

## Standard Trading Terms and Conditions of Smith & Nephew (Pty) Ltd

In these conditions the following expressions shall have the following meanings:

<b>“Authorised Representative”</b>	means a signatory of S+N who is authorised to amend the Contract and these Conditions.
<b>“Business Day”</b>	means a day (other than a Saturday, Sunday or public holiday) when banks are open for business.
<b>“Buyer”</b>	means the person, firm, company or other organisation who purchases the Goods from S+N.
<b>“Conditions”</b>	means the terms and conditions set out in this document as amended from time to time in accordance with clause 2.
<b>“Contract”</b>	means the contract between S+N and Buyer for the sale and purchase of the Goods in accordance with these Conditions.
<b>“Force Majeure Event”</b>	has the meaning given in clause 8.
<b>“Goods”</b>	means the goods supplied or sold by S+N to the Buyer.
<b>“Order”</b>	means an order placed by Buyer for the supply of Goods in accordance with S+N Specific Procedures.
<b>“Price”</b>	means the price payable by Buyer to S+N for the Goods as detailed in S+N’s published price list in force as at the date of delivery or as stated in the Pricing Agreement.
<b>“Pricing Agreement”</b>	means S+N’s document entitled Price List which details the amount Buyer is to pay for the Goods.
<b>“Specification”</b>	means S+N’s standard specification for the Goods in effect at the time of delivery to Buyer.
<b>“S+N”</b>	means Smith & Nephew (Pty) Ltd.
<b>“S+N Specific Procedures”</b>	means the S+N specific procedures in place in each S+N business.
<b>“Use”</b>	means the opening or unwrapping by or on behalf of Buyer of any packaging containing the Goods or any other event which occurs whilst the Goods are in the possession of Buyer and which results in the Goods being reasonably regarded as no longer sterile (or in the case of Goods which are not required to be sterile, no longer fit for their intended purpose).

1.1 The singular in all cases shall imply the plural and vice versa.

1.2 The headings in these Conditions are for convenience only and shall not affect its interpretation.

1.3 Any reference in these Conditions to a statutory provision shall include such provision as from time to time modified or re-enacted or extended at the relevant time and shall include any orders, regulations, instruments or subordinate legislation made under the relevant statute.

1.4 To the extent of any conflict between these Conditions and any Pricing Agreement, the Pricing Agreement shall prevail.

**2. BASIS OF CONTRACT:**

**The direct supply of any Goods to any Buyer by S+N is subject to these Conditions.** These Conditions apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Buyer's standard or other trading terms and conditions, for example, included in the Buyer's purchase order, tender documents or submissions shall not apply and these Conditions shall supersede and prevail over such terms. By ordering Goods from S+N, Buyer is deemed to accept these Conditions. S+N may amend these Conditions at any time. If Buyer orders any Goods from S+N after these Conditions have been amended, the amended Conditions will apply to any order submitted following the amendment of the Conditions. Copies of the Conditions can be found on our website <http://www.smith-nephew.com/south-africa>. Buyer should review the Conditions on S+N's website for any amendments before each order.

**3. PRICE:**

**The Price of the Goods shall be the Price set out in S+N's published price list in force as at the date of delivery (available on request) or (where agreed) as stated in the Pricing Agreement. The price of Goods is exclusive of any costs and charges of insurance, and transport of Goods, which shall be invoiced to Buyer. The price of Goods is exclusive of amounts in respect of value added tax ("VAT"). Buyer shall, on receipt of a valid VAT invoice from S+N, pay to S+N such additional amounts in respect of VAT as are chargeable on the supply of the Goods. Unless otherwise agreed with Buyer in writing, S+N may change its prices at its discretion.**

