

Croyde Medical Limited Terms and Conditions of Sale

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 DEFINITIONS:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.8.

Contract: the contract between Croyde Medical and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

Croyde Medical: Croyde Medical Limited (company number 08878617) with registered address at Unit 7 Regal Way, Faringdon, Oxfordshire, England, SN7 7BX

Customer: the person, firm or organisation who purchases the Goods or Services or Goods and Services from Croyde Medical.

Delivery Location: has the meaning given in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 11.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is set out in the Quotation or as otherwise agreed in writing by the Customer and Croyde Medical.

Order: the Customer's order for the supply of Goods and/or Services as set out in the Customer's purchase order form, or the Customer's written acceptance of Croyde Medical's Quotation, or overleaf, as the case may be.

Quotation: Croyde Medical's quotation or proposal for the supply of Goods and/or Services

Services: the repair services supplied by Croyde Medical to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided by Croyde Medical to the Customer as set out in the Quotation or otherwise.

Warranty Period: the warranty period specified by the manufacturer of the Goods which commences on the date of delivery of the Goods to Croyde Medical or such other date as Croyde Medical shall agree with the Customer in writing.

1.2 INTERPRETATION:

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted.

A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to writing or written excludes fax but includes email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Croyde Medical issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). For the avoidance of doubt, a pro forma invoice issued by Croyde Medical shall not constitute acceptance of an Order as payment of such pro forma invoice (where applicable) shall be a condition of acceptance of the Order.

2.3 Any samples, drawings, descriptive matter or advertising issued by Croyde Medical and any descriptions of the Goods or illustrations or descriptions of the Services contained in Croyde Medical's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by Croyde Medical shall not constitute an offer, and is only valid for a period of 30 calendar days from its date of issue unless otherwise stated.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 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.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 Croyde Medical reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Croyde Medical shall notify the Customer in any such event.

4. DELIVERY OF GOODS

4.1 Croyde Medical shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Croyde Medical shall 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 Croyde Medical with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If Croyde Medical fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Croyde Medical shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Croyde Medical with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to accept delivery of the Goods within three Business Days of Croyde Medical notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Croyde Medical's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Croyde Medical notified the Customer that the Goods were ready; and
- (b) Croyde Medical shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If ten Business Days after the day on which Croyde Medical notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Croyde Medical may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 Croyde Medical may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

5.1 Croyde Medical shall use its reasonable endeavours to transfer to the Customer the benefit of the manufacturer warranties applicable to the Goods to and shall support the customer and liaise with the manufacturer in connection with any warranty claims relating to the Goods.

5.2 Subject to clause 5.3 and 5.4, if:

- (a) the Customer gives notice in writing to Croyde Medical during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Croyde Medical is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Croyde Medical) returns such Goods to Croyde Medical's place of business at the Customer's cost,

Croyde Medical shall liaise with the manufacturer to, at the manufacturer's option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Croyde Medical and the manufacturer shall not be liable for the Goods' failure to comply with the manufacturer's warranty referred to in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Croyde Medical's or the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Croyde Medical following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Croyde Medical;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Clause 5.2 shall not apply whilst the amounts due to Croyde Medical in accordance with clause 8.5 are overdue and unpaid.

5.5 Croyde Medical shall have no liability to the Customer in respect of the Goods' failure to comply with the manufacturer's warranty.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Croyde Medical.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery. Where Croyde Medical's quotation references an Incoterm, the applicable Incoterm 2020 shall apply to the Contract and risk shall pass in accordance with that Incoterm.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Croyde Medical receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Croyde Medical's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Croyde Medical's behalf from the date of delivery;
- (d) notify Croyde Medical immediately if it becomes subject to any of the events listed in clause 10.2(b) to clause 10.2(d); and
- (e) give Croyde Medical such information as Croyde Medical may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Croyde Medical receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Croyde Medical's agent; and
- (b) title to the Goods shall pass from Croyde Medical to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, Croyde Medical may:

- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. REPAIR SERVICES

7.1 Where the Customer orders Services from Croyde Medical, such Services shall be supplied to the Customer in accordance with the Service Specification in all material respects.

