

Allmedics bvba Terms and Conditions of Sale

All products furnished by Allmedics bvba (hereinafter "Seller") to the entity stated on the face of the order (hereinafter "Buyer") shall be in accordance with the following terms and conditions unless otherwise stated in writing:

ACCEPTANCE AND COMPLETE AGREEMENT - Buyer's order is binding only when accepted in writing at the principal office of Seller. The terms and conditions of sale are only those stated herein, which with the information contained overleaf shall constitute the complete agreement between the parties ("the Contract") and may not be altered or modified except in writing duly executed by each party. The parties agree there are no agreements, representations or warranties between the parties, oral or written, with respect to the products sold hereunder (including any made or implied from past dealings) except as expressed herein. No terms and conditions stated in or attached to Buyer's communications to Seller, including but not limited to Buyer's purchase orders the terms of which are hereby rejected, are applicable to these terms and conditions in any way and in no event shall such Buyer's or any other terms and conditions be considered valid exceptions to the provisions of these terms and conditions. Trade custom, trade usage and past performance are superseded by these terms and conditions and shall not be used to interpret these terms and conditions.

SHIPPING - Shipping dates are estimates only and are not guaranteed. Seller will use every effort to make shipments as scheduled and may make partial shipments. Seller shall not be liable for any loss or damage ensuing from late delivery.

EXPORTATION - If the products ordered are to be exported from the country of Seller, the quoted shipping dates are subject to receipt of all export documents and authorizations. Regardless of ultimate destination, the prices quoted are based on packing for domestic shipment unless otherwise stated in writing. Buyer agrees to provide Seller in writing with the ultimate destination and identity of the end-user prior to shipment if the products are to be exported. In the event that the shipment of the products would violate US export control laws or if the Buyer fails to provide destination and end-user information within seven (7) days of a request from Seller, Seller shall be entitled to immediately terminate the contract without any compensation due to Buyer as a result of such termination.

PRICES - Prices quoted, unless otherwise stated in writing, are ex works and do not include sales, use, excise, value added or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or will reimburse Seller if it is required to pay them. Buyer will provide tax exemption certificates or evidence of tax payment on request. The price quoted is based on the cost of raw materials, wage rates, shipping charges, freight, insurance premiums, landing charges and duties, railage and cartage applicable on the date on which a contract, acceptance, confirmation, tender or quotation is issued. Accordingly, any increase in such costs after such date and prior to the fulfillment of the contract shall be for the account of Buyer.

PAYMENT - Standard payment terms are net fifteen (15) days from date of invoice. In the event credit has not been established, Seller reserves the right to require payment, or the issuance of an irrevocable letter of credit satisfactory to Seller and at Buyer's cost, in advance of shipment. Any amounts not paid when due shall bear interest on a daily basis at the rate of 12% per annum or at the highest rate permitted by law (whichever is less), from the date of shipment until paid. Should there be any dispute as to whether the products conform to contract or whether any obligation has been properly performed by Seller, Buyer undertakes that, notwithstanding such dispute, it shall not withhold any payment due, but shall pay any such amount to Seller on the due date therefor. The remedy of Buyer in such circumstances shall be limited to an action against Seller for the repayment of all or any relevant portion of any payment effected by Buyer.

SOLVENCY - Buyer's order will be deemed a representation that Buyer is solvent and able to pay for the products ordered. If Buyer fails to make payments when due or if bankruptcy or insolvency proceedings (including judicial composition proceedings) are instituted by or against Buyer, or if Buyer makes an assignment for the benefit of creditors, Buyer will be deemed to be in default and Seller will have the right to terminate forthwith its obligations by written notice to Buyer, in which case the termination provisions set out below shall apply.