**4. ORDERS:**

All quotations provided by S+N to sell the Goods shall be available for acceptance for a maximum period of thirty (30) days from the date of issue but may be withdrawn by S+N by written or oral notice to Buyer at any time prior to S+N's acceptance of the Order and/or any Pricing Agreement. Quotations are made on the understanding that all resulting Orders shall be subject to these Conditions, including the limitations on varying these Conditions. Any quotation given by or on behalf of S+N shall constitute an invitation to treat and the Contract shall become binding either: (i) on acceptance of an Order by S+N; or (ii) upon signature by both parties of a Pricing Agreement in respect of the supply of Goods. **Orders will only be accepted for values in excess of R1000.00 and will be supplied in complete units (multiples) of the minimum order quantities reflected in the price list.** Buyer shall be

responsible for ensuring the accuracy of each all terms associated with the supply of Goods, including each purchase order. S+N shall, acting reasonably, be entitled to reject a purchase order including without limitation if a purchase order does not comply with the required format or Buyer is late in payment in respect of any previous purchase order. Buyer must report any discrepancy in an invoiced price and the corresponding order price to S+N's Buyer service team within thirty (30) days of the date of invoice. S+N reserves the right to discontinue Goods or to change Specifications, designs, Price or these Conditions at any time. Orders will be placed by Buyer in writing or in accordance with S+N's Specific Procedures.

**5. INVOICING:**

S+N shall send to Buyer a tax invoice in respect of the Goods ordered by Buyer. It shall be deemed to have been received on the day of delivery in respect of by hand or courier delivery and received on the day following the date of transmission if sent by email or fax, or within six (6) days after the date of posting, if sent by ordinary mail.

**6. PAYMENT:**

**S+N does not accept any risk relating to payments. If payment is made by cheque or electronic funds transfers ("EFT"), it is Buyer's responsibility to ensure that the payment is received by S+N. Buyer's liability to S+N will only be discharged when S+N receives as freely available funds in its bank account the full amount due. EFT payments must be made to Smith & Nephew (Pty) Ltd: Standard Bank, Pinetown Branch IBT 04-56-26 Account No. 250 302 020. Payment will be due and payable in accordance with the terms of each invoice. Payment by Buyer shall be made by the Thirtieth (30<sup>th</sup>) day from statement and, if payment is by cheque, must be sent to the address on S+N's invoices/statements to Buyer. Time of payment is of the essence.**

**Buyer shall pay all amounts due under the Contract in full and in cleared funds without deduction, set off or withholding, except as required by applicable law and Buyer shall not be entitled to assert any credit, set-off or counterclaim against S+N in order to justify withholding payment of any such amount in whole or in part. S+N may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable to S+N by Buyer.**

**S+N reserves the right (in S+N's absolute discretion) to change, terminate or limit any credit facility from time to time given to Buyer.**

**Buyer's failure to make timely payment due to S+N under the Contract by the due date for payment is a material breach for which (in addition to other available remedies) S+N may suspend**

performance under any or all contracts with Buyer until all amounts due by Buyer are paid in full. S+N shall be entitled to charge interest on overdue amounts at a rate equal to the lesser of 4 % per month or the maximum rate permitted by applicable law calculated from the due date to the date paid in full. At the election of S+N, Buyer shall pay the interest together with the overdue amount.

In the event of default of payment by Buyer, S+N shall be entitled, without prejudice to any other right or remedy: (i) without notice to suspend or cancel any or all further deliveries under the Contract and under any other Contracts between S+N and Buyer then current; or (ii) to serve notice on Buyer requiring immediate payment for Goods supplied by S+N under the Contract and all other Contracts with Buyer whether or not payment is otherwise due or invoiced.

## **7. DELIVERY:**

**Delivery Terms:** If S+N or its carrier delivers the Goods to Buyer, delivery takes place when Buyer begins unloading the Goods at the delivery address set out in its order. If Buyer or its carrier collects the Goods from S+N's premises, delivery takes place when Buyer or its carrier begins loading the Goods on collection at S+N's premises.

**Use:** Where Buyer has Used any Goods delivered by S+N Buyer shall, unless agreed otherwise by S+N, be liable to pay the Price of such Goods in full in accordance with the provisions of clause 6 above.

**Delivery Dates:** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. S+N will not be liable for any delay in delivery of the Goods that is caused by A Force Majeure Event or Buyer's failure to provide S+N with adequate instructions that are relevant to the supply of the Goods. S+N will make reasonable efforts to deliver Goods within the time stated but will not be liable for any cost, expense, losses or damages arising out of any failure to deliver at the agreed or within a reasonable time due to any cause beyond its reasonable control. The Buyer is not entitled to cancel an order as a result of any delivery delay.