7.2 Croyde Medical shall use all reasonable endeavours to meet any performance dates for the Services discussed and/or agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Croyde Medical reserves the right to amend the Service 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 Croyde Medical shall notify the Customer in any such event.

7.4 Croyde Medical warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 The Customer shall co-operate with Croyde Medical in all matters relating to the Services.

8. CHARGES AND PAYMENT

8.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in Croyde Medical's published price list as at the date of the order; and
- (b) unless otherwise stated in the Quotation:
- (i) where the delivery address is within the United Kingdom, shall be inclusive of all costs and charges of packaging, insurance and transport of the Goods; and
- (ii) where the delivery address is outside the United Kingdom, shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 8.2 The charges for Services shall be as set out in the Quotation.
- 8.3 Croyde Medical reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Croyde Medical that is due to:
- (i) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (ii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Croyde Medical adequate or accurate information or instructions in respect of the Goods.
- 8.4 Croyde Medical shall invoice the Customer for Goods on or at any time after completion of delivery and for Services on or at any time after completion of the Services.
- 8.5 The Customer shall pay each invoice submitted by Croyde Medical:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms set out in Croyde Medical's quotation and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Croyde Medical, and time for payment shall be of the essence of the Contract.
- 8.6 Notwithstanding the above, Croyde Medical reserves the right to issue pro forma invoices to the Customer for the supply of Goods and/or Services where this is specified in Croyde Medical's quotation or as otherwise required by Croyde Medical. The Customer acknowledges that a pro forma invoice is not a demand for payment and is intended for pre-payment purposes only. The obligation to pay an invoice commences on the date of the official invoice issued by Croyde Medical in accordance with clause 8.4. Where a pro forma invoice, and therefore advance payment, is required, payment of the pro forma invoice shall be a condition of acceptance of the Customer's Order.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Croyde Medical to the Customer, the Customer shall, on receipt of a valid VAT invoice from Croyde Medical, pay to Croyde Medical such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.8 If the Customer fails to make a payment due to Croyde Medical under the Contract by the due date, then, without limiting Croyde Medical's remedies under clause 10, the Customer shall pay interest and compensation on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest and compensation under this clause 8.8 will accrue at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. LIMITATION OF LIABILITY**
- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.
- 9.3 Subject to clause 9.2, Croyde Medical's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the total price paid by the Customer under the Contract in respect of goods and services actually supplied by Croyde Medical, whether or not invoiced to the Customer.
- 9.4 Subject to clause 9.2, the following types of loss are wholly excluded:
- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.
- 9.5 Croyde Medical has given commitments to transfer the benefit of the manufacturer's warranty in connection with the Goods. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. Croyde Medical shall not be liable to the Customer to the extent that the manufacturer of the Goods fails to meet its obligations under the manufacturer's warranty.
- 9.6 This clause 9 shall survive termination of the Contract.
- 10. TERMINATION**
- 10.1 The Customer agrees that all Contracts are binding and, subject to clause 10.2, the Customer shall not be permitted to cancel or modify the Contract without the prior written consent of Croyde Medical (given or withheld at Croyde Medical's sole discretion)
- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, 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;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.3 Without affecting any other right or remedy available to it, Croyde Medical may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 Without affecting any other right or remedy available to it, Croyde Medical may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Croyde Medical if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.2(b) to clause 10.2(d), or Croyde Medical reasonably believes that the Customer is about to become subject to any of them.
- 10.5 On termination of the Contract the Customer shall immediately pay to Croyde Medical all of Croyde Medical's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Croyde Medical shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.7 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 11. FORCE MAJEURE**
- Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 60 days months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
- 12. GENERAL**
- 12.1 Assignment and other dealings**
- (a) Croyde Medical may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Croyde Medical.
- 12.2 Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):
Croyde Medical: customerservice@croydemedical.co.uk.
Customer: the email address confirmed by the Customer in writing for use in connection with the Order.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the third Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 12.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 12.4 Waiver.**
- (a) Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) 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 shall it prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 12.6 Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.7 Third party rights.**
- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 12.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.