

1. INTERPRETATION

In these conditions and in any contract to which these conditions apply:-

- (a) "the Vender" means Vear Surgical Instruments or such company as accepts the Customer's order.
- (b) "the Customer" means the person who buys or has agreed to buy the Goods.
- (c) "the Goods" means any item of whatsoever nature which is sold repaired or maintained by the Vender.

2. GENERAL

These Conditions apply to every sale made or agreed to be made by the Vender unless it is verified in writing signed on behalf of the Vender.

3. PRICE

(a) Unless previously withdrawn the Venders quotations are open for acceptance within the period stated therein or, when no period is so stated, within thirty days only after its date.

(b) The Vender shall be entitled without notice to the Customer to adjust the price of the Goods, whether before or after acceptance of the Goods, in the event of and to take account of any increase in the cost to the Vender of supplying the Goods as a result of increases in costs of transport or insurance, or in rates of any applicable taxes in respect of the supply of the Goods or ingredients thereof including any duty, charge or levy in respect of the export or import of Goods, or changes in the classification or value of Goods or ingredients for customs purposes, or any changes in applicable exchange rates or in the event of delays by the Customer in providing any information or licences required by the Vender for the production, supply, despatch or delivery of the Goods, or any other impost arising after the sale.

4. PAYMENT

(a) Unless otherwise agreed by the parties in writing payment of the price of the Goods shall be made within 30 days of the date of the Vender's invoice.

(b) Time for payment of the price of the Goods shall be of the essence of the contract and if the Customer fails to pay the price when due the Vender may treat the contract as repudiated by the Customer or may, until payment in full is made, suspend delivery of the Goods the subject of the contract and any Goods the subject of any other contract with the Customer without incurring any liability whatsoever to the Customer in respect thereof. In addition, but without prejudice to such rights of the Vender, the Customer shall (if so required by the Vender) pay interest to the Vender on the outstanding amount of the price at the rate of 3 per cent per annum above the indicator Lending Rate of National Australia Bank Limited ruling from time to time until the price is paid in full.

(c) Notwithstanding any rights to lien to which the Vender may otherwise be entitled, the Vender shall have a specific lien (including a right of sale) over the Goods the subject of the contract and any Goods the subject of any other contract with the Customer until the price of the Goods has been

paid. The Customer shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim.

5. DELIVERY

(a) In the event of production of the Goods or any part thereof being hindered or impaired or ceasing for any cause whatsoever outside the reasonable control of the Vender, the Vender may notify the Customer that it is unable to fulfil the contract and may cancel the contract without any liability whatsoever.

(b) Where the Customer requests a particular method of delivery then the Customer shall cover the cost of delivery by that method from the point of despatch of the goods by the Vender. Otherwise the Vender may select the method of delivery and the Customer shall bear such delivery costs. Goods sent for repair are to be freight prepaid.

(c) The Vender is not responsible for any loss or damage to goods in transit. The Vender shall render the Customer such assistance as may be necessary to press claims on carriers providing that the Customer shall have notified the Vender and the carriers in writing immediately loss or damage is discovered on receipt of goods.

6. FAILURE TO DELIVER

The Customer shall notify the Vender within 7 days of delivery of any shortfall in, loss or damage to Goods delivered. Failure to so notify shall disentitle the Customer to any remedy in respect of the shortage, loss or damage.

7. TITLE

(a) Goods supplied by the Vender to the Customer shall be at the Customer's risk immediately on delivery to the Customer and the Customer should insure the Goods thereafter against such risks as it thinks appropriate.

(b) Property in the Goods supplied by the Vender to the Customer will not pass to the Customer until such time as the Goods the subject of this contract and all other Goods supplied by the Vender to the Customer have been paid for in full. In default of such delivery the Vender may by its servants and agents enter the Customer's premises at any time without notice to repossess the Goods.

(c) Until such time as the Goods have been paid for in full the Customer is at liberty to sell the Goods, including Goods into which the supplied Goods have been mixed, in the ordinary course of its business, as agent for the Vender and shall account to the Vender for the proceeds thereof.

(d) The Customer and the Vender agree that the provisions of this clause apply notwithstanding any arrangement between the parties under which the Vender grants the purchaser credit.

