

1. DEFINITIONS

- 1.1 **Consignment Goods** means Goods that are supplied to the Customer on a consignment basis for which an invoice is not issued by the Vendor until the Consignment Goods have been used or opened for use by the Customer (subject to the terms of any other agreement entered into between the Vendor and the Customer for Consignment Goods).
- 1.2 **Customer** means a person, company or institution who has purchased and/or been supplied with Goods under these Terms of Sale.
- 1.3 **Goods** means products or services supplied or to be supplied by the Vendor to the Customer under these Terms of Sale.
- 1.4 **GST** means the Goods and Services Tax defined by the "A New Tax System (Goods and Services Tax) Act 1999 (Cth)" and any related legislation or regulations.
- 1.5 **Vendor** means Zimmer Biomet Pty Ltd ACN 096 480 992 and/or Paragon 28 Australia Pty Ltd ABN 61654034545 both of Level 4, 12 Narabang Way, Belrose, NSW, 2085.

2. TERMS OF SALE TO PREVAIL

- 2.1 These Terms of Sale will prevail in the event of any conflict or inconsistency between these Terms of Sale and a Customer's order or terms of purchase (subject to any agreement to the contrary).
- 2.2 Acceptance of delivery of Goods by a Customer will constitute acceptance of these Terms of Sale by the Customer, unless otherwise agreed in writing.

3. DESCRIPTION AND PURPOSE

- 3.1 **Suitability for Purpose**
Unless the Vendor has been specifically advised in writing, it has no knowledge of the purpose for which the Customer proposes to use any Goods supplied by the Vendor to the Customer, and the Customer relies on its own skill and judgement and has satisfied itself as to the condition, quality, suitability and fitness of the Goods for the purpose for which the Customer proposes to use them.

4. DELIVERY

- 4.1 **Time**
The Vendor will use reasonable endeavours to meet any delivery date quoted for the Goods but such date is an estimate only and not binding on the Vendor.
- 4.2 **Delivery Ex Works**
Unless agreed otherwise in writing, Goods are supplied ex works at the place of manufacture or storage nominated by the Vendor and the Vendor's obligation to deliver shall be satisfied if the Vendor makes the Goods suitable for collection by the Customer at such place of manufacture or storage.
- 4.3 **Shortages in Delivery or Other Non-Conformance**
Any claim for shortages or other non-conformance relating to a delivery of Goods shall be notified in writing to the Vendor by the earlier of (i) the date of withdrawal for use by the Customer; or (ii) within ten days of delivery; otherwise Goods will be deemed accepted by the Customer.

5. RISK AND TITLE

- 5.1 **Risk**
Risk in Goods shall remain with the Vendor only until the first in time of (i) the passing of property in the Goods to the Customer; or (ii) the delivery of the Goods by the Vendor to the Customer or to a carrier at the contractual point of delivery; or (iii) the expiry of 14 days from the date of notification by the Vendor to the Customer that the Goods are ready for delivery; and thereafter risk of damage, loss or deterioration of the goods from any cause whatsoever will pass to the Customer notwithstanding that transport of the Goods may be directed by the Vendor and/or that transport insurance may be taken out by the Vendor on the Customer's behalf.
- 5.2 **Title**
(i) Title to the Goods passes to the Vendor on delivery except in the case of Consignment Goods where title passes on use, or opening for use, by the Customer.
(ii) Until Consignment Goods are withdrawn for use by the Customer, the Customer shall store the Consignment Goods in a way that clearly manifests the Vendor's title and will keep separate records of any sales of the Consignment Goods or withdrawal of the Consignment Goods from Customer's inventory and further will not sell or part with possession of the Consignment Goods prior to withdrawal for use except with the consent of the Vendor.
(iii) Payment in relation to any Goods shall become due immediately upon the Customer committing an act of bankruptcy or insolvency, or if an administrator or receiver of the Customer is appointed in relation to the Customer or its assets.

6. PRICES AND CONTRACT PRICE ADJUSTMENT

- 6.1 **Price Basis**
Prices quoted by the Vendor are those applicable at the date of quotation and may be varied without notice. All prices, unless otherwise stated or agreed, are ex works at Vendor's nominated premises and all costs incurred by the Vendor thereafter shall be at the expense of the Customer.
- 6.2 **GST and other Excluded Charges**
Unless otherwise stated in writing the GST, sales tax or any other tax or levy imposed on any of the sale, manufacture, handling, distribution, import or use of the Goods, or calculated by the selling price of the Goods, or otherwise howsoever included in or added to the price of Goods, shall in all cases be charged to the Customer as an additional charge over and above the price quoted for the Goods.

