

CONDITIONS OF PURCHASE



In these conditions Possum Limited is referred to as "the Buyer" and the Supplier named overleaf is referred to as "the Seller".

1. BASIS OF PURCHASE

- 1.1 The Buyer's purchase order ("the Order") shall constitute an offer by the Buyer to purchase the goods and/or services specified in the Order ("the Goods") subject to the terms set out in the Order and to these Conditions. The contract for the sale and purchase of any Goods between the Buyer and the Seller ("the Contract") shall be formed when the Buyer receives the Seller's acceptance of the Order or when the Buyer receives the Goods or part of the Goods whichever first occurs.
- 1.2 The terms set out or referred to in the Order and in these conditions together with any warranties implied by law (whether or not capable of exclusion) shall apply to the exclusion of any standard terms and conditions of the Seller and of all other terms and conditions.
- 1.3 Neither the Buyer nor the Seller shall be bound by any variation, waiver of, or addition to these Conditions, unless expressly agreed to in writing by the Buyer.

2. DELIVERY

- 2.1 The Goods shall be delivered on the date and in accordance with the instructions specified overleaf during normal business hours unless previously agreed otherwise.
- 2.2 The time stipulated for delivery shall be of the essence of the Contract.
- 2.3 The Buyer's signature given on any delivery note, or other documentation, presented for signature in connection with delivery of the Goods, is no evidence that the correct quantity or quality of Goods has been delivered or that they have been delivered in good condition.
- 2.4 The Buyer may by notice to the Seller delay delivery of all or part of the Goods for the period stated in the notice without cost to the Buyer.

3. RISK AND PROPERTY

- 3.1 Property in the Goods or part of the Goods shall pass to the Buyer when the Goods have been delivered to the Buyer or (if earlier) when the Goods or part of the Goods are appropriated by the Seller to the Contract without prejudice to the Buyer's rights under Condition 5.3.
- 3.2 Risk in the Goods passes to the Buyer on delivery in accordance with Condition 2.

4. PRICE AND PAYMENT

- 4.1 The price of the Goods is as set out overleaf and is exclusive of VAT.
- 4.2 The price is firm and may only be modified upon the written agreement of the Buyer and the Seller.
- 4.3 Unless otherwise stated in the Order the Seller shall not be entitled to invoice the Goods or any consignment of the Goods before delivery.
- 4.4 Payment shall be made by the Buyer within 30 days of the end of the month in which the invoice is issued. Payment of invoices shall not be deemed to be a waiver by the Buyer of any remedy which it may have against the Seller in respect of any defects in the Goods.
- 4.5 The Buyer shall be entitled to set off against the price any sums owed by the Seller to the Buyer including without limitation any damages for breaches of other contracts between the Buyer and the Seller.

5. WARRANTIES AND LIABILITY

- 5.1 The Seller warrants to the Buyer that the Goods will on delivery and for the period referred to in Condition 5.2:-
 - 5.1.1 be in conformity with the specifications, drawings, samples or other descriptions as supplied by the Buyer to the Seller or as agreed in writing but without any defects such samples may have;
 - 5.1.2 be of satisfactory quality (including where applicable being Year 2000 compliant within the meaning of DISC PD2000-1 published by the British Standards Institute) and free from defects in materials, and workmanship and (save to the extent that the Buyer is responsible for design) design;
 - 5.1.3 be fit for any purpose made known to the Seller either expressly or by implication; and
 - 5.1.4 comply with all relevant statutory requirements, regulations and standards and will have all necessary authorisations and approvals relating to the manufacture and sale of the Goods including, in appropriate cases, but not limited to Council Directive 93/42/EEC concerning medical devices, ISO-9002 and all the requirements imposed by the Medical Devices Agency.
- 5.2 The Seller shall at its own expense repair or replace at the option of the Buyer any of the Goods which are found to be defective or not in accordance with the Contract within twelve months from the date of sale of the Goods (or items of which the Goods form part) by the Buyer or within 18 months from the date of delivery of the Goods to the Buyer (whichever is shorter).
- 5.3 If the Seller does not deliver all or part of the Goods within the time specified overleaf, or if all or part of the Goods are found to be defective or not in accordance with the Contract the Buyer shall be entitled to terminate the Contract, purchase other items of the same or similar description to make good such default, and recover from the Seller the amount by which the cost of purchasing such items exceeds the price which would have been payable to the Seller in respect of the Goods replaced by such purchase, without prejudice to any other remedy for breach of contract.

6. DESIGNS AND DRAWINGS

- 6.1 The copyright and other intellectual property rights of whatever nature in the specifications, drawings and designs of the Buyer and in any modifications and enhancements made thereto by the Seller and in the Goods and any other items made using such specifications, drawings and designs, are and shall remain the property of the Buyer.
- 6.2 Unless agreed otherwise, the Seller shall at its own cost supply all material, equipment, tools and facilities required to perform this Order. Any material, designs, drawings, specifications and other items provided to the Seller by the Buyer are the property of the Buyer and shall not be copied or used by the Seller other than in completing the Order and must be returned on request to the Buyer. The Seller shall use such property at its own risk and shall be responsible for all loss or damage to the same until it is redelivered to the Buyer.
- 6.3 The Buyer may on demand remove any such specifications drawings designs and other items as are referred to in this condition and the Seller shall permit the Buyer and persons authorised by it access on request to any premises where such items may be for that purpose.

7. INDEMNITY

7. The Seller shall indemnify the Buyer in full against all claims, costs, expenses, losses, damage and liabilities whether direct or consequential which the Buyer may suffer as a result of or in connection with:-
 - 7.1 any breach or alleged breach by the Seller of any warranty or obligation under this Contract, any breach or alleged breach by the Seller of any terms or obligations implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to the Goods, and as a result of or connection with any liability of the Buyer under the Consumer Protection Act 1987 or other relevant legislation in respect of the sale of the Goods, and any act or omission of the Seller or its employees or agents in manufacturing and delivering the Goods; and
 - 7.2 any infringement by the Goods of any patents copyright trade mark or other intellectual property right of a third party except where such infringement is occasioned by the act or fault of the Buyer.

8. CANCELLATION

- 8.1 The Buyer may by notice to the Seller (and irrespective of there being any breach of contract on the part of the Seller) cancel the Order to the extent that delivery has not been made.
- 8.2 If the Buyer cancels the Order under this condition its liability shall be limited to the price of the Goods already delivered and the actual cost wholly and necessarily incurred by the Seller in obtaining or manufacturing the Goods not then delivered.

9. TERMINATION

- 9.1 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving written notice to the Seller at any time if the Seller makes a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of solvent amalgamation or reconstruction) or a receiver is appointed over the whole or a material part of the assets of the Seller or if the Buyer has cause to believe that any of the events referred to above or any other consequence of insolvency is likely in relation to the Seller.

10. LIEN

The Seller hereby waives its rights to any lien it may acquire over any property of the Buyer in the Seller's possession for work done or materials furnished in connection with the Goods.

11. ASSIGNMENT AND SUBCONTRACTING

The Seller shall not assign or transfer the whole or any part of the Contract or sub-contract the production or supply of the Goods to be supplied under the Contract without the prior written consent of the Buyer.

12. NOTICES

Any notice consent approval or other communication to be given under the Contract shall be in writing and may be served personally or left at the address shown overleaf or may be sent by first class post to such address.

13. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English law and parties submit to the exclusive jurisdiction of the English Courts.