**Failure or Refusal to Take Delivery:** If Buyer refuses or fails to take delivery of the Goods within normal working hours on the date of delivery, or if S+N is unable to deliver the Goods on time because Buyer has not provided appropriate instructions, documents, licences or authorisations, S+N may store the Goods and Buyer shall, at the election of S+N, in addition to the price payable, pay all related costs and expenses (including the costs for storage and insurance and additional delivery costs incurred by S+N). If Buyer fails to take delivery of the Goods for fourteen (14) days following the date scheduled for delivery, S+N may rescind the Order and sell the Goods to a third party or return them to S+N's warehouse, with, at the election of S+N, all storage and shipping charges to be paid by Buyer,

and in either event Buyer will be responsible for any damages S+N may incur.

**Requests to Postpone Delivery:** S+N shall use its reasonable endeavours to comply with the reasonable requests made by Buyer to postpone delivery of the Goods but shall be under no obligation to do so.

**Delivery in Instalments:** S+N may deliver 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 Buyer to cancel any other instalment.

**Right to Cancel or Withhold Delivery:** S+N reserves the right, at its sole option, to cancel or withhold the delivery of any Goods (whether in whole or in part): (i) until; receipt of satisfactory credit reference in respect of any Buyer; and/or (ii) where the supply of such Goods would exceed any credit limit which S+N may, in its absolute discretion, have granted to Buyer; or (iii) any circumstance in clause 16 ; or subject to the final paragraph of clause 6 above, if Buyer breaches the Contract and where such breach is remediable, has not remedied the breach within fourteen (14) days of notice from S+N detailing such breach.

S+N will not consider any claim for incorrect quantities delivered unless S+N receives the claim within three (3) Business Days after delivery of the Goods to the Buyer.

#### **8. FORCE MAJEURE:**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of S+N or subcontractors.

#### **9. TITLE AND RISK:**

The risk in the Goods shall pass to Buyer on delivery in accordance with clause 7. Title to the Goods shall pass to Buyer when S+N has received payment in full (in cash or cleared funds) for the Goods. In respect of Goods to which title has not passed to the Buyer, S+N shall be entitled

to require the Buyer to deliver up the Goods to S+N, and if the Buyer fails to do so forthwith, S+N may either accelerate any credit period in relation to payment of the Price and/or recover any Goods.

**10. LIMITED  
WARRANTY:**

S+N Goods are warranted to conform in all material respects to S+N's standard Specification for a particular Good in effect at the time of delivery to Buyer (including any tolerance parameters) for the warranty period for the particular Good. Please contact your S+N representative to confirm such warranty periods. For Goods supplied by S+N which are manufactured by a third party, the manufacturer's warranty (if any) will apply and S+N shall not be liable for any defect in relation to such Goods.

For any S+N Goods found to be defective during the warranty period, this warranty provides and is restricted to, as elected by S+N, either: (i) repair or replacement of Goods without charge and within a reasonable period of time; or (iv) a full refund or credit in the amount of the purchase price of such Goods. This warranty does not cover and is voided by any of the following: (i) Goods packaged or labelled by someone other than S+N or its authorized agents; (ii) Goods not used in compliance with the specifications, instructions or claims for use of the Goods; (iii) damage due to misuse, reprocessing, alteration, unauthorized repair or negligent handling or damage due to lack of care by the owner, user, or handler of the Goods including but not limited to storage, handling or cleaning; and (iv) any other damage inflicted to Goods by the owner, user or handler. This warranty applies only to the original purchaser from S+N or its authorized distributor and is not transferable. **THIS WARRANTY IS THE SOLE WARRANTY OF S+N. ALL OTHER WARRANTIES OF ANY KIND OR DESCRIPTION WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**

