



## **General Terms and Conditions of Supply - Direct Sales**

These terms and conditions do not apply in the case of any purchase by any party which has entered into a distribution agreement with Surgins Surgical Limited, in which case the applicable provisions of such agreement apply.

**Please note the limitations and exclusions of liability set out in clauses 3.3, 5.3, 7.3 and 7.4.**

### **1 Definitions**

In these conditions, unless the context requires otherwise:

- 1.1 'Supplier' means **Surgins Surgical Limited** incorporated and registered in England and Wales with company number 06307127 whose registered office is at PO Box 14530 Solihull B91 9LH West Midlands
- 1.2 'Conditions' means these General Terms and Conditions;
- 1.3 'Contract' means the contract between the Supplier and the Customer for the sale and purchase of the Products coming into existence as referred to in clause 2.5 below;
- 1.4 'Customer' means the person, company which buys or agrees to buy Products from the Supplier;
- 1.5 ' Customised Products' means Products (as defined below) which have been produced or adapted by or on behalf of the Supplier to a specification requested or stipulated by the Customer;
- 1.6 'Delivery Date' means the date specified by the Supplier as the target date for delivery of the Products to the Customer;
- 1.7 "Order" means the order submitted by the Customer to the Supplier through and in accordance with the processes of the Supplier's website [www.surgins.co.uk/](http://www.surgins.co.uk/) [www.surgins.com](http://www.surgins.com) or as the Supplier may otherwise agree in writing;
- 1.8 Order Acknowledgement" means the form of order acknowledgement or order acceptance issued in any manner, including by e mail, by the Supplier to the Customer;
- 1.9 'Party' means the Supplier or the Customer and 'Parties' means both of them;



- 1.10 'Price' means the price for the Products (and any associated services, including by way of example only delivery, carriage, packing but only where any of the same are expressly shown in the Quotation to be included in the Price) as set out in a Quotation;
- 1.11 'Products' means that range of products appearing in the Supplier's catalogue, physical, virtual or electronic, as may be published by the Supplier from time to time;
- 1.12 'Quotation' a quotation for the supply of a Product or Products issued by the Supplier however given including by e mail;
- 1.13 'Warranty' means the warranty granted by the Supplier to Customer in relation to the Products as set out in Clause 7.1.
- 1.14 'Working Day' means any day other than a Saturday a Sunday or a UK public holiday.

## **2 CONDITIONS APPLICABLE**

- 2.1 The Conditions shall apply to all contracts for the sale or supply of Products by the Supplier to the Customer to the exclusion of all terms and conditions of the Customer including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar or other document.
- 2.2 All Orders from the Customer for Products shall be deemed to be offers by the Customer to purchase Products pursuant and subject to the Conditions.
- 2.3 Any party interested to be supplied with Products must apply to the Supplier for a Quotation for the types and quantities of Products concerned in accordance with the process specified in the Suppliers website [www.surgins.co.uk/](http://www.surgins.co.uk/) [www.surgins.com](http://www.surgins.com) or Product catalogue. The Supplier is not bound to give a Quotation
- 2.4 A Quotation is only an invitation to treat. If the Customer wishes to purchase Products from the Supplier the Customer shall issue an order to the Supplier which the Supplier may, but is not obliged, to accept. The Supplier will not accept any Order unless the Order specifies the Quotation to which it relates by setting out the Quotation number and otherwise conforms in all respects to that Quotation. In any event Products are subject to availability.
- 2.5 No binding contract shall exist between the Supplier and Customer with respect to the sale and purchase of any Product until and unless the Supplier has expressly accepted such Order by issuing an Order Acknowledgement. The Supplier has no obligation to accept any Order even if it has always or habitually accepted such Orders previously.



