



Terms and Conditions of Sale

Definitions

In these Conditions of Supply all references to:

(i) "Seller" are to Hilotherm Limited whose registered office is at 10 Gibbet Hill Road, Coventry CV4 7AJ

(ii) "Buyer" are to the person, firm or company by whom the order is given to the Seller.

(iii) "Devices" are to one or more Hilotherm Clinical or Homecare Devices loaned to the Buyer by the Seller to enable the Seller to use Hilotherm consumables and accessories purchased from the Seller under separate contracts.

(iv) "Usage" are to the usage of the Devices which are the subject of the order by the Buyer in accordance with the manufacturer's instructions.

(v) "Usage Period" are to the period of Usage of the Devices to which this agreement relates.

2 – Entire Agreement

2.1 All contracts for Usage shall be deemed to incorporate these Conditions which represent the complete agreement of the Seller and Buyer with regards to the supply except as otherwise specifically agreed in writing by the Seller (the contract for supply). These conditions shall override any terms and conditions stipulated, incorporated or referred to by the Buyer in any order, correspondence, negotiations or any other way.

2.2 Catalogues, price lists, advertisements and other published information are only indications of the type of products and services available and shall not form part of the contract for supply or any other contract with the Buyer nor be considered an offer, a collateral warranty or a representation inducing the same.

3 – Acceptance of Orders

3.1 An order on the Seller will be effective on acknowledgement of the order by the issue of an invoice to the Buyer.

3.2 Accepted orders are not subject to cancellation except upon the written approval of the Seller whereupon the Buyer will immediately return the Devices to the Seller in good working order and condition at its own cost and expense.

4 – Price and Payment Terms

4.1 The price and terms of payment for the supply shall be set out in the Seller's invoice and will be held for 30 days.

4.2 The Seller reserves the right by notice given at any time before delivery of the goods or performance of the services to vary the price if there is any increase or decrease in the Seller's general price list appertaining to such or similar goods or services or if there is any increase in the cost to the Seller due to any factor beyond its control, any change in delivery dates, quantities or specification of goods which is requested by the Buyer or any delay caused by the Buyer's instructions or failure to provide adequate information. Time of payment of the price shall be the essence of all contracts for supply.

4.3 Unless otherwise agreed in writing or set out in the quotation the Seller's prices do not include delivery charges. Where the Seller agrees to deliver the Devices the Buyer will pay for the cost of transport, packaging and insurance.

4.4 The Seller reserves the right to suspend further deliveries or performance and/or to cancel allowance of further credit in the event of any payment not being made when due or if the Seller considers the financial circumstances of the Buyer have ceased to justify the terms allowed.

4.5 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy, the Seller can:

(i) cancel the contract and suspend further deliveries to the Buyer (ii) charge the Buyer interest (both before and after any Judgment) on the amount unpaid at the rate of 5% above the Seller's bank's base rate from time to time or the statutory rate of interest payable on judgment debts whichever is the greater. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998

5 – Usage and maintenance of Devices

5.1 The Buyer must use the Devices, together with approved Hilotherm consumables and accessories, in accordance with the manufacturer's instructions and recommendations.

5.2 The Buyer must use the Devices, together with approved Hilotherm consumables and accessories, in accordance with all applicable laws and regulations.

5.3 The Buyer is responsible for the day-to-day cleaning and servicing of the Devices in accordance with the manufacturer's instructions.

5.4 The Seller is responsible for rectifying major defects in the Devices within a reasonable period of notification of the defect by the Buyer to the Seller.

5.5 The Buyer is responsible for returning the Devices to the Seller at the Seller's normal place of business within 10 working days of the expiry of the Usage Period.

6 – Invoicing

6.1 Unless a proforma invoice is supplied the Seller may invoice the Buyer in respect of the Usage at the earlier of the following dates: the date the goods are despatched or the date the goods are ready for delivery.

6.2 The Seller may invoice the Buyer for the supply of services at the earlier of the following dates: the date of the commencement of performance thereof or such date agreed by the Buyer and the Seller if performance is delayed by the instructions of the Buyer, or by some reason beyond the control of the Seller.

7 – Passing of Property

7.1 No property in or title to the Devices shall pass to the Buyer at any time. Failure to pay the purchase price for Usage of the Devices when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the Devices or so much thereof as the Seller may determine from any premises where they may be or to which they may be attached. For the purpose of repossessing the Devices or any part thereof the Buyer shall permit the Seller, its employees or agents upon such premises and the Buyer shall pay to the Seller the cost of removal and transport of the goods or any part thereof.

7.2 The Buyer shall not sell, purport to sell or part with possession of the Devices other than to the Seller under any circumstances.

8 – Statutory Liability

8.1 The Seller does not exclude or restrict any legal liability it may have for death, or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors.

8.2 The Seller does not exclude or restrict any of its legal obligations arising under Section 12 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994) and Section 2 of the Sale of Goods and Services Act 1982 and Part 1 of the Consumer Protection Act 1987.

9 – Warranties

9.1 The Seller warrants the Devices against defects in, materials and workmanship in accordance with the terms of sales and the Buyer shall be entitled to rely on such warranty.

9.2 The above warranty shall not apply to any defect in the goods or deficiency in the services where such defect or deficiency is caused in whole or in part by:

(i) The installation, storage, use, maintenance or repair of the goods in a manner reasonably considered by the Seller to be improper;

(ii) The Buyer and/or any user of the Devices or of products related to the Devices changing or adding to the goods without the express permission in writing of the Seller;

(iii) Any other act of the Buyer or any third party.

