
TERMS AND CONDITIONS FOR
THE SALE OF GOODS AND SERVICES

1. Definitions and Interpretation

1.1 Definitions:

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Clause 14.4.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: means any documentation or other information provided as part of the Services.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings or CE marking, that is set out in the Supplier's documentation or on its website, or any variation which is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods and/or Services, as set out in the Supplier's order form, the Customer's written acceptance of the Supplier's quotation, or the Customer's purchase order form.

Order Confirmation: the document generated and sent out by the Supplier to the Customer after the Supplier has received an Order and accepted it.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Services Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Chalice Medical Limited (registered in England and Wales with company number 3625972).

1.2 Interpretation

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to writing or written includes emails.

2. Basis of Contract

- 2.1 These Conditions apply to this 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. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions, including without limitation any contained in the Customer's purchase order.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods or Services Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation, at which point this Contract shall be formed.
- 2.4 A quotation for the Goods and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 1 month from its date of issue.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of this Contract or have any contractual force.

3. Goods

- 3.1 The Goods will conform to the Goods Specification.
- 3.2 The Supplier reserves the right to:
 - 3.2.1 amend the Goods Specification and any documentation if required by any applicable statutory or regulatory requirements; or
 - 3.2.2 substitute any materials or parts which are used in the Goods and which are unavailable for any reason with alternative materials or parts, to the extent that this does not materially affect their quality or performance or this is necessary to comply with any health and safety or other legal requirements.

4. Delivery

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code or batch number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Order will specify the Delivery Location which may be the Customer's nominated premises or the premises of the nominated carrier ("Delivery Location"). The Supplier will send out an Order Confirmation and deliver the Goods to the Delivery Location.
- 4.3 Subject to Clause 4.6, delivery of the Goods is completed when the Goods arrive at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only and time of delivery is not of the essence. The Supplier shall endeavor to deliver the Goods in accordance with any timescales documented in the Order but will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods within one (1) month of the estimated timescales specified in the Order, the Customer's sole remedy shall be the right to cancel the Order.
- 4.6 If the Customer fails to accept delivery of the Goods within three (3) days of the Supplier first attempting to deliver the Goods to the Delivery Location, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under this Contract:

- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third day after the day on which the Supplier first attempted to deliver the Goods to the Customer's Delivery Location; and
- 4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately, each being a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. Warranty**
- 5.1 The Supplier warrants that on delivery, and for a period of twelve (12) months from the date of delivery ("Warranty Period"), the Goods shall:
 - 5.1.1 conform with their description and the Specification; and
 - 5.1.2 be free from material defects in design, material and workmanship; and
 - 5.1.3 be of satisfactory quality.
- 5.2 Subject to Clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period within fourteen (14) days of discovery that some or all of the Goods do not comply with the warranty set out in Clause 5.1;
 - 5.2.2 the Supplier (or its nominated representative) is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price (or provide credit to the value) of the defective Goods.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events:
 - 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
 - 5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - 5.3.7 the damage or defect arose after delivery had completed.
- 5.4 Except as provided in this Clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1.
- 5.5 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 this Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier for the remainder of the Warranty Period.

6. Title and Risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with Clauses 4.2 and 4.6.1.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 store the Goods (at no cost to the Supplier) separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in Clause 11.1; and
 - 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Clause 11.1, then, without limiting any other right or remedy the Supplier may have to require the Customer to deliver up all Goods in its possession and if the Customer fails to do so promptly, the Supplier may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's Obligations

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order are complete and accurate;
 - 8.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.1.5 prepare the Customer's premises for the supply of the Services;
 - 8.1.6 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.7 comply with all applicable laws, including health and safety laws;
 - 8.1.8 keep all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorization; and
 - 8.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.