CANCELLATION - No products may be returned without prior written approval of Seller. Orders placed with and accepted by Seller may not be cancelled except upon Seller's written consent prior to shipment and Buyer's acceptance of Seller's cancellation charges which shall protect Seller against all costs and losses. Seller reserves the right to cancel any sale hereunder without liability to Buyer (except for refund of monies already paid) if the manufacture or sale of the products is or becomes technically or economically impractical.

MANUFACTURE - Seller reserves the right to discontinue the manufacture of, or change or modify the design and/or construction of the products sold pursuant to these terms and conditions, without incurring any obligation to Buyer.

JURISDICTION AND DISPUTES - These terms and conditions shall be governed in accordance with the law of the domicile of Seller. All disputes under these terms and conditions shall be resolved as follows:

- for contracts with Buyers in the domicile of Seller such question, dispute or difference shall be submitted to the exclusive jurisdiction of the courts of the domicile of Seller; and
- for contracts with all other Buyers such question, dispute or difference shall be finally settled by one or more arbitrators under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The place of arbitration shall be in Brussels, Belgium and the language of the arbitration proceedings shall be English and the arbitration award shall be final and binding on the parties.

INSPECTION - All products must be inspected within five (5) calendar days of receipt. If any damage is discovered, a claim must be filed with the carrier. A full report of the damage must be forwarded to Seller so that it can arrange for repair or replacement. Failure to comply with this provision precludes Buyer from making any claim against Seller in respect of any damage to the products.

TITLE AND RISK - The title in the products shall not pass until payment has been received in full by Seller and in the meantime title is expressly reserved in favour of Seller. Pending receipt of payment in full by Seller, Buyer shall store the products in such a way to ensure that they are preserved in the same condition as they were received, that they can at all times be identified as Seller's property and are separate from any other goods in Buyer's possession. Notwithstanding the foregoing risk in the products shall pass to Buyer upon delivery

WARRANTY - All products that Seller manufactures are warranted, when paid for and properly installed, operated and maintained, to be free from defects in material and workmanship and to conform to the specifications, if any, listed on the other side of this form. If no specifications are listed, the products are warranted to conform to Seller's currently published specifications. The warranty period is twelve months from delivery to the Buyer. However, for implant related products, an extended warrantee period applies, as specified by the manufacturer. No warranty is given for products or components manufactured by companies not affiliated by ownership with Seller, or for products which have been subject to misuse, improper installation, corrosion, or which have been disassembled, modified or repaired by unauthorized persons. Seller must receive written notice of the defect from Buyer within the warranty period. Seller's liability is limited solely to servicing or adjusting any product returned to Seller's factory for that purpose, including replacing any defective parts therein or, at Seller's option, refunding to Buyer the purchase price allocable to the nonconforming product. Buyer must pay packing, crating and transportation costs to and from Seller's factory. At Buyer's request, Seller will make reasonable efforts to provide warranty service at the Buyer's premises, provided the Buyer pays Seller's then current rates for field service and the associated travel and living expenses. If a fault has been caused by improper installation, maintenance or use, or by abnormal conditions of operation, repairs will be billed at normal rates.

If any fault arises, the following steps must be taken:

- A. Notify Seller of the product model number, serial number and details of the difficulty. On receipt of this information, Buyer will be given service data or shipping instructions.
- B. On receipt of Seller's shipping instructions, forward the product prepaid. If the product or the fault is not covered by warranty, an estimate of charges will be furnished before work begins.

SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. SELLER ALSO DISCLAIMS ALL WARRANTIES REGARDING ANY ANCILLARY SERVICES RENDERED.

POLLUTION - Buyer agrees to indemnify, defend and hold Seller harmless against any loss, damage, expense, claim and any other cost or liability (including, but not limited to, fines and penalties to the extent permitted by law, clean-up or other remedial or containment costs, or legal, technical or other professional fees) arising as a result of any pollution, contamination, or other loss or damage to the environment or natural resources which arise in connection with any goods or services provided by Seller under the contract, regardless of cause, including without limitation Seller's negligence, strict liability, or other act or omission.

