

Taurus Medical Solutions

Terms of Sale

1 GENERAL

- 1.1 These Terms of Sale ("Terms") shall apply to any confirmed orders ("Contract") by Taurus Medical Solutions Limited, ("Seller") for the sale of products or supply of services. These terms shall apply to the Contract to the exclusion of any other terms the Customer seeks to impose or incorporate or which may be implied. In the event of conflict between these Terms and any particular conditions in the purchase order of, or any other document with, a particular Customer, these Terms shall prevail unless otherwise expressly agreed to in writing between the Seller and the Customer, in which case the remainder of these Terms shall remain in force.
- 1.2 All changes to these Terms have to be agreed in writing.

1.3

2 QUOTES & ORDERS

- 2.1 Any quote made by the Seller shall be non-binding and deemed to be an invitation to tender, and the parties will only enter into a contractual relationship in accordance with the procedure described hereunder. Customer orders are binding upon the Customer.
- 2.2 All orders are subject to approval by the Seller and shall only be deemed to be accepted and a Contract formed either when the Seller sends a written order confirmation, or when the Seller sends the products or performs the services ordered. Errors in Seller's order confirmation have to be notified in writing to the Seller and such notice received by the Seller within three days as of receipt of the order confirmation. After this three-day period, the information mentioned on the order confirmation shall be considered to be correct.
- 2.3 All orders are subject to credit approval by the Seller, which may, in its sole discretion at any time, change the Customer's credit and payment terms. If the Seller believes that the Customer's ability to make payments may be impaired, the Seller may suspend delivery, until the Customer has provided a bank guarantee under Clause 8.
- 2.4 The Customer agrees to send to the Seller a written order of any oral orders duly marked with any confirmation reference provided to properly identify the Customer and the products ordered, otherwise the Seller reserves the right not to process the order.
- 2.5 In case the Seller processes an oral order that has not been confirmed by the Customer, the order is nevertheless binding upon the Customer.

3 SPECIFIC CUSTOMER OBLIGATIONS

- 3.1 The Customer is responsible for providing Seller with accurate information prior to and during the existence of the Contract (including but not limited to shipping address, bank account numbers, the company name, financials) and for specifying in its order any specific requirements with regard to merchantability of the products or services or their suitability or fitness for any particular purpose or use.
- 3.2 The Customer shall be responsible for the safeguarding of all data and has to take appropriate precautions against any loss of data.
- 3.3 The Customer shall provide the Seller with its financial data as reasonably requested by the Seller for credit checks.
- 3.4 The Customer assumes full responsibility with regard to any license agreement affected by, involved in or related to the use of the products purchased or the services performed hereunder and shall comply with all license terms provided by the manufacturer of the products.
- 3.5 The Customer will comply with all local, E.U. import and export laws and regulations with respect to the products or the services performed.

3.6 The Customer shall conform with the applicable manufacturer's guidelines for the products and for any value-added work performed by the Seller.

4 PRODUCT AND SERVICE DESCRIPTION

4.1 Upon delivery to Customer the products purchased hereunder shall conform with the applicable manufacturer's specifications for such products and any value-added work performed by the Seller on such products shall conform to the Customer's specifications relating to such work, to the extent they have been clearly communicated as required under Clause 3.1 and accepted by the Seller.

4.2 Subject to Clause 12(a) and unless specified otherwise, products sold by the Seller are not designed, intended or authorised for use in life support, life sustaining, nuclear, military or other applications in which the failure of such products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Customer uses or sells the products for use in any such applications or any other medical, diagnostic, air traffic control or other similar application:

4.2.1 the Customer acknowledges that such use or sale is at the Customer's sole risk;

4.2.2 the Customer represents and warrants that it is not solely reliant on the products;

4.2.3 the Customer agrees that subject to any mandatory liability under the law, the Seller and the manufacturer of the products are not liable, in whole or in part, for any claim or damage arising from such use; and

4.2.4 the Customer agrees to indemnify on demand and to defend and hold the Seller and the manufacturer of the products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale or from any claims by any third party connected with the Customer or any end user of the products.

4.3 The Seller shall not be responsible for adapting or modifying any products to conform to statutory requirements not current at the time of the acceptance or order, except as specifically requested by the Customer in accordance with Clause 3.1 and accepted by the Seller.

4.4 The Customer is aware that product specifications may change over the course of time and shall inform itself about the future specifications and availability of any products and services. Seller cannot guarantee the ongoing supply of products of a certain specification in the future.

4.5 All product descriptions, adverts and any other public information regarding products supplied are not binding unless specifically agreed in the order confirmation.