- 2.6 Without prejudice to any other acceptance by the Customer of the Conditions or the applicability of the Conditions as stated herein acceptance of the Product(s) by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Conditions.
- 2.7 Any variation or amendment or purported variation or amendment to the Contract, other than in accordance with the terms of the Contract shall be ineffective unless expressly agreed in writing on the part of the Supplier.
- 2.8 The Supplier shall be entitled to amend or replace these Conditions from time to time by either sending the new or amended conditions to the Customer or posting the new or amended conditions on its website [www.surgins.co.uk/](http://www.surgins.co.uk/) [www.surgins.com](http://www.surgins.com)
- 2.9 Where the Customer is a consumer as defined in Schedule A then Schedule A shall be incorporated in and apply to the Contract concerned.

### **3 Representations**

- 3.1 All of the pre-contractual statements or representations in any way relating to the Products or to the Supplier and upon which the Customer is relying, if any are set out in the Supplier's official publications relevant to the Product concerned current at the relevant time. The Customer acknowledges and agrees that neither the Supplier nor any person on acting behalf of the Supplier has made any pre-contractual statement or representation in any way relating to the Products or to the Supplier, other than as so set out and the Customer waives any claims rights or remedies which it might have in relation to any such statement or representation which is not so set out provided always that this clause shall not exclude or limit any liability of a Party or any right which the other Party may have in respect of any such statement or representation made or given fraudulently or dishonestly or in circumstances where there has been wilful concealment.
- 3.2 If there is any conflict between the various documents referred herein they shall take priority in the following order, firstly the Quotation, then the Order Acknowledgement and thirdly these Conditions.
- 3.3 The Customer shall inform the Supplier, in writing as soon as possible and in any event not later than within its Order whether there are any factors including but not limited to those which relate in any way to the Customer's proposed application of any Products, their working practices or the environment in which the Products or any part of them may operate which could mean that the Products might not perform or exhibit the quality or durability or otherwise be other than the Supplier would expect in normal circumstances. In default of any such written information from the Customer adequately putting the Supplier on notice of any such factors the Supplier shall have no liability to the Customer in relation to any such matter.

### **4 Price and payment**



- 4.1 The Prices have been established taking into account amongst other things the limitation and exclusion of liability provisions set out in these Conditions.
- 4.2 Any Quotation shall be valid for not more than 30 days from the date upon which it is given, being in the case of an e mail the date of transmission by the Supplier and is valid only for the quantities of Products for which it is given.
- 4.3 The Price for the Products is quoted on an ex works basis unless otherwise expressly agreed by the Supplier in writing following receipt of the Order concerned.
- 4.4 If the Supplier agrees in exceptional circumstances to deliver Products delivery charges will also be payable by the Customer to the Supplier at the level specified by the Supplier in the relevant Quotation and confirmed in the Order Acknowledgment.
- 4.5 The Price quoted is exclusive of VAT (and/or other similar tax or duty) which shall be due from and payable by the Customer at the rate ruling on the date of the Supplier's invoice.
- 4.6 Save where the Supplier has expressly agreed credit terms with the Customer as set out in the relevant Quotation, or as otherwise expressly agreed in writing by the Supplier and subject to any available credit limit agreed therein by the Supplier the Customer is required to pay the whole of the amount of the Price together with VAT in cleared funds to the Supplier by credit or debit card or by BACS before the Supplier shall have any obligation to despatch any Products to the Customer
- 4.7 The currency of the Price is as specified in the Quotation and payment must be made in the same currency .
- 4.8 The Supplier shall not have been paid for the Products until the Supplier has irrevocably received the whole of the Price, (including any deliver charge) together with the applicable VAT (and/or other similar tax or duty) in cleared funds.
- 4.9 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled without thereby incurring any liability to the Customer to cancel or suspend any further deliveries to the Customer whether or not any relevant Order has been accepted.
- 4.10 In any case where the Customer fails to pay when due and without prejudice to is other rights the Supplier reserves its rights to claim interest and compensation for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.**



4.11 All payments to be made by the Customer under a Contract shall be paid free and clear of any deductions, withholdings for, or on account of, tax, set-offs or counterclaims, except any deduction or withholding which is required by law, in which case, the sum payable by the Customer in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, the Supplier receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received had no such deduction or withholding been made or required to be made. If the Supplier subsequently receives a credit for such deduction or withholding, it shall immediately pay the amount of such credit to the Customer. No credit shall be deemed received by the Supplier unless it has relieved the Supplier of a present obligation to pay tax.

