

**CONSIGNMENT TERMS AND CONDITIONS – ZIMMER BIOMET NEW ZEALAND COMPANY**

1. Definitions

**Consigned Inventory** means Products and/or Instruments consigned on a long term basis to the Customer.

**Customer** means the entity accepting Consigned Inventory and/or Instruments and/or a Loan Kit from Zimmer Biomet.

**Instruments** mean Zimmer Biomet's surgical instruments provided for use with the Products.

**Loan Kit** means a set of Products, Instruments and ancillary products consigned on a short term basis to the Customer.

**Products** mean orthopedic implants, ancillary products and other items from time to time ordinarily supplied by Zimmer Biomet in the usual course of its business.

**Terms** mean these terms and conditions.

**Zimmer Biomet** means Zimmer Biomet New Zealand Company of 210 Kyber Pass Road, Newmarket, Auckland, New Zealand.

2. Consignment

Consigned Inventory and Loan Kits will be consigned by Zimmer Biomet to Customer on the following basis:

- (a) Zimmer Biomet will consign to Customer such quantities of Consigned Inventory as Customer and Zimmer Biomet mutually agree are necessary to meet Customer's long term requirements from time to time.
- (b) Zimmer Biomet will place with Customer a Loan Kit from time to time containing such Products to be agreed between Customer and Zimmer Biomet (**Loan Kit Inventory**) as necessary to meet Customer's clinical requirements for one or more surgical procedures.
- (c) All Consigned Inventory and Loan Kit Inventory will remain the property of Zimmer Biomet until used by Customer as provided under these Terms, provided however that Customer accepts all risk of loss and full responsibility for the condition of, any shortages in, and the payment for, all Consigned Inventory and Loan Kits (including Loan Kit Inventory) that may be used, opened, lost, or damaged, other than where such loss or damage is due to an act or omission of Zimmer Biomet or its employees or contractors.
- (d) Customer will use its best efforts to (i) identify all Consigned Inventory and Loan Kits as being the property of Zimmer Biomet, and (ii) store Consigned Inventory and Loan Kits separately from other property of or held by the Customer.
- (e) Within 48 hours of a surgical procedure in which Loan Kit Inventory is used, Customer at its own cost (unless otherwise agreed) must return the Loan Kit to Zimmer Biomet and at the same time supply Zimmer Biomet with a purchase order for any Loan Inventory used in the surgical procedure or otherwise used, opened, lost or damaged. Zimmer Biomet on written notice to Customer at any time may recall a Loan Kit not required for a surgical procedure and upon receipt of such notice, Customer shall immediately deliver the Loan Kit to Zimmer Biomet.
- (f) Within 48 hours of a surgical procedure in which Consigned Inventory is used, Customer must provide Zimmer Biomet with a purchase order for any Consignment Inventory used in the surgical procedure or otherwise used, opened, lost or damaged, and also by way of notice to Zimmer Biomet to replenish Consigned Inventory if required by the Customer.
- (g) Zimmer Biomet may charge a handling fee at its discretion for any Loan Kit returned to Zimmer Biomet without having been used in a surgical procedure.

3. Instruments

- (a) Customer will have no ownership or other proprietary rights in Instruments and shall hold them as bailee only.
- (b) Customer is responsible for maintaining Instruments in good condition and for using reasonable care in their handling and storage. Instruments are not permitted to be modified, defaced, marked, etched, engraved, or have any marking, chemical or engineering process applied to them by the Customer. Customer will be liable to pay the full cost of any Instrument affected by Customer's breach of this term.
- (c) Customer will be responsible for the proper sterilisation of Instruments in accordance with applicable laws and standards prior to their use for any surgical procedure and also prior to their return to Zimmer Biomet.
- (d) Instruments shall only be used with the Products.
- (e) Customer will be responsible for and be invoiced for all shortages of and loss or damage to Instruments (reasonable wear and tear excepted) as from the time of delivery to Customer.
- (f) Instruments must be returned to Zimmer Biomet within 48 hours of any surgical procedure in which they are used and must be returned on demand by Zimmer Biomet in any event.

4. Shipment and Delivery

Zimmer Biomet agrees, subject to these Terms, to deliver or procure the delivery of Consigned Inventory and Loan Kits to such site/s as agreed between Zimmer Biomet and the Customer in writing on the basis that all delivery costs including call out costs for urgent requests are payable by the Customer unless otherwise agreed in writing.

5. Prices for the Products

Use of Consigned Inventory or Loan Kit Inventory by Customer shall be deemed to constitute an agreement by Customer to purchase the relevant Products in accordance with these Terms. Purchase prices for those Products, unless otherwise agreed in writing, will be in accordance with Zimmer Biomet's list prices in effect as at the date of use by the Customer plus GST and any other applicable taxes.