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CONFIDENTIALITY - Buyer agrees that all drawings, prints and other technical material which Seller provides to Buyer, whether prepared by Seller or by third parties under contract to Seller, contain data which may embody trade secrets and confidential know-how of commercial value to Seller or third parties under contract to Seller. Buyer agrees (a) to keep such information confidential; (b) that it will not disclose such information to any other person, corporate division or entity except where disclosure is required by Court order or otherwise by law in which event Buyer shall notify Seller in advance in writing of the requested disclosure; (c) will not use such information except in connection with the products supplied hereunder; and (d) will not sell, lease, loan or permit any other person, corporate division or entity to use such information for any purpose, without Seller's express prior written consent. Nothing herein shall restrict the use of information available to the general public or from disclosure by Buyer pursuant to any order of the court. Buyer agrees to reimburse Seller for any damages resulting from Buyer's breach of this confidentiality provision.

INTELLECTUAL PROPERTY RIGHTS - All patents, copyrights, designs, drawings and other technical or commercial information relating to the products, including any software provided by Seller pursuant to any proposal, tender or the contract, and the intellectual property rights therein made or acquired by Seller prior to or during the preparation of the proposal or tender or in the course of work on the contract shall be and remain the exclusive property of Seller.

If a product furnished to Buyer becomes or, in Seller's opinion, may become the subject of any claim, suit or proceeding for infringement of any intellectual property rights, Seller may at its option and expense (i) obtain for Buyer the right to use, lease or sell the product, (ii) replace the product, (iii) modify the product, or (iv) remove the product and refund the purchase price paid by Buyer less a reasonable amount for use, damage or obsolescence. Seller will not be liable for any infringement arising from the combination of products or from the use of a product in practicing a process. Seller's total liability to Buyer will not, under any circumstances exceed the purchase price paid for the allegedly infringing product. Buyer agrees, at its expense, to protect and defend Seller against any claim of intellectual property right infringement arising from compliance with Buyer's designs, specifications or instructions and to hold Seller harmless from damages, costs and expenses attributable to any such claim.

INDEMNITY & INSURANCE - Buyer agrees to defend, indemnify and hold the Seller (and its agents, representatives, employees, officers, related companies, successors and assigns, and customers) harmless from all claims, demands, actions, damages and liabilities (including legal fees and consequential and incidental damages) arising out of any injury (including death) to any person or damage to any property in any way connected with any act or omission of Buyer, its agents, employees, or subcontractors.

LIMITATION OF DAMAGES - IN NO EVENT SHALL SELLER BE LIABLE, IN CONTRACT, TORT, STRICT LIABILITY, LAWS RELATING TO THE PROTECTION OF THE ENVIRONMENT, OR UNDER ANY OTHER LEGAL THEORY, FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER IT WAS INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER EXCEED AN AMOUNT EQUAL TO THE CONTRACT PRICE.

SELLER SHALL NOT BE HELD LIABLE FOR POSSIBLE CONSEQUENCES FROM USAGE OF THE THROUGH ALLMEDICS PURCHASED MEDICAL DEVICES OUTSIDE INDICATED APPLICATIONS ("OFF-LABEL USE"). FOR EXAMPLE, THE "INTRA-LOCK INTRASPIN L-PRF CENTRIFUGE" IS INDICATED FOR DENTAL, ORAL AND MAXILLO FACIAL APPLICATIONS. POSSIBLE OFF-LABEL USE WILL BE UNDER FULL AND EXCLUSIVE RESPONSIBILITY OF THE PRACTITIONER/DOCTOR.

