7 will not apply. Promedics may require photographic evidence of damaged goods, and the Customer shall provide all reasonable assistance in this regard.

- 6.7 Subject to condition 6.6, Promedics will, at its option, where Goods are accepted by Promedics as damaged, repair or replace the damaged Goods or refund the price of the damaged Goods in full, save to the extent that Promedics holds that such damage is caused by the carrier.
- 6.8 If requested by Promedics, the Customer shall return the damaged or excess Goods or those Goods that do not match the specification to Promedics at the Customer's cost. Customer shall return such Goods in a saleable condition, in their original boxes with seals and shrink-wrap intact, and Promedics shall be entitled to charge the Customer the full price of such Goods if they are not returned in accordance with the provisions of this condition 6.8.
- 6.9 Promedics will, at its sole discretion, accept the return of Goods (excluding custom-made Goods) that have been ordered by the Customer in error provided that the Customer notifies Promedics within 21 days of delivery of its wish to return such Goods. Customer shall return the Goods at the Customer's cost, within 14 days of notifying Promedics of its wish to return such Goods, in a saleable condition, in their original boxes with seals and shrink-wrap intact. Promedics shall be entitled to charge the Customer a restocking fee.

7. Risk and property

- 7.1 Except as otherwise agreed between Promedics and the Customer in writing, risk of damage to or loss of the Goods shall pass to the Customer:
 - 7.1.1 in the case of Goods to be delivered at Promedics's premises, at the time when Promedics notifies the Customer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at Promedics's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, at the time when Promedics has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Customer until Promedics has received in cleared funds payment in full of the price of the Goods and the delivery charges (if applicable) and of all other Goods agreed to be sold by Promedics to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Promedics's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored protected and insured and identified as Promedics's property.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), Promedics may at any time require the Customer to deliver up the Goods to Promedics and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

Promedics shall not be liable to the Customer for any damage as a result of the removal or retrieval of the Goods.

- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Promedics, but if the Customer does so all monies owing by the Customer to Promedics shall (without limiting any other right or remedy of Promedics) forthwith become due and payable.

8. Warranties and liability

- 8.1 Promedics provides a warranty that on delivery and for a period of 12 months from delivery, the Goods shall:

8.1.1 subject to condition 9.1, conform in all material respects with their description in the despatch note; and

8.1.2 be free from material defects in design, material and workmanship.

- 8.2 Subject to condition 8.3, if:

8.2.1 the Customer gives Promedics notice in writing within a reasonable time of discovery (specifying invoice or despatch note number and date of delivery) that some or all of the Goods do not comply with the warranty set out in condition 8.1;

8.2.2 Promedics is given a reasonable opportunity of examining the Goods; and

8.2.3 if requested by Promedics, the Customer returns the Goods to Promedics at the Customer's cost,

Promedics will, at its option, where Goods are accepted as defective, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 8.3 Promedics shall not be liable for breach of the warranty set out in condition 8.1 if:

8.3.1 the Customer makes any further use of the Goods after giving notice to Promedics under condition 8.2, including selling the Goods to a third party;

8.3.2 the defect arises as a result of Promedics following any drawing, design, specification or other request supplied by the Customer;

8.3.3 the Customer or a third party alters or repairs the Goods without Promedics's written consent;

8.3.4 the defect arises because the Customer failed to follow Promedics's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;

8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, failure to use the Goods in accordance with instructions provided, or abnormal storage or working conditions;

- 8.3.6 the defect arises as a result of excessive use or use beyond the normal lifespan or intended period of use of the Goods (for example where Goods are single-use items) or where the Goods are used outside their intended purpose; or
- 8.3.7 the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Except as provided in this condition 8, Promedics shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 8.1.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract. Except as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.6 These Terms also apply to any repaired or replacement Goods supplied by Promedics to the Customer.
- 8.7 Any Goods replaced will belong to Promedics.
- 8.8 Promedics shall be under no liability under the warranty in condition 8.1 (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

9. Quality/Description

- 9.1 All drawings, descriptive matter, specifications and advertising issued by Promedics and any descriptions or illustrations contained in Promedics's catalogues/brochures or on Promedics's Website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract and the Customer accepts that colours reproduced in any electronic image or brochure may differ from the actual Goods.
- 9.2 The Customer shall indemnify Promedics and keep Promedics indemnified in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Promedics as a result of or in connection with: (i) any defect in Goods caused in whole or in part by Promedics supplying such Goods in accordance with the Customer's instructions or specification; and (ii) any infringement or alleged infringement of any intellectual property rights or any breach of applicable law or regulation caused in whole or in part by Promedics complying or attempting to comply with the Customer's instructions or specification or the use, manufacture or supply of Goods in accordance with the Customer's instructions or specification. This condition shall survive the termination of the Contract.

10. Limitation of Liability

- 10.1 Subject to condition 6.4 and condition 8, the following provisions set out the entire financial liability of Promedics (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of these Terms and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Nothing in these Terms excludes or limits the liability of Promedics for death or personal injury caused by Promedics's negligence, or liability for defective products under the Consumer Protection Act 1987, or for fraudulent misrepresentation.
- 10.3 Subject to conditions 10.1 and 10.2:
- 10.3.1 Promedics's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods, except as expressly provided in these Terms; and
- 10.3.2 Promedics shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, 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.
- 10.4 Promedics shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of Promedics's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Promedics's reasonable control.

11. Insolvency of the Customer

- 11.1 This condition 11 applies if:
- 11.1.1 the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Customer; or
- 11.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Customer's financial position deteriorates to such an extent that in Promedics's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 11.1.5 Promedics reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.2 If this condition applies then, without limiting any other right or remedy available to Promedics, Promedics may cancel the Contract or suspend any further

deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. General

- 12.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its main trading address or such other address (including email address) as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 Any notice shall be deemed to have been received:
 - 12.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or
 - 12.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this condition 12.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.3 Condition 12.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.4 The Contract is between Promedics and the Customer. No other person, firm or company has any rights to enforce any of its terms.
- 12.5 No waiver by Promedics of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.6 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 12.7 Any dispute arising under or in connection with the Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.
- 12.8 Promedics shall be entitled to assign its rights and obligations under these Terms and/or the Contract.