6. Invoicing and Payment

On receipt of Customer's purchase order, Zimmer Biomet shall issue a taxable invoice to the Customer. Payment of the invoice including GST will be due 30 days from the date of the invoice unless otherwise agreed in writing. Zimmer Biomet is entitled to issue an invoice for any Products or Instruments that are opened, lost, or damaged (other than where such loss or damage is due to an act or omission of Zimmer Biomet or its employees or contractors).

7. Passing of Risk and Title

All risk in Consigned Inventory, Loan Kits and Instruments passes to the Customer on delivery to the Customer. Title in the Products will pass to Customer on use by the Customer, otherwise title in all Consigned Inventory, Loan Kits and Instruments shall remain with Zimmer Biomet.

8. Stocktake of Consigned Inventory

Zimmer Biomet will regularly complete a stock count of the Consigned Inventory and Loan Kits and reconcile with Zimmer Biomet's own records. Customer will be invoiced for any Consigned Inventory, Loan Kits or Instruments determined as a result of the stocktake to have been used, or otherwise missing, damaged, opened or otherwise rendered unsaleable.

9. Storage and Withdrawal of Consigned Inventory

Consigned Inventory and Loan Kits must be stored in a secure and clean environment and in accordance with any guidelines set out in packaging instructions including with respect to temperature controls if applicable. Where applicable, Consigned Inventory and Loan Kit Inventory must be withdrawn for use by the Customer on a first expired/first out basis, and expired Products must not be used in any circumstances. Any Product found to have passed its expiry date must be reviewed by a Zimmer Biomet representative and, where appropriate, will be replaced free of charge except where the Customer has failed to withdraw Products for use on a first expired/first-out basis. Consigned Inventory and Loan Kits are not permitted to be modified, defaced, marked, etched, engraved, or have any marking, chemical or engineering process applied to them by the Customer.

10. Warranty

Customer has the benefit of conditions and warranties implied by the Fair Trading Act 1986 and/or the Consumer Guarantees Act 1993 (**the Acts**) and nothing in these terms and conditions is intended to exclude or restrict or modify any statutory obligation of Zimmer Biomet if that cannot lawfully be effected. In addition, Zimmer Biomet warrants that the Products that it manufactures, when used in accordance with the directions on their labels or as otherwise indicated by Zimmer Biomet, are fit for the purposes and indications described in the labeling until the date of the Product's expiry as indicated on the Product's label, except in the case of abuse or misuse or inappropriate storage conditions. If Zimmer Biomet is liable for breach of a condition or warranty implied by the Act or as set out above, the liability of Zimmer Biomet for such breach is limited to (i) the replacement of the Products or the supply of equivalent Products; or (ii) the payment of the cost of replacing the Products or of acquiring equivalent Products, as determined by Zimmer Biomet. Subject to the foregoing and any legislation to the contrary all warranties and representations on the part of Zimmer Biomet, whether express or implied, statutory or otherwise, are expressly excluded. In no instance will Zimmer Biomet be responsible for incidental or consequential damages.

11. Term and Termination

This Agreement will take effect from the date it is executed by Customer and will continue in force until terminated by either party upon 14 days written notice to the other party. Zimmer Biomet may with immediate effect cancel this contract and refuse to supply any further Loan Kits, Products and/or Instruments or stop Loan Kits, Products and/or Instruments in transit if the Customer makes any default under this Agreement, becomes bankrupt, has a receiver or administrator appointed to any of its assets, goes into liquidation, makes an arrangement with its creditors or has a statutory manager appointed in respect of it. Upon termination of this Agreement for any reason, the Customer will immediately deliver up to Zimmer Biomet all Loan Kits, Products and/or Instruments then in its possession or control.

12. Confidentiality

Each of Zimmer Biomet and Customer will hold in strictest confidence any information and materials related to the business or products of the other party or designated by the other party as confidential. The parties agree that they will not disclose such information of the other to any third party without the prior written consent of the other.

13. Personal Property Securities Act 1999 (PPSA)

Customer agrees that Zimmer Biomet may register each security interest in its favor in the Consigned Inventory, Loan Kits or Instruments on the Personal Property Securities Register created under the PPSA. Customer further agrees that Zimmer Biomet need not provide any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. To the maximum extent permitted, all provisions listed in sections 114, 116, 120, 121, 125, 126, 127, 129 and 131 of the PPSA are excluded in full and will not apply to that security interest. For the purposes of section 40 of the PPSA, these Terms constitute a security agreement that creates a security interest in collateral.

14. Miscellaneous

- (a) No party will be liable for breach of these Terms or for failure or delay in the performance of its obligations if such breach, failure or delay is due to natural disaster or any causes reasonably beyond the control of the party.
- (b) These Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the jurisdiction of the courts of New Zealand.
- (c) Any notice required under these Terms will be in writing sent by email, registered mail, or postage prepaid and addressed to the parties at their respective addresses as set out in the Reference Schedule.
- (d) These Terms sets out the entire agreement and understanding between the parties as to the subject matter hereof and none of these Terms may be amended or modified except in writing signed by the parties.