- 8.2 If the Supplier's performance of any of its obligations under this Contract are prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"), the Supplier:
- 8.2.1 shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 8.2; and
 - 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Price, Charges and Payment

- 9.1 In consideration for the provision of Goods and/or Services by the Supplier, the Customer will pay the price for the Goods and charges for the Services.
- 9.2 The price of the Goods shall be the price set out in the Order Confirmation.
- 9.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.3.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, import or export tariffs, increases in labour, materials and other manufacturing costs, change in applicable law);
 - 9.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Service Specification; or
 - 9.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.4 The charges for the Services shall be as set out in the Order or calculated on a time and materials basis based on the Supplier's published daily rates. The Supplier's daily rates for each individual person are calculated on the basis of an eight (8) hour day (between 08.00 to 17.00) worked on Business Days. The Supplier will be entitled to charge additional fees for Services required outside of these hours.
- 9.5 The price of the Goods and charges for the Services exclude:
- 9.5.1 amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 9.5.2 the costs and charges of packaging, insurance and transport of the Goods, travelling and subsistence and other expenses associated with the provision of the Services including but not limited to materials and any third party services, which shall be invoiced to the Customer.
- 9.6 The Supplier may invoice the Customer for the Goods and any additional costs and expenses on or at any time after the completion of delivery of the Goods. The Supplier may invoice the Customer for the Services on completion of the Services or as otherwise specified in the Order.
- 9.7 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be in the currency specified on the invoice and shall be made to the bank account nominated in writing by the Supplier.
- 9.8 If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under this Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without

limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

- 9.10 If the Customer fails to make payment due to the Supplier under this Contract within seven (7) Business Days after the due date, the Supplier will be entitled to withhold further deliveries of Goods and/or provision of further Services until that payment has been made. In addition, if the Supplier has reasonable concerns regarding the Customer's financial standing or credit worthiness, it will be entitled, by giving written notice to the Customer, to issue invoices prior to the Goods being delivered and/or Services being provided and will not be required to deliver the Goods and/or provide the Services until the relevant invoice has been paid in full.

10. Intellectual Property

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier. The Customer shall, at the Supplier's reasonable expense, execute all such documents and do all such acts and things as the Supplier may request from time to time in order to give effect to this clause.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable license to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by Clause 10.2
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of this Contract for the purpose of providing the Services to the Customer.

11. Termination

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 11.1.1 the Customer commits a material breach of any term of this Contract and (if such a breach is remediable) fails to remedy that breach within twenty one (21) days of that party being notified in writing to do so;
 - 11.1.2 the Customer takes any step or action in connection with it entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 11.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under this Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 11.1.1 to Clause 11.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11.3 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.4 On termination of this Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 11.5 Termination of this Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

11.6 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. Limitation of Liability

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 12.1.1 death or personal injury caused by its negligence, or the negligence;
- 12.1.2 fraud or fraudulent misrepresentation; or
- 12.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2 Subject to Clause 12.1

- 12.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Contract; and
- 12.2.2 the Supplier's total liability to the Customer under this Contract in respect of all other losses arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total value of this Contract.

13. Force Majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for eight (8) weeks, the party not affected may terminate this Contract by giving written notice to the affected party.

14. General

14.1 Assignment and other dealings

The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.

The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Contract without the prior written consent of the Supplier.

14.2 **Confidentiality**

Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, or the terms of this Contract, except as permitted by Clause 14.2.2. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party. Each party may disclose the other party's confidential information:

- 14.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14.2; and
- 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

14.3 **Entire agreement**

This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any

statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

14.4 Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

14.5 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy nor prevent or restrict the further exercise of that or any other right or remedy.

14.6 Severance

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

14.7 Notices

14.7.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email (provided that a hardcopy follows by post).

14.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.7.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

14.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.8 Third party rights

No one other than a party to this Contract shall have any right to enforce any of its terms.

14.9 Governing law and Jurisdiction

This Contract, and any dispute or claim (including contractual and non-contractual disputes) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (contractual or non-contractual) arising out of or in connection with this Contract or its subject matter or formation.