

GENERAL PURCHASE CONDITIONS BELGIUM

1. Definitions

In these general purchase conditions the following definitions apply:

Purchaser: Smith & Nephew NV, Hector Henneulaan 366, 1930 Zaventem, Belgium with company number 0474.619.911.

Seller: any party that supplies goods to the Purchaser, provides services to the Purchaser or has agreed with the Purchaser to do so, or any party to whom the Purchaser has given an assignment of any other nature.

Agreement: any agreement, including these general purchase conditions, between the Purchaser and the Seller on the purchase of goods and/or services by the Purchaser from the Seller, or any other order assignment given by the Purchaser to the Seller, or any related acts.

2. Applicability

2.1 These general purchase conditions are applicable to all requests, offers, assignments, purchase orders, order confirmations, agreements and other legal acts relating to the supply of goods, the provision of services or the execution of assignments or the performance of other works by the Seller for the Purchaser.

2.2 The Seller's general terms and conditions are hereby expressly excluded. Derogating terms and any general conditions apply only if and to the extent expressly accepted in writing by the Purchaser for each individual case separately.

2.3 If the contents of the Agreement differ from the contents of these general purchase conditions, then the contents of the Agreement shall prevail.

2.4 The Seller who was contracted once on the basis of these general purchase conditions accepts the applicability of these conditions to subsequent agreements between him and the Purchaser, unless it has been agreed otherwise in writing.

3. Formation of the Agreement

3.1 Any offer, etc. made by the Seller is irrevocable, unless it is unequivocally clear from the offer, etc. that the offer is without obligation.

3.2 Any Agreement between the Seller and the Purchaser is formed no sooner than the Purchaser has expressly accepted an offer from the Seller in writing or has sent a written confirmation.

3.3 Any costs incurred with respect to the drafting of offers are borne by the Seller.

4. Prices, Invoices and Payment

4.1 The agreed price includes all fees and duties, sound packing material, inspections, tests, certificates, etc., and is fixed for the duration of the agreement.

4.2 The Purchaser shall pay the goods supplied or the services provided within 60 days after the invoice date, unless otherwise agreed in writing and on condition that the goods supplied or the services provided have been approved by the Purchaser and after receipt of all relating documentation including the correct data and all information necessary to constitute a valid invoice.

4.3 Failure to comply with the requirements relating to invoice data, advice notes and packing lists set out in the order or otherwise agreed and failure to complete such documents with all necessary data will give the Purchaser the right to suspend the Purchaser's obligation to pay the Seller.

4.4 Not in any way does payment by the Purchaser constitute a renunciation of any right.

4.5 The Purchaser is at all times entitled to pay in euro, at the exchange rate that is applicable on the invoice date.

4.6 If the Seller exercises any right - whether on the basis of an agreement or any legal provision - to increase a price, the Purchaser is entitled to terminate the Agreement between the Seller and the Purchaser with immediate effect without any notice of default being required and without the Purchaser being liable for compensation.

5. VAT Registration number

5.1 Parties undertake to provide each other with their correct VAT registration numbers, and to immediately notify each other of any change therein.

5.2 If the Seller fails to comply with the obligations set out under 5.1, then the Seller shall pay to the Purchaser any VAT and other amounts insofar as the Purchaser may be owing such amounts due to the Seller's noncompliance.

5.3 If the Purchaser fails to comply with the obligations set out under 5.1, then the Seller shall be entitled to increase the selling price by the amount of VAT and any other amounts insofar as the Seller may be owing such amounts due to the Purchaser's noncompliance. In this event, the provisions of article 4.6 of these general purchase conditions do not apply.

6. Delivery of goods

6.1 Unless otherwise agreed, goods must be delivered free at the warehouses of the Purchaser 'Delivered Duty Paid' in conformity with the Incoterms (most recent version) as set out by the International Chamber of Commerce, unless it has been otherwise agreed in writing.

6.2 The mere fact of exceeding the delivery time by the Seller results in the Seller being in default.

6.3 Without prejudice to the provision in the previous paragraph, the Seller is obliged to inform the Purchaser immediately of any delay or foreseeable delay in the execution of the Agreement.

6.4 Unless otherwise agreed in writing, the Seller is not entitled to make partial deliveries. If the execution of partial deliveries has been agreed, then delivery is, for the purposes of these general purchase conditions, also deemed to mean a partial delivery.

6.5 The delivery is complete at the moment when the goods have been received by or on behalf of the Purchaser and the Purchaser has signed for delivery. The latter signing does not affect the fact that the goods delivered can be rejected later under the terms of article 8 of these general purchase conditions. Furthermore, the Seller cannot derive any rights from the signing referred to in the first sentence of paragraph (6.5), and the signing therefore does not prevent the Purchaser from exercising (for instance) its rights on the grounds (among others) of a default on the part of the Seller.

6.6 The Seller is not entitled to suspend its delivery obligation if the Purchaser fails to perform one or more of its obligations.

7. Execution of services

7.1 The execution of services must be effected in the manner and at the time as set out in the Agreement.

7.2 Exceeding the time set for the provision of services by the Seller results in the Seller being in default.

7.3 Without prejudice to the provision in the previous paragraph, the Seller is obliged to inform the Purchaser immediately of any delay or foreseeable delay in the execution of the Agreement.

7.4 If the Agreement provides a penalty for exceeding the time limit within which the assignment must be completed, this will not prevent the damage actually suffered by the Purchaser and caused by late completion by the Seller to be fully reimbursed.