**11. LIMITATION OF  
LIABILITY :**

**Except as set out in the paragraph titled "LIMITED WARRANTY", S+N will not be liable for any losses or damages, whether arising from breach of contract, delict (including negligence) or otherwise, and whether or not flowing directly, indirectly or as a consequence of such breach, delict or other cause. This includes without limitation loss of profit or anticipated savings, loss of anticipated profit, economic loss, loss of data, wasted expenditure and loss of reputation or goodwill**

**12. RETURNS:**

No Goods may be returned to S+N without prior written authorisation from a S+N's Authorised Representative. S+N reserves the right to levy a handling fee of 5% of the invoice value in cases related to Buyer error. This handling fee may be increased to 15% of the invoice value where Goods are returned without the prior written authorisation from a S+N Authorized Representative. Goods which carry expiry dates may not be returned unless they are received by S+N a minimum of six (6) months prior to the expiry date thereof.

**13. SERVICING AND****REPAIR:**

Any requests for repairs and servicing must be notified to your S+N Buyer service representative in writing. Servicing and repairs shall be conducted in accordance with S+N's policies and procedures (as may be amended from time to time).

**14. COMPLIANCE:**

Buyer acknowledges receipt of S+N's Code of Conduct, which is available on S+N's website at: <http://compliance.smith-nephew.com>, which is binding on Buyer and which Buyer will comply with.

Buyer agrees that S+N Goods are approved by the United States Food and Drug Administration (FDA) only for certain indications. S+N's Goods should only be used for FDA-approved indications. S+N will not be responsible for damages or losses of any kind arising out of uses that are other than, or contrary to, those indications (commonly called 'off-label' uses). S+N's warranties, representations, and obligations pursuant to these Conditions are void as to any such off-label uses.

Each party shall conduct its business and affairs in an ethical manner and comply with all applicable laws, regulations, and industry codes. Buyer agrees to comply with all applicable laws in connection with Goods pricing, including all standards applicable to disclosure and reporting the existence and terms of discounts to any applicable governmental authority, agency or similar body. Any breach by Buyer, its representatives or agents shall entitle S+N to terminate one or more orders immediately on written notice to Buyer. All transactions between Buyer and S+N are made in good faith on the basis of arms-length negotiation and all prices are consistent with fair market value.

**15. CREDIT LIMITS:**

The credit limit (if any) granted to you by S+N is within S+N's absolute discretion. If you require your credit limit to be increased, you may provide S+N with a written request to that effect, including the credit limit which you require. S+N is not obliged to increase your credit limit to the extent requested, or at all. S+N may decrease your credit limit at any time or stop granting you credit if you do not purchase any Goods from S+N on credit for a continuous period of 180 days.

**16. BREACH:**

The parties agree that, without limitation, each of the following shall constitute a material breach of Buyer's obligations under these Conditions:

1. Buyer fails to pay any amount due to S+N on the due date for payment thereof;
2. Buyer is "financially distressed" as defined in section 128(1)(f) of the Companies Act;
3. the shareholders of Buyer or the board of directors of Buyer adopts a resolution to commence liquidation, or an application for provisional or final liquidation, winding-up, judicial management is made, or business rescue proceedings commences, or the equivalent of any of these in any jurisdiction occurs in respect of Buyer;
4. a judgment is granted against Buyer in respect of which no appeal lies or in respect of which the period for lodging an appeal (excluding any period to seek condonation) has expired and remains unsatisfied for a period of at least 20 days;
5. Buyer makes or offers to make a general assignment or any arrangement or compromise with or for the benefit of its creditors generally (or any class of its creditors) for releasing it wholly or partially from its debts; or
6. Buyer commits or performs any act which, if committed or performed by a natural person would constitute an act of insolvency as specified in section 8 of the Insolvency Act, 1936.
7. any material information disclosed in any application for credit facilities with S+N is incorrect, or Buyer fails to make full disclosure of the required information.

