

# HEMOCARE MEDICAL - TERMS & CONDITIONS OF SALE

## 1. DEFINITIONS: IN THESE CONDITIONS:

"Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;

"Customer" means the person specified in the Invoice as purchaser of the Goods from the Seller;

"Dispatch Date" means the dispatch date shown in the Invoice;

"Force Majeure" means, in relation to any person, any circumstances beyond the reasonable control of that person (including, without limitation, any strike, lock out, picket or other form of industrial action or any threatened industrial action);

"Goods" means the articles which the Customer agrees to buy from the Seller, as specified in the Invoice;

"Invoice" means the invoice issued by the Seller in respect of the Goods;

"Price" means the price for the Goods, which is (save, in each case, to the extent otherwise stated in the Invoice) inclusive of packaging and exclusive of carriage, insurance and VAT;

"Seller" means Homecare Medical, Tooraree, Knock Road, Ballyhaunis, Co. Mayo;

"VAT" means any value added tax and any goods and services, sales or other turnover tax, imposition or levy of a like nature chargeable in respect of the sale of the Goods to the Customer.

## 2. CONDITIONS APPLICABLE:

2.1 The Conditions shall apply to all contracts for the sale of Goods by the Seller to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order or otherwise.

2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to the Conditions.

2.3 Acceptance of delivery of the Goods by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Conditions.

2.4 Any variation to the Conditions shall be inapplicable unless evidenced by writing signed on behalf of the Seller by a duly authorised person. The Customer is notified that no person has been authorised by the Seller in this regard, and further, that no person may be taken by the Customer to have any such authority unless such person has presented to the Customer a written instrument, signed by a director of the Seller, conferring upon such person such authority in connection with the Goods.

## 3. PRICE AND PAYMENT:

3.1 The Price of the Goods shall be the price set out in the Invoice. The Price is exclusive of VAT. In addition to paying the Price, the Customer shall pay to the Seller all applicable VAT.

3.2 The Customer shall pay direct to the Seller the Price, any VAT and any costs of packaging, insurance and delivery specified in the Invoice, on the date specified in the Invoice.

3.3 Credit Terms Strictly 30 days from Date of Invoice.

3.4 Interest on overdue payments under this Clause 3 shall accrue from the date when payment becomes due from day to day until the date of payment at that rate which is 2 percentage points above the rate of interest applicable to the principal euro overdraft rate of the Seller from time to time, and shall accrue as well after as before any judgment.

## 4. THE GOODS:

The quantity and description of the goods shall be as set out in the Invoice.

## 5. WARRANTIES:

5.1 The Seller warrants that it will have the right to sell the Goods to the Customer at the time at which title to the Goods is to pass to the Customer, and further warrants that the Goods will be fit for such purposes as may be specifically notified in writing by the Seller to the Customer.

5.2 All other warranties, conditions or terms relating to the Goods (other than those provided for in Section 12 of the Sale of Goods Act 1893), whether implied by statute or common law or otherwise, are excluded.

## 6. DELIVERY & RISK:

6.1 Unless otherwise stated in the Invoice, the Goods shall be delivered to the Customer Ex Works (as defined in Incoterms 2000) to the address specified in the Invoice on the Dispatch Date, and risk in the goods shall pass to the Customer in the manner provide for in that regard in Incoterms 2000. The cost of collection and delivery of the Goods to the Customer shall be borne by the Customer.

6.2 Discrepancies must be notified within 7 days. Our Company, the seller, reserves the right to impose a restocking charge of up to 30% on the value of the goods returned by a customer, through no fault of the seller.

## 7. TITLE:

7.1 Title to the Goods shall not pass from the Seller until the Customer has paid the Price plus VAT in full.

7.2 Until title to the Goods passes to the Customer in accordance with Clause 7.1, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Customer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

7.3 For so long as the Goods remain the property of the Seller, the Customer shall not use the Goods in any manner and shall not purport to, sell, charge, pledge, encumber or otherwise deal the Goods.

7.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.

7.5 Until such time as property in the Goods passes from the Seller, the Customer shall, upon request, deliver up the Goods to the Seller. If the Customer fails to do so the Seller and/or its agents may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods.

7.6 The provisions of this Clause 7 shall not entitle the Customer either to refuse or delay payment or require the Seller to accept the return of Goods on the grounds that the property in the Goods supplied is reserved by the Seller as aforesaid.

## 8. REMEDIES OF CUSTOMER & SELLER'S LIABILITY :

8.1 In the event of a breach by the Seller of any warranty in relation to the Goods, the Customer's sole remedy shall be to reject the Goods to which such breach of warranty relates. Upon such a rejection of the Goods, the Seller shall refund to the Customer that part of the Price which relates to such Goods to the extent that it has been paid by the Customer. Following such rejection and refund, the Customer shall have no further rights whatever in respect of the breach of warranty.

8.2 Without prejudice to Clause 8.1, and in each case to the fullest extent permitted by applicable laws,

(a) the Seller shall not be liable to the Customer for any indirect or consequential loss, damage, cost or expense of any kind which the Customer may suffer or incur, which arises out of, or is connected with, a breach by the Seller of these Conditions or of any other obligation of the Seller, (including, without limitation, any loss of opportunity, loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings), irrespective of whether the Customer's claim for recovery in respect of that loss, damage, cost or expense is (or would but for this provision be) founded in contract, tort (including negligence) or otherwise, and irrespective of whether or not the Seller has been advised of the potential for the loss in question; and

(b) in no event shall the liability of the Seller to the Customer in respect of, or in relation to, or in connection with the Goods, whether arising in contract, tort or otherwise, exceed the amount (exclusive of VAT) actually paid by the Customer to the Seller in respect of the relevant Goods.

## 9. FORCE MAJEURE:

If either the Seller or the Customer is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof. Neither the Seller nor the Customer shall be deemed to be in breach of any of the Conditions, or otherwise be liable to the other by reason of any delay in performance, or non performance, of any of its obligations hereunder, to the extent that such delay or non performance is due to any Force Majeure of which it has notified the other party hereto; and the time for performance of that obligation shall be extended accordingly.

## 10. PARTIAL INVALIDITY:

If any of the Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in any other jurisdiction of that or any other Condition.

## 11. LAW AND JURISDICTION:

All contracts between the Seller and the Customer in respect of, or in relation to, or in connection with, the Goods and any non-contractual obligations arising out of or in connection with any such contracts are governed by and shall be construed in accordance with the laws of Ireland. For the benefit of the Seller, the Customer hereby agrees that the courts of Ireland shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Goods or their sale to and purchase by the Customer and, for such purposes, the Customer irrevocably submits to the jurisdiction of the courts of Ireland.