

## TERMS AND CONDITIONS

The below apply for purchases of products directly from Smith & Nephew, Inc. (S&N). For purchases of S&N's AWM products from S&N authorized distributors, only Sections 6 through 11 apply, as terms covered by Sections 1 through 5 will be negotiated and agreed to between Customer and the S&N authorized distributor.

1. **ORDERS.** Orders for S&N products may be placed by:

S&N Products – U.S.			
	Advanced Wound Management	Orthopaedics – Reconstructive, Trauma & NAVIO <sup>®</sup>	Endoscopy – Sports Med, ENT & Spine
<b>Phone</b>	800-876-1261	800-238-7538	800-343-5717
<b>Fax</b>	727-392-6914	800-621-6924	800-554-6105; or 978-749-1108
<b>EDI</b>	Contact EDI Analyst for details: 800-876-1261	Contact EDI Analyst for details: 800-238-7538	Contact EDI Analyst for details: 800-343-5717
<b>S&amp;N Sales Rep</b>	N/A	Call your local S&N sales rep	N/A
<b>Special, Custom, MTO Products</b>	N/A	Ortho Specialties Department: 800-262-3536	800-343-5717

Not all products listed in catalogues are available in all countries; contact your local S&N representative for specific availability. No Customer order is deemed accepted by S&N until received and approved by authorized S&N personnel. Product is sold in case quantity only. S&N accounts are not transferable. Any major change within Customer's organization requires a new and independent review by S&N before it shall extend a Customer's account to the changed organization. As elected by S&N, Products are sold directly by S&N to Customer or through S&N's authorized distributors. For the name and address of your S&N representative or authorized distributor, contact S&N's customer service team noted above. Sales personnel may not alter the terms of this agreement, extend credit, or accept payment for merchandise. For all Orthopaedic orders, unless Customer issued a valid purchase order number at the time of initial order placement, Customer shall issue a valid purchase order number within forty-eight (48) hours of receipt of product.

2. **SPECIAL, CUSTOM, MADE TO ORDER (MTO) PRODUCTS.** Requests for special, customized or MTO orthopedic or endoscopy instrument products must be submitted at the contacts provided in the above table, which contacts shall provide a price quote valid for thirty (30) days and the estimated time required to manufacture the product. Manufacturing shall not begin until receipt of a purchase order for the requested product and credit is approved. All special, customized or MTO sales are final and nonreturnable, and product lead time may vary depending on the product. In some cases, the surgeon shall be required to sign a copy of the blueprint and/or template prior to S&N beginning to manufacture the product. Service agreements and service exchange is not available on special, customer or MTO endoscopy instrument products, as such products are serviced on a repair only basis.

3. **TITLE; DELIVERY; SHIPMENT VERIFICATION.** Product shall be deemed accepted by Customer upon delivery at the named point of destination. S&N reserves the right to select the mode and carrier. If Customer requests a certain method, carrier or other special or rush shipping then additional shipping and handling charges may be added to the invoice. Customer is responsible for noting any damage, potential damage and shortages on freight bill at time of delivery and notifying S&N's customer service team within fifteen (15) days of delivery. Any discrepancy in the quantity billed and quantity received resulting from damage (concealed or otherwise), shortages, overages, non-delivery or wrong product must be reported to S&N's customer service team within fifteen (15) days of date a shipment is or was to have been received. Any discrepancy reported after fifteen (15) days shall be addressed by S&N in its sole discretion, failing which S&N shall be under no liability for such issues. In addition, except as otherwise provided above:

- 3.1 **For AWM Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CIP Customer's dock, except for orders shipped C.O.D. Customer pays full shipping costs and are shipped freight collect. Title to product passes to Customer when signed for by the carrier at the shipper's dock.
- 3.2 **For Ortho Products (except NAVIO<sup>®</sup>):** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock except shipping then is added to Customer's invoice. Title to product passes to Customer upon delivery at the destination point.
- 3.3 **For NAVIO<sup>®</sup> Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock. Title to product passes to Customer when signed for by the carrier at the shipper's dock.
- 3.4 **For Endo Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock except shipping then is added to Customer's invoice. Title to product passes to Customer when signed for by the carrier at the shipper's dock
- 3.5 **For drop shipments to distributors:** All are responsibility of the distributor and consignee's purchase order number must be included with distributor's order. Title to product passes to distributor when signed for by the carrier at the shipper's dock.