## **5 DELIVERY**

5.1 Subject in every case to payment by the Customer in accordance with clause 4.6 above delivery (Delivery) will occur when the Products are collected by or on behalf of the Customer from the Supplier. Should the Supplier agree to deliver Products then Delivery will occur when the Products are physically delivered to the delivery address stated in the Order Acknowledgement.

5.2 Other than where any such delay may be due to any act or omission of the Customer the Supplier shall inform the Customer if it believes that the delivery may be delayed beyond the Delivery Date and the Supplier shall take all reasonable steps to reduce any such delay. The Delivery Date is approximate only and the Supplier shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in writing.

5.3 If the Supplier fails to deliver the Products (or any instalment) on or before the expiry of a period of three months following the Delivery Date and if notwithstanding clause 5.2 above and the other provisions of the Contract the Supplier is held to be liable to the Customer for such delay, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market for products of the same or equivalent quality as that which applied to the Products) of similar products to replace those not delivered over the Price of the Products.

5.4 Upon Delivery of the Products or any of them the Customer (or its agent) shall immediately and carefully inspect the same for any shortages, signs of damage, and conformity with any applicable specification. The Customer or such agent shall at the time of Delivery inform the Supplier verbally, confirmed later by fax, of any such damage, shortages or lack of conformity which should be apparent from any such inspection. If within two Working Days of the date of Delivery the Supplier has received no such fax or other written confirmation from the Customer then the Products concerned will be irrevocably deemed to be free of any such damage, shortages, or lack of conformity and have been accepted by



the Customer. Where the Products are taken from the Supplier's premises by or on behalf of the Customer following Delivery then they shall be deemed for all purposes to have been accepted by the Customer.

- 5.5 The Customer shall in any event co-operate with the Supplier and where applicable with the Supplier's delivery agent in any reasonable process and with any reasonable documentation which the Supplier shall specify with regard to the delivery of the Products to the Customer and other matters pertinent at the time of delivery. The Customer shall ensure that any such documentation which is reasonably required by the Supplier to be signed in order to record delivery and/or the apparent condition of the Products at Delivery or attempted Delivery is signed on behalf of the Customer by a person authorised to do so on behalf of the Customer and that any remarks about condition or shortages are properly recorded.

## **6 Risk and property**

- 6.1 Risk of damage to or loss of the Products shall pass to the Customer upon the Products being delivered to the Customer.
- 6.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of the Contract or that the Products may have become affixed or attached to any land or building, the property in and all legal and equitable title to the Products shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the Price of those Products together with the applicable VAT (or other tax or duty payable).
- 6.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products to the order of the Supplier as the Supplier's fiduciary agent and bailee, and shall keep the Products separate from that of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property. The Customer shall be entitled to use or to sell the Products whether in the ordinary course of its business or otherwise only after the Customer has accepted the Products in accordance with the provisions of the Contract.
- 6.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remains the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## **7 Warranties and liability**

- 7.1 Each Product is sold with the benefit of the following warranty (the Warranty). The Supplier warrants that the Products will be free of material defects resulting from errors in the design (other than design provided by the Customer) or



manufacture of the Products or the use by the Supplier of defective materials in the Products in each case for a period of 12 months from the date upon which the Products were accepted or deemed to have been accepted by the Customer under the Contract concerned. Other than the Warranty all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.2 The Warranty is given by the Supplier subject to the following conditions:

7.2.1 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions, misuse (which includes any use of the Products for a purpose other than that for which it was designed) or alteration or repair of the Products without the Supplier's approval;

7.2.2 the Supplier shall be under no liability under the Warranty (or any other warranty, condition or guarantee) whilst and for so long as the Customer is in default of any of its payment obligations to the Supplier under the Contract;

7.2.3 where the Supplier agrees to carry out work on the Products or replaces the Product in the belief that the work is necessitated by some cause covered by the Warranty and it is discovered that the cause is in fact one not covered by the Warranty then the Supplier shall be entitled to charge the Customer in full for the replacement of the Product or as the case may be for the work carried out by it at the Supplier's then current rate for the sale of the relevant labour and for the materials used by it in connection with such work and the Customer shall pay for the same, together with VAT thereon at the applicable rate, forthwith upon demand by the Supplier.