4.6 Unless specified otherwise, when the Seller provides services but is not supplying any goods which are the subject of the services to the Customer the Customer is deemed always the manufacturer of the goods and the Seller acts as agent on behalf of and on the instruction of the Customer with regard to the goods.

4.7 No services provided by the Seller include the application for certain certificates or registrations (for example but not limited to CE, WEEE), labelling or branding. All services Seller provides free of charge are subject to verification by the Customer and shall not be binding for the Seller. Paid services are always subject to due cooperation by the Customer and his support. Unless agreed in writing no service constitutes a right of the Customer to obtain a certain result.

5 DELIVERY AND TITLE

5.1 The Customer acknowledges that delivery dates provided by the Seller are estimates or indications only, and non-binding as delivery is conditional upon the Seller receiving the supplies of the products from the Seller's suppliers.

5.2 Delivery of the products to the carrier shall constitute delivery to the Customer, and all risk shall thereupon pass to the Customer.

- 5.3 The Seller shall be entitled to make partial deliveries or deliveries by instalments. Each such delivery shall be construed as a separate contract and these Terms shall apply to each such delivery.
- 5.4 The Customer shall inspect all delivered products on delivery and inform the Seller about all damages, faults, wrong- and short-deliveries in writing without delay but at the latest within one week from delivery after which the products shall be deemed to be irrevocably accepted unless it was a hidden defect or fault or wrong delivery that could not be detected on due inspection. In case the Customer detects a hidden defect or fault later on the Customer shall notify the Seller immediately upon detection. Where the Seller delivers products upon request of the Customer to a third party the Customer is responsible that the third party acts in accordance with this Clause 5.4 as of the references to "customer" were to the third party.
- 5.5 Title to the products will only pass to the Customer upon receipt by the Seller of full payment (including any interests, indemnities, VAT and/or other taxes) for:
- 5.5.1 products which are the subject to the Contract; and
 - 5.5.2 all other products or services provided by the Seller to the Customer where payment is outstanding.
- 5.6 Until such time as the title in the products passes to the Customer, the Customer shall
- 5.6.1 hold such products on a fiduciary basis as the Seller's bailee and shall store and mark them in such a way that they are readily identifiable as the Seller's property, and shall not mix them with any other products;
 - 5.6.2 not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the products; and
 - 5.6.3 not dispose of or deal with the products or any documents of title relating to them or any interest in them; except that the Customer shall be entitled to sell the products to third parties within the normal course of the business.
- 5.7 If any of the events set out in Clause 23 occurs, the Seller may without prejudice to any other rights and remedies:
- 5.7.1 terminate the Contract and/or the Customer's right to use or sell the products;
 - 5.7.2 demand the immediate return of all the products which remain in the ownership of the Seller. The Customer hereby irrevocably authorises the Seller to enter any premises to recover them. Recovery of the products shall not of itself discharge the Customer's liability to pay the whole of the price due for them.
- 5.8 In case of direct delivery to a customer of the Customer, or in case of delivery by the Customer before full payment to the Seller, the Customer shall pass on the obligations contained in this Clause 5 to its customer

6 PRICE

- 6.1 Unless otherwise stated any prices quoted by the Seller are:
- 6.1.1 exclusive of value added tax and any other taxes;
 - 6.1.2 exclusive of carriage, customs, packing and insurance;
 - 6.1.3 exclusive of any release certificates, (for example, CE certificates if Seller performs Integration services); and the Seller shall have the right to charge extra in respect of the above items.

6.2 Prices shall be as quoted by the Seller and shall be applicable for the period specified in the Seller's quote. If no period is specified, prices shall not be increased by the Seller for thirty (30) days from the date of the seller's quote. Notwithstanding the foregoing, prices shall be subject to increase in the event of:

- (i) an increase in the Seller's costs, including but not limited to currency, deliveries by third parties, other circumstances beyond the Seller's reasonable control;
- (ii) any breach by the Customer leading to higher costs for the Seller;
- (iii) the Customer not ordering the quantities that formed the basis for the price quotation; and/or
- (iv) a change in the scope of the services

6.3 The Seller will notify the new prices to the Customer in writing and invite the Customer to accept such prices. If parties cannot reach an agreement on the new prices within a reasonable timeframe, Seller is allowed to terminate the agreement and cancel pending orders.