IN PERFORMING ACTIVITIES RELATED TO THE USAGE OF THE MEDICAL DEVICES, SELLER SHOULD TAKE INTO ACCOUNT LEGISLATIONS IN THE APPLICABLE COUNTRY, RELATIVE TO AUTHORIZED PERSONS FOR PERFORMING THOSE ACTIVITIES, SUCH AS FOR EXAMPLE - BUT NOT LIMITED TO - THE ACT OF DRAWING BLOOD FROM PATIENTS FOR APPLYING A L-PRF TREATMENT. SELLER CANNOT BE HELD RESPONSIBLE FOR POSSIBLE VIOLATIONS OF THE APPLICABLE LEGISLATIONS, OF WHICH BUYER HIM/HER-SELF IS ASSUMED TO BE AWARE.

WAIVER - No failure to exercise and no delay in exercising on the part of Seller any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right, power or privilege.

VALIDITY OF PROVISIONS - In the event any provision or any part or portion of any provision of these Terms and Conditions shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

FORCE MAJEURE - If performance of any obligation under the contract (other than an obligation of Buyer to make payment) is prevented, restricted or delayed by any act of God, act or omission of government or regulatory body, war, hostilities, industrial dispute at either party's premises or elsewhere, failure or delay in source of supply of materials or equipment, fire, explosion, accident or breakdown of essential machinery or equipment or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected which for the avoidance of doubt includes any sub-contractor or supplier of Seller, then that party shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly. If performance is delayed for more than 120 days by any cause referred to above and the parties have not agreed upon a revised basis for continuing the contract at the end of the delay, then either party may after that period and while the cause of the non-performance still exists terminate the contract by giving not less than 30 days' notice in writing to the other party, in which event the termination provisions set out below shall apply.

SUSPENSION - If Buyer fails to make any payment when due or to perform on time any of its other obligations under this contract Seller shall be entitled to suspend performance of the contract until the failure is remedied.

TERMINATION - Seller shall be entitled to terminate the contract in the event Buyer is in breach of any of its obligations hereunder and fails to remedy the breach within twenty eight (28) calendar days after receiving written notification thereof from Seller or if Buyer goes into liquidation, receivership, administration or makes any voluntary arrangement with any of its creditors. Any termination of the contract in accordance with the terms hereof shall become effective upon service of a written notice of termination on the other party. Upon termination, howsoever arising, Seller shall be entitled forthwith to suspend any further deliveries under the contract without any liability to Buyer. Within 14 days of such a notice of termination, howsoever arising, Buyer shall pay to Seller.

- the outstanding balance of the contract price for products which have been delivered and for those products which are then capable of being delivered, and
- the costs incurred or committed by Seller up to the date of notice of termination in performing work on products which are not then in a deliverable state plus a reasonable margin to be agreed between the parties which shall not be less than 15%, and
- the costs reasonably incurred by Seller as a result of the termination.

This obligation shall not, however, apply in respect of deficient or delayed products and in respect of which Buyer has terminated the contract by reason of the Seller's continual failure to remedy the deficiency or delay.

STORAGE - If Buyer does not take delivery of products within 7 days of notification that they are ready for delivery Seller shall be entitled on behalf of Buyer to put the products into storage at Buyer's expense. Seller shall be deemed to have delivered such products to Buyer on storage and shall be entitled to payment on presentation of the warehouse receipt in place of any bill of lading or similar document otherwise required under the contract. Risk shall pass to the Buyer on storage, but title shall only pass in accordance with the title provision set out above.

VARIATIONS - Unless otherwise provided in the contract, no variation to the contract may be made unless jointly agreed in writing by Seller and Buyer. If any variation increases or reduces the cost or time to Seller of performing the contract then the contract price and/or programme shall be adjusted accordingly. Seller shall not be obliged to accept any variation if the net effect, including any variations already made, is to increase or reduce the contract price by more than 15%.

GENERAL -The headings herein have been used for ease of reference only and shall not affect the meaning or interpretation of this contract in any manner whatever.

Buyer shall not be entitled to cede, transfer and/or assign any of its rights or delegate any of its obligations under this contract, without the prior written consent of Seller.

Buyer warrants that the person signing this document on its behalf has authority and legal right to bind the buyer