**7.3 Provided that nothing in the Contract shall have the effect of excluding or restricting the liability of the Supplier in respect of any kind of loss damage or liability which cannot or must not be excluded or limited under English law the Supplier shall not be liable to the Customer, or to any third Party, for:**

**7.3.1 loss of profits;**

**7.3.2 loss of anticipated profits;**

**7.3.3 loss of production;**

**7.3.4 loss of turnover;**

**7.3.5 loss of contracts;**

**7.3.6 any other economic loss whatsoever;**

**7.3.7 any indirect, special or consequential loss and/or damage whatsoever;**

**7.3.8 costs, expenses, other claims for compensation whatsoever relating in any way to the matters referred to in 7.3.1 to 7.3.7 (inclusive) above,**

**suffered or incurred by the Customer or any third party in any way arising out of any act or omission of the Supplier or its employees or agents**



**whether for breach of statutory duty or in contract (including any implied term) tort, including negligence, negligent misrepresentation and misstatement or otherwise under or in connection with the Contract and any other agreement relating to the Products or any part or based on any claim for indemnity or contribution. The foregoing shall not relieve the Supplier from the obligation to remedy defects in the Products under and subject to the terms of the Warranty .**

- 7.4 Without prejudice to clause 7.3 the entire liability of the Supplier to the Customer under or in connection with the Contract or the Products concerned save in respect of any kind of loss damage or liability which cannot or must not be limited under English law shall not exceed the Price of the Products concerned, except as and to the extent expressly provided in the Conditions.**
- 7.5 The Supplier and the Customer hereby expressly agree that the exclusions and limitations of liability set out in the Conditions are fair and reasonable taking into account the nature of the Products supplied or to be supplied by the Supplier to the Customer, the Price payable by the Customer to the Supplier, the obligations of the Supplier under the Warranty, and the availability and cost of existing and future insurance cover to the Parties.
- 7.6 Nothing in the Contract shall be deemed to exclude or limit the Supplier's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.
- 7.7 The Supplier 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 the Supplier's obligations in relation to the Products, or otherwise under the Contract if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:
- 7.7.1 Act of God, explosion, flood, tempest, fire or accident;
  - 7.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 7.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 7.7.4 import or export regulations or embargoes;
  - 7.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of any other Party);
  - 7.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 7.7.7 power failure or breakdown in machinery.
- 7.8 Where the Supplier has manufactured or has modified or adapted any Product(s) to the specific requirement of the Customer then the Customer will forthwith on demand indemnify the Supplier and keep the Supplier indemnified against any and all losses, damages, costs and expenses suffered or incurred





by the Supplier arising out of or connected with any allegation or claim by any third party that the Product as so manufactured, modified or adapted in any way breaches or interferes with any intellectual property right of such or any other third party.