7. PAYMENT

- 7.1 **Payment Due**
Except for Consignment Goods and unless otherwise agreed all Goods are supplied on a cash on delivery basis. The extension of credit shall be at the Vendor's absolute discretion. Where credit is extended, payment for all Goods including GST and other applicable charges shall be due 30 days from the date of the invoice unless otherwise agreed in writing.
- 7.2 **Consignment Goods**
Within 48 hours of use (or opening for use) of any Consignment Goods, the Customer must both notify Vendor of such and issue a purchase order for the subject Consignment Goods. Use or opening for use will be deemed to constitute a purchase of the Consignment Goods by Customer in accordance with this Agreement. On receipt of a purchase order, the Vendor will issue its invoice to Customer on the same payment terms as set out in clause 7.1 above.
- 7.3 **Delay or Default in Payment**
Should the Customer fail to make payment of any amount due to the Vendor, then the Vendor will be entitled to charge interest on the overdue amount at such rate as would be charged to the Vendor by its bankers for overdraft accommodation and calculated from the due date of payment to the actual date of full and final payment. Any payment subsequently made by the Customer to the Vendor shall be credited first against any interest so accrued.

8. RETURN OF GOODS

- 8.1 Goods may only be returned by the Customer with the written consent of the Vendor. The Customer is then required to:-
(i) ensure that the Goods are free from defects or damage and are clean and of saleable quality;
(ii) return the Goods to the Vendor within 30 days of delivery to the Customer; and
(iii) arrange and bear the costs of return of the Goods to the Vendor's nominated premises.

9. SECURITY INTEREST UNDER PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

- 9.1 The Customer will provide information, execute documents and do such acts as are necessary, in Vendor's opinion, to ensure the registration and enforceability of any security interest held by the Vendor in this agreement or any Goods supplied to the Customer under it, under the PPSA (or any amendments to it). The Customer irrevocably appoints the Vendor as its attorney to do anything which the Customer agrees to do under this clause and ratifies anything done by the Vendor accordingly. Customer waives the right to receive a copy of the verification statement in accordance with section 148 of the PPSA. Vendor and Customer agree to contract out of Part 4 of the PPSA to the extent that they are able to do so in relation to the obligations and rights set out in sections 121, 125, 129, 132, 134, 135, 142 and 143 of that Part.

10. LIMITATION OF LIABILITY

- 10.1 To the extent permitted by law, the liability of the Vendor for any loss, damage, claim or expense arising from or in connection with the Goods will be limited to, and fully discharged by, at Vendor's sole discretion, the replacement of the Goods, or the supply of equivalent Goods, or the repair of the Goods. The Vendor will not be liable for proximate, incidental or consequential damages in any circumstances.
- 10.2 The Customer will indemnify the Vendor in relation to any claim, loss, damage or expense caused or contributed to by the negligence or contractual breach of the Vendor, in relation to this Agreement or any of the Goods sold to, or passing into the possession or control of, the Customer under this Agreement.

11. FORCE MAJEURE

- 11.1 The Vendor shall not be liable to the Customer for any failures to meet any obligation under any contract arising between the Vendor and the Customer to the extent that such failure is caused by or arises from:
(i) strikes, lockouts or other industrial disputes, shortage of labour or materials, delay in manufacturing by the Vendor, its associates or suppliers, riot, civil commotion, pandemics, fire, flood, drought, loss or delay at sea or otherwise, breakdowns or war; or
(ii) any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of the Vendor.
In such an event, the Vendor may elect to either cancel this contract or extend the time for performance, and the Customer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in their delivery or despatch.

12. NOTICES

For the purpose of service of any document or notice in connection with this contract it shall be sufficient for either party to forward such document or notice by registered post to the registered address of the other party or the address nominated in the Vendor's invoices rendered to the Customer, such notice deemed to be received two days after the date of posting.

13. GENERAL

- 13.1 The Vendor may cancel this contract, refuse to supply any further Goods or stop Goods in transit if the Customer makes any default under this contract or any other contract with the Vendor, becomes bankrupt, has a receiver or administrator appointed for any of its assets, goes into liquidation, makes an arrangement with its creditors or has a statutory manager appointed in respect of it.
- 13.2 All the original rights, powers, exemptions and remedies of the Vendor shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement.
- 13.3 All contracts and all claims or actions under this contract will be determined in accordance with the laws of and applicable in the state of New South Wales and each party irrevocably agree to submit to the courts having jurisdiction in that State.