8. WARRANTY

All Vear Surgical products are warranted to be free of defects in the materials and workmanship. If any products are identified by the Customer as being defective upon receipt, and such goods are returned and accepted by Vear as defective, they will be repaired or replaced free of charge, or

credited against future purchases. The warranty does not apply to damage and/or misuse or abuse of the product. Warranty is void if any product has been altered in any manner, and/or if repair was done by someone other than a qualified Vear Surgical service representative. This warranty is expressly limited to the terms and conditions as stated above and there is no other implied or expressed warranty or guarantee.

9. EXCLUSION OF LIABILITY

(a) Except as provided in these terms and conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, materials or workmanship or otherwise are hereby expressly excluded and the Vender shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, or use of the Goods or arising out of the Vender's negligence or in any way whatsoever.

(b) The Venders liability, if any, for a breach of a condition or warranty is hereby limited to: –

(1) in the case of goods, any one or more of the following:-

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(2) in the case of services:-

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(c) The Vender's liability, if any is expressly limited to:

(1) the cost of replacing the goods; or

(2) the cost of obtaining equivalent goods; or

(3) the cost of repairing the goods whichever cost shall be the lesser.

(d) Unless otherwise agreed in writing the only warranty provided by the Vender in respect of Goods not manufactured by it is that (if any) provided by the manufacturer of the Goods and the liability of the Vender pursuant to such warranty is limited to any amount receivable by the Vender from the manufacturer.

10. LICENCES, DUTIES, ETC.

The payment of any taxes and the obtaining and maintenance in full force and effect of any necessary export or import licences, authorisations or consents in respect of the Goods is the sole responsibility of the Customer and the Vender shall be under no liability whatsoever in respect of Goods exported or imported without any necessary licences, authorisations or consents.

11. HEALTH AND SAFETY

It is the Customers responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the

Goods and where information is supplied to the Customer on potential hazards relating to the Goods to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. Without prejudice to the foregoing, it is also the Customers responsibility to provide safe facilities for the reception of the Goods into storage.

12. REPAIRS

Vear Surgical is not responsible for damage to goods sent to Vear Surgical for repair or examination, nor for accidental damage to glass or other apparatus or delicate instruments in the course of the repair.

Time involved in preliminary examination of an article may be charged in the event of an order not being placed. Goods sent for repair are to be freight prepaid and clearly labelled with the senders name and address and details of the work required.

13. RETURN OF GOODS POLICY

Goods received as a result of Vear Surgical's error may be returned for repair, replacement or credit. Returns are to be freight prepaid.

Goods will be considered non-returnable if:

- (a) Goods are held longer than 90 days.
- (b) Discontinued products.
- (c) Non-stock items (i.e. custom designed).
- (d) Goods not in, or accompanied by, original packaging.
- (e) Goods not in saleable condition due to no fault of Vear Surgical.

Loan stock will be invoiced if:

- (a) The Goods are not returned within 30 days of issue, or the period stated on the Loan Docket.
- (b) The Goods are not in saleable condition when received by the Vender.
- (c) The Goods are not in, or accompanied by, the original packaging.

14. INDUSTRIAL PROPERTY RIGHTS

The Customer shall not alter remove or in any way tamper with any of the trade or other marks or numbers of the Vender attached to or placed upon the Goods.

15. INDEMNITY

The Customer will indemnify the Vender against all damages, penalties, costs and expenses to which the Vender may become liable as a result of work done in accordance with the Customer's specifications which involves the infringement of any letters patent or registered designs.

16. NOTICES

Any notice to be given to the Customer shall be deemed to be given upon its being posted or sent by telex, facsimile, cable or telegram to the address of the Customer set out in the contract or to the Customers registered office or to the Customers last known address.

17. ASSIGNMENT

The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.

18. SUB-CONTRACTS

The Seller reserves the right to sub-contract the performance of any contract or any part thereof to any other person party or person it may determine.

19. PROPER LAW AND JURISDICTION

All contracts made between the Vender and the Customer shall be governed by and construed in accordance with the laws of New Zealand. The Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand courts for all purposes of or in connection with such contracts.

20. HEADINGS

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