## **8 General**

- 8.1 Any notice required or permitted to be given by either Party to the other under the Contract shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 8.2 The failure of either Party hereto to enforce any of the provisions of the Contract or any right with respect thereto or failure to exercise any election provided for therein, shall not be considered a waiver of such provision, right or election, or in any way affect the validity of the Contract. The failure of either of the Parties to enforce any of such provisions, rights or elections shall not preclude or prejudice such Party from later enforcing or exercising the same or other provisions, rights or elections which they may have under the Contract.
- 8.3 If any provision of the Contract is held by any 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.
- 8.4 The Contract is personal to the Customer and the Customer may not assign to any third party any of its rights under the Contract or any interest in them or purport to do so without the prior written authority of the Supplier which may be given or refused at the sole discretion of the Supplier and if given may be given subject to such terms and conditions as the Supplier may specify.
- 8.5 Other than as expressly set out in the Contract (if at all) a person who is not a Party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 8.6 Where the Customer is a partnership then each of the partners shall be severally as well as jointly liable for all of the obligations of the Customer to the Supplier pursuant to the Contract.
- 8.7 In any meeting between representatives of the Supplier and those of the Customer it will be conclusively presumed that the representatives of the Customer are duly authorised to act in the name of the Customer with full authority to bind the Customer unless the Customer has expressly informed the Supplier to the contrary in writing prior to such meeting.
- 8.8 Headings included in the Contract (including those in these Conditions) are for ease of reference only and shall not affect interpretation or construction.
- 8.9 Any disagreement or claim arising out of or relating to the Products, the Contract or the breach, interpretation, termination or validity of any provision of the Contract, other than one which relates to the non payment or alleged non payment of the Price or other liquidated amount payable by the Customer to the Supplier under the Contract, which cannot be settled between the Parties within thirty days of being raised by either Party in a written notice to the other Party shall be settled by arbitration by a single arbitrator in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of the same.



The identity of the arbitrator shall be agreed between the Parties and in default of agreement within 10 Working Days of the expiry of the period of thirty days referred to above shall be appointed by the President of the Law Society of England then in office upon the application of either Party. The decision of the arbitrator shall be final and binding on the Parties. The place of arbitration shall be Birmingham. The arbitrator shall have full power to order a Party to provide security for costs regardless of whether the High Court would have power in the circumstances to make such an order. Judgement upon any award rendered by the arbitrator may be entered in any court of competent jurisdiction. All notices to be given in connection with the arbitration shall be in writing in accordance with clause 8.1.

## 9 Applicable Law

The Contract and any and all disputes alleged to relate to it or arise out of it shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.

### **SCHEDULE A**

- A) Where the Customer is buying as a consumer, but only then, the following additional terms and conditions apply. Should there be any conflict between any provision in this Schedule and any set out elsewhere in the Conditions then the provision in this Schedule shall prevail.

'consumer' means a natural person acting for purposes outside his or her business.

- B) Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by the Conditions.
- C) Where the Customer is a consumer and subject to (D) below the Customer has a right to cancel its order under the Consumer Protection (Distance Selling) Regulations 2000 as amended. To exercise this right the Customer must give Supplier written notice of cancellation by fax, letter or e-mail.
- The e-mail address of Supplier for this purpose is [Support@surgins.co.uk](mailto:Support@surgins.co.uk)
  - The fax number of Supplier for this purpose is 0121 705 2221
  - The postal address of Supplier for this purpose is PO Box 14530, Solihull, West Midlands, United Kingdom B91 9LH

Notice of cancellation must quote the order number for the Products concerned and be given to Supplier before the expiry of a period of seven working days starting the day after the day on which the Products were delivered to the delivery address, if not the right to cancel will not be exercisable.

- D) Where the Customer has ordered Customised Products the Supplier is entitled to commence the manufacture or adaptation of the same to the specification of



the Customer immediately following the issue of the relevant Order Acknowledgement. Once the Supplier has begun any such work of manufacture or adaptation the Customer has no right to cancel its Order.

- E If the Customer exercises the right to cancel after having received the Products concerned the Customer must immediately return the Products to Supplier. Other than where the Products are defective the Customer is responsible for the cost of returning the Products to Supplier. If the Customer returns non defective products to Supplier at Supplier cost then the Customer must at the request of Supplier refund the direct cost to Supplier of such return.
- F) The Customer must take reasonable care of the Products until they are returned.
- G) The return address for Products is PO Box 14530, Solihull, West Midlands, United Kingdom B91 9LH
- H) Any complaints must be sent to either:
  - [support@surgins.co.uk](mailto:support@surgins.co.uk) or
  - Surgins Surgical Ltd, PO Box 14530, Solihull, West Midlands, United Kingdom B91 9LH