4. **PRICE; PAYMENT.** The latest published price list supersedes all previous price lists. Prices are subject to applicable tax. Organizations exempt from taxes or that resell product must provide S&N with a valid exemption or resale certificate for each applicable jurisdiction to avoid being invoiced for taxes. Exemption or resale certificates received after the sale shall not void taxes already charged but shall prevent tax from being charged on future invoices. All taxes are due for payment as billed. For sales by S&N to its distributors, distributor is free to resell products at prices determined in its sole discretion. Payment by Customer is due net thirty (30) days from date of invoice and must be sent to the address on S&N's invoices/statements to Customer. S&N reserves the right to terminate or limit open account credit at any time. Any discrepancy in an invoiced price and the corresponding order price must be reported to S&N's customer service team within thirty (30) days of the date of invoice. Customer's failure to make timely payment is a material breach for which (in addition to other available remedies) S&N may suspend performance under any or all S&N agreements until all past due amounts are brought current. Interest shall accrue on past-due amounts at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law. Customer shall reimburse S&N for reasonable costs (including attorneys' fees) relating to collection of past due amounts. Any credits due to Customer under an agreement may be applied first to any outstanding balance. If, after product delivery, Customer does not make

required payments within forty-five (45) days after the payments are due, S&N may, upon ten (10) days' prior written notice to Customer, either enter upon Customer's site and remove the products or temporarily disable the products so they are not operational.

5. **RETURNS.** All product returns, whether for defect or otherwise, require the prior written authorization of S&N, which must be obtained through S&N's customer service team. If the return is authorized, S&N shall provide Customer a return authorization, and Customer must return the product to S&N within thirty (30) days of receipt of such return authorization. Any product returned after thirty (30) days shall be addressed by S&N in its sole discretion, including for Endoscopy products not returned within thirty (30) days Customer will be charged the then list price for such products. Credit shall be issued only after product is received by S&N and then examined and determined to be returnable by S&N's return goods department. Customer shall not make any changes to the return authorization without receiving prior approval through S&N's customer service team. In addition, product may be returned only under the following conditions:
- From date of invoice, up to 180 days for Advanced Wound Management and Orthopaedic products and up to 60 days for Endoscopy products. (Except for \*FRESHNET<sup>o</sup>, OASIS<sup>o</sup>, PROSHIELD<sup>o</sup>, REGRANEX<sup>o</sup>, SANTYL<sup>o</sup> brands, up to 12 months past the expiration date, or in the case of such brands shipped in error by S&N, damaged in shipping or recalled by S&N.)
  - A restocking fee shall be charged: 25% for Advanced Wound Management products and 20% for Orthopaedic and Endoscopy products, except for product defects or an error by S&N.
  - Only unopened, full cases.
  - Product is still listed on S&N's current product list.
  - For Advanced Wound Management products, a copy of the original invoice is included.
  - S&N reserves the right to destroy product shipped to S&N that it deems unfit for sale.

S&N shall not accept returns for product:

- not in standard S&N packaging.
  - purchased through anyone other than S&N.
  - with unauthorized labels or that has been defaced.
  - that is a temperature controlled product.
  - that is obsolete, discontinued, special price, damaged or in broken lots or cases.
  - that is a sterile Endoscopy products with less than 1 year of shelf live remaining.
  - except for warranty claims, NAVIO<sup>o</sup> products may not be returned.
6. **COMPLIANCE.** Each party shall conduct its business and affairs in an ethical manner and comply with all applicable laws, regulations, and industry codes. Any breach by Customer or its representatives or agents shall entitle S&N to terminate this agreement immediately upon S&N's written notice to Customer. Customer acknowledges receipt of S&N's Code of Conduct that is available on S&N's website at <http://www.smith-nephew.com/compliance/global-compliance-programme/>. All transactions between Customer and S&N in connection with this agreement are made in good faith on the basis of arms-length negotiation and all prices are consistent with fair market value. The prices reflected on S&N invoices incorporate applicable discounts to S&N's list prices for the named products. Consistent with S&N's understanding of the requirements that apply to purchases of discounted products under 42 U.S.C. § 1320a-7b(b)(3)(A) or 42 C.F.R. § 1001.952(h), listing of these invoice prices constitute S&N's notice to Customer of the amount and value of all discounts given on these products. Prices may be subject to further rebates earned (if any) pursuant to an agreement between Customer and S&N. Customer may be responsible for reporting prices, discounts, and rebates to third parties under laws and regulations that apply to Customer's business, and for providing information to certain third parties in accordance with those laws and regulations. Any invoice prices less than S&N's list prices are "discounts" within the meaning of any safe harbors or other applicable protections regarding discounted product pricing (including the statute and regulation cited above), whether or not the invoice includes language indicating that a price is "discounted."
7. **LIMITED WARRANTY – OTHER THAN ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** S&N products are warranted to conform in all material respects to S&N's standard specification for a particular product in effect at the time of product delivery to the buyer (including any tolerance parameters) for the warranty period specified for the products at [www.SNWarranties.com](http://www.SNWarranties.com) (Warranty Period). For any products found to not be in conformance with this warranty during the Warranty Period, this warranty provides and is restricted to, as elected by S&N, either (i) repair or replacement of such products without charge and within a reasonable period of time or (ii) a refund or credit in the amount of the purchase price of such products (except for product equipment the refund shall be based on the straight line depreciation schedule specified at the Warranty Period website). If S&N repairs or replaces product under this warranty and requests Customer to return such product, Customer must ship such product to S&N freight prepaid by Customer. Customer shall be invoiced for any replacement product if Customer does not return the requested replaced product within thirty (30) days after S&N's shipment of the replacement product. This warranty does not cover and is voided by any of the following: (i) product packaged or labeled by someone other than S&N or its authorized agents; (ii) product not used in compliance with the specifications, instructions or claims for use of the product; (iii) equipment product used in conjunction with disposables or accessories not specified for use with such equipment; (iv) equipment product used in conjunction with reprocessed disposables or accessories; (v) modification of product; (vi) product past its expiration date; (vii) normal wear and tear; (viii) 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 product including but not limited to storage, handling or cleaning; or (ix) any other damage inflicted to products by the owner, user or handler. A 90-day warranty on repairs applies to the defective component repaired. This warranty applies only to the original buyer from S&N (or its authorized distributor) and is not transferable. **EXCEPT TO THE EXTENT PROHIBITED OR OTHERWISE REQUIRED BY APPLICABLE LAW, THIS WARRANTY IS THE SOLE WARRANTY OF S&N, AND 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.**
8. **LIMITED WARRANTY – ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** For any products for which ArthroCare Corporation is the legal manufacturer, the product warranty (including warranty length) is as stated in the Information For Use (IFU) accompanying the product. (See product packaging for the name of the legal manufacturer.)
9. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF ITS GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, BREACH OF ANY CONFIDENTIALITY PROVISION OF THIS AGREEMENT, LIABILITY OWED TO THIRD PARTIES OR FOR DEATH OR PERSONAL INJURY, OR AS OTHERWISE