7 PAYMENT

7.1 An invoice is payable without offset or deduction upon receipt and shall be paid within 30 days from date of invoice by means of bank wire unless the Seller has set other payment terms. Payment by means of cheque or bill of exchange will only be accepted if agreed to in writing by the Seller. Payment shall be entirely at the expense of the Customer (including, but not limited to, wire transfer expenses).

7.2 The Seller reserves the right to suspend deliveries if payment is not received in accordance with Clause 7.1 or any other terms of payment agreed in writing or if there are indications that the financial situation of the customer is not stable.

7.3 If the Customer fails to make any payments due to the Seller by the due date, the Seller is entitled to be paid interest on the overdue amount from the due date up to the date of actual payment (both dates inclusive), after as well as before judgment, at either:

7.3.1 the rate (such rate accruing on a daily basis and compounded monthly) of 10 per cent per annum above the base lending rate for sterling (or its replacement) from time to time of HSBC Bank plc; or

7.3.2 the statutory rate otherwise provided for in the Late Payment of Commercial Debts (Interest) Act 1998.

7.4 Moreover, the Seller shall be entitled to claim reasonable compensation for all relevant recovery costs, without prejudice however to the right of the Seller to claim compensation for all incurred damages.

7.5 No cash or other discount is allowed unless agreed in writing.

7.6 All invoices immediately and without further notice become due when the Customer is in default of payment or otherwise in breach of any provision of these Terms.

7.7 The Customer is not entitled to exercise any statutory right of retention, to withhold performance in respect of claims or to off-set any amounts unless these rights are based on court decision or the counterclaim has been acknowledged in writing by the Seller.

8 BANK GUARANTEE

At the Seller's first request the Customer shall submit to the Seller a bank guarantee with an established European credit institution or other security instrument reasonably selected by Seller with respect to its payment obligations. The Seller shall be entitled to request such guarantee at all times, both before any delivery has taken place, as well as during and after delivery. As long as the Customer has not submitted a bank guarantee after request by the Seller, the Seller may suspend any (further) delivery, without any liability to the Customer or any third party.

9 **DRAWINGS ETC.**

- 9.1 All drawings, descriptive weights, dimensions and the descriptions and illustrations contained in the sales literature, price lists, estimates of performance or other specifications provided by the Seller are approximate only and shall not form part of the contract or constitute a guarantee. All such other information as may be supplied to the Customer by the Seller including specifications shall not be copied, reproduced or communicated to any third party without the Seller's prior written consent.
- 9.2 The Seller can change the specifications of the products from time to time.

10 **LIMITED WARRANTY**

- 10.1 The Seller warrants that:
- 10.1.1 on delivery all products are free from defects in materials and workmanship, are suitable for their usual purposes and comply with any description applied to them by the Seller; and
 - 10.1.2 all services will be performed by appropriately qualified and trained personnel, with reasonable care and diligence.
- 10.2 Subject to Clause 10.3, where the Seller is in breach of either or both of the warranties in Clauses 10.1.1 and/or 10.1.2 above, the Seller will, at its option, repair or replace the product (or any defective part), perform the relevant part of the services, or offer a refund of all or a fair or reasonable part of the price paid for the relevant product or service. If the Seller complies with the obligations in this clause 10.2, it shall have no further liability in respect of, or arising from the relevant products and/or services.
- 10.3 The Customer can not claim any warranty rights if it is in default of its obligations set out in Clauses 5.4 and 11. The Customer is also obliged to notify the Seller immediately but in any event not later than one week after the Customer has obtained knowledge about any fault or defect with its customer or any end user. The Customer must provide acceptable evidence of the defects and the products must be returned to the Seller.
- 10.4 The Seller shall not be liable under the warranties in Clause 10.1 or any other warranty, condition or guarantee while any sum is overdue from the Customer to the Seller
- 10.5 The warranties and rights in clause 10.1 do not extend to:
- 10.5.1 fair wear and tear, damage caused by the Customer's or any third party's default, negligence or misuse of the products, including the accidental or deliberate destruction of or damage to the products;
 - 10.5.2 any failure to install, use or maintain the products in accordance with the Seller's or manufacturer's instructions;
 - 10.5.3 any drawing, design, specification or instruction supplied or approved by the Customer.
 - 10.5.4 any defect of the product caused by freight damage, modification, alteration, abuse, misuse, accident, incorrect installation (unless carried out by the Seller), disaster, faulty maintenance and/or improper repair by a third party other than the Seller;
 - 10.5.5 any incompatibility of the product due to possible technical innovations and/or regulations;
 - 10.5.6 any deterioration of the product caused by the use at higher brightness than the recommended brightness described in the user manual
 - 10.5.7 any defect of the product caused by external equipment
- 10.6 Repair and replacement of products does not prolong the warranty term set out in Clause 10.7.