9.3 The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information or lack of information supplied by the Buyer as to the Buyer's requirements in relation to the specification or use of the goods or services.

9.4 The Seller shall be under no liability whatsoever to repair, replace or make good any loss which results from defects or depreciation caused by damage in transit in circumstances outside the Seller's control; wear and, accidents, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Seller's control as stipulated in Clause 12 below.

10 – Exclusions and limitations on warranties

10.1 The Buyer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition, representation or warranty whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise.

10.2 It shall be the responsibility of the Buyer to determine the suitability of the goods and any services for their intended purpose and for actual application and their compliance with applicable laws, regulation codes and standards and the Buyer assumes all risks pertaining thereto.

10.3 Notwithstanding the exclusion of any warranty as to fitness for purpose contained in these Conditions, as a separate Condition the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether goods or services are fit for the purpose for which they are purchased or provided the Seller shall accept no liability whatsoever with regards to that judgement or any matter arising from that judgement the Buyer will indemnify the Seller against any loss, damage, costs, claims or expenses arising there from.

10.4 If notwithstanding the Seller's attempts to comply with the warranty the Seller is unable to do so the Seller shall pay monetary damages to the buyer not exceeding the amount received by the Seller for the defective goods, or as the case may be, the deficient services.

10.5 The Seller shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused whether by reason of the negligence of the Seller or otherwise, to premises, plant or other physical property. In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

10.6 Save as expressly provided for in the contract for supply the Seller shall in no circumstances be liable for the following loss or damage howsoever caused and howsoever arising whether by reason of the Seller's negligence or otherwise, even if such loss or damage was or ought reasonably to have been, in the contemplation of the parties at the date of the contract for supply as being likely to occur; (i) economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach; (ii) any other consequential or indirect loss or damages; (iii) any claim made against the Buyer by any other party; In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

10.7 If, notwithstanding the provisions of Clauses 10 and 11 inclusive and Clause 12, the Seller shall in any circumstances whatsoever be held legally liable to the Buyer then; (i) the Buyer's sole rights of redress against the Seller shall be limited to damages; (ii) the Seller's total liability in respect of any goods and/or services notwithstanding the number of incidents for which the Seller is found legally liable shall in no circumstances exceed the amount received by the Seller for goods or services as the case may be.

11 – Insurance

11.1 The precise limits of any appropriate insurance cover are primarily within the Buyer's knowledge thereby enabling the Buyer to effect his own insurance cover at more economic rates than the Seller. The Buyer agrees that insofar as the Buyer may require any insurance cover the Buyer shall effect the same, such to include without prejudice to the generality of the foregoing;

(i) damage to the physical property of any kind; (ii) economic and other consequential or indirect loss or damage; therefore the Buyer acknowledges and accepts that it is reasonable for the Seller to limit its legal liability and its liability to pay damages as set out in these conditions.

11.2 The Buyer hereby agrees and acknowledges that it will procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

12 – Indemnity

12.1 The Buyer agrees to indemnify the Seller against any loss, damage, claims or expenses incurred by the Seller in respect of liability established against the Seller by a third party arising out of or in connection with the contract of supply.

12.2 The Buyer agrees to indemnify the Seller against any loss or damage to the Devices during the Usage Period.

13 – Change in Buyer's Financial Circumstances

If the Buyer makes any composition or arrangement with creditors or, being in a company, goes into liquidation whether voluntary or compulsory or, being an individual or firm, if he or any partner commits any act of bankruptcy or if a Receiver is appointed in respect of any assets of the Buyer or if the Buyer fails duly to pay for any goods or services or to comply with any other requirement under any contract for supply or if the Seller considers in its absolute discretion that the financial circumstances of the Buyer do not justify any payment or credit terms or arrangement previously agreed the Seller may at its option either require payment in cash before dispatch of goods remaining to be delivered or performance of services remaining to be performed may cancel further deliveries or work without prejudice to any other rights or remedies of the Seller and the Buyer shall remain liable for completed and partially completed deliveries and work to the same extent as required under these Conditions in the event of cancellation.

14 – Health and Safety.

14.1 The Buyer agrees to use the Devices and obtain services for uses specified in the Seller's current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being in the Seller's opinion free from risk to health and safety.

14.2 The Buyer agrees to pay due regard to any information or advice relating to the use of the devices or related products or services which the Seller may at any time furnish to it and agrees that before the goods are used it will, if requested by the Seller, furnish the Seller with an written undertaking to abide by any steps which the Seller may specify with a view to ensuring that the goods will be safe and without risk to health when used.

14.3 Any written undertaking given pursuant to Clause 14.2 above shall be deemed to have as if it formed part of the contract for supply.

15 – Patent Indemnity

When goods are made or adapted by the Seller in accordance with the Buyer's specifications, the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trademarks or other rights belonging to third parties.

16 - Assignment

The Buyer shall not assign or otherwise transfer any contract for supply or any part thereof or any benefit or interest therein or there under without the prior written consent of the Seller. Any such attempted assignment or transfer by the Buyer without the written consent of the Seller is void.

17 - Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual contract for supply in relation to which it is made.

18- Severability

If any term or condition herein or part thereof is held to be invalid for any reason by any Court or competent authority it is to that extent to be deemed removed from the contract for supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

19 – English Law

The formation, construction and performance of all contracts for supply shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

To request an electronic version of the Terms of Sale please email info@hilotherm.co.uk