**PROHIBITED BY LAW: (I) IN NO EVENT SHALL S&N BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR TYPES OF LOSS OR DAMAGE OF ANY KIND, OR FOR ANY LOST OR ANTICIPATED PROFITS OR SAVINGS, COST OF COVER FOR REPLACEMENT OR ALTERNATIVE PRODUCT OR DAMAGE TO REPUTATION OR GOODWILL, ARISING FROM THIS AGREEMENT; (II) CUSTOMER'S SOLE REMEDY FOR S&N'S BREACH OF ANY PRODUCT WARRANTY SHALL BE THE REPAIR, REPLACEMENT OR REFUND BY S&N AS PROVIDED IN THE WARRANTY; AND (III) IN NO EVENT SHALL THE TOTAL LIABILITY OF S&N UNDER ANY THEORY OF LIABILITY EXCEED THE PURCHASE PRICE PAID FOR THE APPLICABLE PRODUCT(S). THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE PRECEDING LIMITATIONS ON LIABILITY ARE A FAIR COMPROMISE AND WAIVE ANY RIGHT TO LATER CHALLENGE THEM AS UNREASONABLE, UNCONSCIONABLE OR OTHERWISE.**

- 10. GOVERNING LAW; JURISDICTION; JURY WAIVER.** This agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to or application of conflict of law principles. If any legal action, proceeding or other dispute arises relating to this agreement, the prevailing party shall be entitled to recover its costs and expenses associated with same, including, but not limited to, reasonable fees and costs for attorneys, accountants, collection, and other professionals. The commencement of any civil action or other proceeding or the assertion of any setoff relating to this agreement or any act or omission relating to its performance or subject matter must occur no later than three (3) years of the breach, act, omission, condition, or event in dispute, notwithstanding any longer statute of limitation or repose, or doctrine postponing or tolling a claim's accrual for non-discovery, to the contrary; or else such proceeding shall be barred. The parties, after consultation with respective counsel, waive trial by jury in any proceeding or counterclaim brought by either party against the other on any matters arising out of or in any way connected to this agreement, the relationship between the parties, or any injury or damage claim.
- 11. MISCELLANEOUS.** S&N reserves the right to discontinue products or change specifications or designs from time to time. Upon S&N's request as to purchases by its distributors, distributor, at no charge, will submit electronically to S&N end-user monthly sales tracings for all S&N products sold by distributor. Neither party is liable for delays or failures in performance (other than payment obligations) due to causes beyond its reasonable control. In the event of such delay, the time for performance shall be extended as reasonably necessary to enable performance. No modified, additional or different terms or conditions proposed by Customer, verbally or in writing, including without limitation any terms set forth in Customer's RFP or purchase order, shall apply and are expressly rejected by S&N. Any waiver of any breach of any provision of this agreement shall not be a waiver of any subsequent breach of the same or of any other provision of this agreement. Customer will keep all terms of this Agreement confidential and will 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 will 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. These terms and conditions of sale are subject to change by S&N effective on notice to Customer. <sup>o</sup>Indicates trademark of S&N.