- 10.7 Without prejudice to any other extended warranty provided by the Seller to the Customer and contained on the Seller's website www.eizo.com at the date of the order, each warranty expires in any event after 12 months of delivery by the Seller to the Customer.

11 RETURNED PRODUCTS AND CANCELLATIONS

- 11.1 No return of products shall be accepted by the Seller without a Return Material Authorisation ("RMA"), which may be issued by the Seller or the Seller's supplier in their sole discretion.
- 11.2 A request to return products because of visible defects must be made within one week of receipt.
- 11.3 A request to return products because of hidden defects must be made within one week of discovery and in any case not later than 12 months as of receipt thereof.
- 11.4 The Customer will lose the right to return products if it fails to request a RMA within the timeframes set out in 11(2) and 11(3) above.
- 11.5 Returned products must be in original manufacturer's shipping cartons complete with all packing materials.
- 11.6 All products for return shall be returned freight prepaid in the manner specified in the RMA.
- 11.7 If returned products are claimed to be defective, a complete description of the nature of the defect, as well as the date and the circumstances of its discovery must be included with the returned products.
- 11.8 If the Seller consents to a return or cancellation of products that are not subject to warranty claims, it reserves the right to make return or cancellation charges, including those charges specified in the RMA.
- 11.9 If the customer returns products claiming warranty rights and these goods are found to be fault-free, the customer shall bear all costs related to the unjustified claiming of warranty rights including transport, handling and costs for inspection.

12 EXCLUSION OF LIABILITY

- 12.1 The Seller shall be liable without limitation for (i) its own wilful default or gross negligence (ii) its own fraudulent acts (iii) any damages resulting from death or personal injury caused by the negligence of the Seller or its servants or agents; and (iv) any damages based on other mandatory laws that do not allow to limit the Seller's liability.
- 12.2 Subject to Clause 12.1 above, the Seller's liability shall not include:
- 12.2.1 direct or indirect loss of or damage to:
- (i) profit;
 - (ii) revenue;
 - (iii) business;
 - (iv) contract;
 - (v) opportunities;
 - (vi) anticipated savings;
 - (vii) data;
 - (viii) goodwill;
 - (ix) reputation;
 - (x) use;
- 12.2.2 indirect or consequential loss or damage; or
- 12.2.3 any claim arising out of a claim against the Customer by a third party.

- 12.3 Subject to Clause 12.1, the Customer's recovery from the Seller for any claim shall not exceed the Customer's purchase price for the products or services giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise.
- 12.4 The Seller shall not be liable for the loss of or damage to software programs during repair or upgrade of any products whether or not the same are under warranty.
- 12.5 The limits on and exclusion of liability described in this Clause 12 shall also apply for the Seller's employees and all other persons acting on its behalf

13 **FRUSTRATION ETC. (FORCE MAJEURE)**

- 13.1 If the Seller is prevented at any time from performing any contractual obligation, or if any loss, damage, injury or delay in delivery is occasioned by or due to any cause beyond the Seller's control including (but without prejudice to the generality of the foregoing expression), the commission of any criminal act, shortage of products, act of war (whether declared or not), civil commotion, accident, strikes or lock-outs, man-made disasters, Acts of God, or any restriction imposed by any local municipal or government authority (including Customs Authorities) whether national or foreign, the Seller's time for performance of delivery and any other obligation shall be suspended for as long as the cause of the lack of performance, loss, damage, injury or delay is outstanding or, provided that the force majeure remains 4 weeks or longer, the Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to the Customer.
- 13.2 If the contract is terminated in whole or in part in such circumstances the Customer shall be liable to pay the Seller for any products delivered or services rendered under each or any contract on a pro-rata basis

14 **INTELLECTUAL PROPERTY RIGHTS & SOFTWARE**

- 14.1 The Customer acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the products and services and any value-added work thereto do not pass to the Customer, unless otherwise specifically authorised.
- 14.2 The Customer agrees to indemnify the Seller against all claims, damages, costs (including legal costs calculated on an indemnity basis) made by any person or company which the Seller may incur, either as a result of work done in accordance with the Customer's specifications or for the infringement of any intellectual property rights resulting from such customisation.
- 14.3 If an order includes software or other intellectual property, such software or other intellectual property is provided by the Seller to the Customer subject to the copyright and user licence, the terms and conditions of which are set forth in the licence agreement accompanying such software or intellectual property. Nothing herein shall be construed to grant any rights or licence to use any software in any manner or for any purpose not expressly permitted by such licence agreement.