**If Buyer is in breach of these Conditions, or Buyer ought reasonably to be aware that a breach may occur, Buyer shall immediately notify S+N thereof.**

**Without prejudice to any of its other rights, if Buyer is in material breach of these Conditions, then S+N may:**

- **immediately stop granting Buyer credit;**
- **suspend any deliveries to Buyer and immediately take the necessary steps to recover all amounts owing to S+N, irrespective of whether or not they are then due;**
- **terminate all contracts with Buyer.**

**17. COSTS:**

In the event of S+N incurring any legal costs as result of a sale of Goods, whether or not action is instituted, Buyer undertakes to pay on demand all costs incurred by S+N as between attorney and own client and in the

case of late payment, a collection commission at the rate of 10% of each amount paid by Buyer after S+N has instructed its attorneys.

**18. MISCELLANEOUS:**

The Contract constitutes the entire agreement between the parties. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of S+N which is not set out in the Contract, and neither party shall have any remedy against the other in respect of any misrepresentation whether made innocently or negligently by the other party or any employee, agent, sub-contractor or representative of the other party in connection with the Contract unless the representation in question has been incorporated into the Contract by an Authorised Representative as provided for below.

Any samples, drawings, descriptive matter, or advertising produced by S+N and any descriptions or illustrations contained in S+N's catalogues, brochures, price lists or other materials are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

No employee, representative, agent or sales person of S+N other than an Authorised Representative has any authority to waive or vary any of these Conditions on behalf of S+N and if Buyer wishes to make any amendment to these Conditions then S+N will only be bound by such an amendment to these Conditions if S+N has expressly accepted the amendment, waiver or variation in writing and signed by an Authorised Representative.

Buyer shall not be entitled to assign, sub-contract or in any way dispose of or transfer its rights or obligations under the Contract without the prior written consent of S+N. S+N shall be free to assign and/or transfer any of its rights or obligations to any of its associated companies or to a third party. S+N shall be free to sub-contract any of its obligations under the Contract.

Any notice required to be served pursuant to these Conditions shall be served at such address as each party may from time to time notify to the other and shall be served by first class registered post or registered airmail. Any such notice shall be deemed to have been served two (2) days after the date of despatch.

Any term of these Conditions which is or becomes void or unenforceable shall, to the extent of such invalidity, be severable and shall not affect the other provisions or terms or the remainder of the affected provision of these Conditions.

Failure by either party to exercise any right to enforce these Conditions or any term of the Contract relating to any breach of these Conditions

or the Contract shall not be construed as a waiver of any such breach or any subsequent breach of the same provision or any other provision.

Buyer shall at all times keep confidential details of the Contract and of Prices for any Goods supplied under the Contract and shall not disclose, disseminate, use or otherwise make them available to any third party for any purpose, including use as a basis for competitive solicitation. The terms hereof shall not be construed to create between the parties the relationship of principal and agent, joint venturers, partners or any other similar relationship, the existence of which is expressly denied by each party. If a court of competent jurisdiction finds any provision of this agreement is invalid or unenforceable, such finding shall not affect the remainder of these terms and conditions and otherwise shall remain in full force and effect.

**19. JURISDICTION:** The Buyer consents to the jurisdiction of the Magistrate's Court in respect of any action instituted by S+N arising out of this contract, even if the nature of the claim concerned exceeds the jurisdiction of that court.

**20. QUERIES:** Please direct all price or delivery related queries to the S+N Buyer Services Team by phone 011 284 5452 or email [Ordersptn@smith-nephew.com](mailto:Ordersptn@smith-nephew.com) within three (3) days of receipt of Goods.

**21. BUYER CARE:** Please direct Goods related questions or suggestions to the S+N Customer Services Team by phone 011 284 5452 or email [Ordersptn@smith-nephew.com](mailto:Ordersptn@smith-nephew.com).

**PLEASE NOTE:** If Buyer is an individual or a company, CC, partnership, trust or other association of persons which has an annual turnover or asset value ***BELOW R2 MILLION***, such Buyer may have the rights set out in the Consumer Protection Act, 2008. In this case, these Conditions shall be deemed to have been amended to the extent required by law to comply with Consumer Protection Act, 2008.

**PLEASE MAKE SURE THAT YOU HAVE READ AND UNDERSTOOD THE PROVISIONS OF THESE CONDITIONS AND IN PARTICULAR, THE PROVISIONS WHICH HAVE BEEN SPECIFICALLY DRAWN TO YOUR ATTENTION.**