15 **DATA PROTECTION**

- 15.1 The Seller shall treat any personal information it collects from the Customer in accordance with the Data Protection Act 1998.
- 15.2 The Seller may transfer, process or store personal information from the Customer outside the European Economic Area (EEA). In particular, it is likely that the Seller will transfer personal information to Japan.
- 15.3 By providing any personal information, the Customer consents to the transfer, storage and processing of the data.

15.4 The Customer acknowledges that countries outside the EEA may not offer the same level of data protection as the United Kingdom however the Seller will take all reasonable steps to ensure that the Customer data is treated securely and in accordance with its privacy policy.

15.5 The Customer shall have the right to access its personal data, to correct them if they appear incorrect, in accordance with the EIZO Limited Privacy Protection Policy, which is available on demand.

16 **SUB-CONTRACTING**

The Seller reserves the right to sub-contract any part of any work or supply of any products or services.

17 **THIRD PARTY CLAIMS**

17.1 No third party shall acquire any rights against the Seller and the Seller shall have no liability to any third party arising out of or in connection with any Contract.

17.2 Furthermore the Customer shall indemnify the Seller against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with the products (or the use of the products) or the services provided, if such action, claim or demand is caused by or attributable to, even partially, the Customer.

18 **ASSIGNMENT**

Any Contract may be assigned in whole or in part by the Seller without the prior written consent of the Customer. The Customer shall not assign or transfer or purport to assign or transfer any Contract or the benefit thereof to any other person, without the written consent of the Seller.

19 **HEADINGS**

The headings of these Terms are for convenience only and shall have no effect on the interpretation thereof.

20 **WAIVER**

The Seller's failure to enforce its rights under or insist on any occasion upon the performance of the contract or these Terms shall not act or be deemed as a waiver of such rights (including with respect to a breach by the Customer) or acceptance of any variation of these Terms.

21 **SEVERENCE**

If any one or more provisions of a term in these Terms shall be declared to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of these Terms shall not as a result in any way be affected or impaired. If any provisions of these Terms are adjudged to be void or ineffective but would be adjudged to be valid and effective if part of the wording were deleted or the scope or periods reduced, they shall apply with such modifications as may be necessary to make them valid and effective while adhering as closely as possible to the original intent, period and scope of the provisions and the parties hereby undertake to make such modifications.

22 **NOTICE**

Any notice required in these Terms shall be in writing (by first class post, fax or e-mail).

23 **TERMINATION**

23.1 The Seller shall be entitled by notice in writing to terminate any contract without prejudice to any claim or right the Seller may otherwise make or exercise where:

23.1.1 exceptional circumstances render impossible any further professional cooperation between parties;

23.1.2 the Customer is in breach of any term, condition or provision of any contract and/or these Terms or as set out in law, to the extent that these are not capable of remedy or where they are not remedied by the Customer within 30 days of the date of any notice of breach from the Seller;

23.1.3 the Customer:

- (i) becomes insolvent; or
- (ii) is unable to pay its debts; or
- (iii) ceases to trade; or
- (iv) has a receiver appointed over the whole or any part of its assets; or
- (v) has an administrator appointed; or
- (vi) enters into any composition with creditors generally; or
- (vii) is wound up (other than for the purpose of a bona fide scheme of solvent reconstruction); or
- (viii) any step is taken whether by the Customer or any other person, towards any of the foregoing events, or the seller reasonably expects any such event:

23.1.4 any distress or seizure be levied upon any of the Customer's property;

23.2 Upon termination the Seller can suspend and cancel any confirmed delivery and claim all outstanding amounts immediately.

24 **ENTIRE AGREEMENT**

24.1 These Terms of Sale and any extended warranties referred to in Clause 10 (if applicable) constitute the entire agreement between the parties and supersedes any previous agreement or understanding between the parties regarding the products or services. The Customer acknowledges that it does not rely on, and shall have no remedy in respect of, any representation or warranty, whether negligent or not, which is not expressly set out in these Terms.

24.2 Nothing in this clause 24 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation

25 **JURISDICTION**

- 25.1 These Terms and any dispute or claim arising in connection with them, shall be governed by and construed in accordance with the laws of England and Wales.
- 25.2 Subject to Clause 25.3, The parties' irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales to settle any dispute or claim arising in connection with these Terms.
- 25.3 The Seller may, at it's sole discretion commence proceedings arising out of these Terms in any other jurisdiction it may consider to be more expedient as appropriate.