7.5 If and to the extent the work is performed at the premises of the Purchaser, this shall be done within the working hours applicable there, unless otherwise agreed. At the Purchaser's first request, the Seller shall be obliged to carry out the work outside these working hours. Travel time and waiting time shall not count as time worked and can only be charged to the Purchaser if an express and written agreement between him and the Seller exists in relation thereto.

7.6 The Seller shall at his own expense timely arrange for the execution of the work and/or employment of employees and obtaining the necessary permits, waivers, approvals and licences.

7.7 The provision of services is completed when the Purchaser has confirmed in writing that the services provided have been performed or that the services provided have been approved. The Seller cannot derive any rights from such confirmation or approval and the confirmation or approval therefore do not prevent the Purchaser from exercising (for instance) its rights on the grounds (among others) of a default on the part of the Seller.

7.8 The Seller may only instruct third parties to carry out services with prior written consent from the Purchaser.

7.9 The Seller is not entitled to suspend the execution of services if the Purchaser should fail to meet one or more of its obligations.

7.10 The Purchaser may at any time terminate or interrupt the Agreement in whole or in part, without this giving the other party the right to any compensation, other than the payment for the work actually performed at that time or a proportionate part of any agreed fixed price.

8. Inspection

8.1 The Purchaser is at all times entitled to subject the goods to be delivered (or delivered) to an inspection or to have these subjected to an inspection, or to investigate whether the services provided have been executed in conformity with the Agreement and these general purchase conditions. The Seller is obliged to give its full cooperation to the inspection or the investigation.

8.2 The Seller cannot use the fact that such inspection or investigation has not occurred to object in full or in part against any claim of the Purchaser.

8.3 In the event of rejection the Purchaser shall inform the Seller of the rejection. The Purchaser shall store the rejected goods, or have the goods stored, at the risk and expense of the Seller. If the Seller has not taken back the goods within a period of 14 days after the Purchaser has informed the Seller that the goods delivered have been rejected, then the Purchaser is entitled to return the goods to the Seller at the Seller's risk and expense, without the Seller's approval being required. If the Seller should refuse to take delivery of the goods, the Purchaser is entitled to store, sell or destroy the goods at the risk and expense of the Seller.

8.4 The Seller cannot derive any rights from the results of an inspection or investigation as referred to in article 8.1 or from the non-occurrence of an inspection or investigation.

8.5 The Purchaser is never bound by any period set by the Seller in which the Purchaser should inform the Seller that the goods delivered have been rejected or in which the Purchaser should have lodged a complaint.

9. Ownership and risk

9.1 Ownership and risk of goods are transferred to the Purchaser at the moment of delivery, unless (i) it has been agreed otherwise in writing or (ii) the goods are rejected by the Purchaser upon or after delivery (under article 8 of these general purchase conditions).

9.2 The Seller waives any retention rights and rights of revendication it may have.

9.3 The Seller has to take out insurance against transit damage, at its own risk and expense.

10. Guarantee

10.1 The Seller guarantees that the goods to be supplied or the services to be provided meet the Agreement. Such guarantee at least includes that:

(i) the goods and services have the characteristics that have been promised, if nothing has been agreed in relation thereto, the characteristics imposed on these goods and services in trade;

(ii) the goods are new and have no defects and are free of any thirdparty rights;

(iii) the goods or services are fit for the purpose for which the assignment/order was given or for which the Agreement was concluded;

(iv) the services shall be executed expertly and without interruption;

(v) the goods or services are compliant with any requirements set by or by virtue of the law and/or applicable rules of self-regulation and/or requirements set by the Purchaser, including requirements as to quality, health, safety, environment and advertising, in any applicable jurisdiction;

(vi) the goods have been marked with the name of the manufacturer or of the party that markets the goods;

(vii) the goods are complete with and accompanied by all data and instructions required for correct and safe usage; and

(viii) the goods are complete with and accompanied by all documentation required by the Purchaser, irrespective of the question whether the documentation was requested by the Purchaser before, during or after the conclusion of the Agreement.

(ix) during the term of this Order, and for two (2) full years thereafter, Supplier represents and warrants that Supplier will timely and completely provide S&N with all information reasonably requested by S&N related to Supplier's use and sourcing of "Conflict Minerals" as that term is used and defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the rule promulgated pursuant thereto.

10.2 It is known to the Seller that the Purchaser markets high-quality medical goods and services, including amongst others medical supplies, instruments and electronics. Insofar as the Seller supplies goods or services, the Seller guarantees that these meet the highest quality standards.

10.3 If it turns out that - irrespective of the results of any preceding inspections - any goods provided do not meet the provisions of article 10.1, then the Seller shall at its own expense and at the discretion of the Purchaser and at the Purchaser's first request repair or replace the goods, or supply what is missing, unless the Purchaser prefers to terminate the Agreement in conformity with the provisions of article 16 of these general purchase conditions and without prejudice to any other rights of the Purchaser arising from any failure to perform (including the right to damages). Any costs related to this (including cost of repair and disassembly) shall be borne by the Seller.

10.4 In urgent cases and in cases where it has to be assumed in all reasonableness after consultation with the Seller that the Seller will fail to meet its guarantee obligations, then the Purchaser is entitled to effect repair or replacement itself at the expense of the Seller or to have a third party effect such repair or replacement, without the Seller being discharged from its obligations under the Agreement.

10.5 Unless agreed otherwise in writing, a guarantee period shall apply of at least five years as from the date of delivery of the goods or the execution of the services, except where the law provides for a longer guarantee period in that case the longer guarantee period shall apply.

10.6 Any agreed guarantee period shall resume upon acceptance of the executed repair, the replacement or replenishment to which the guarantee provisions apply.

10.7 The Seller warrants that the work is at all times performed in compliance with all statutory and other government provisions relating to the payment of social security contributions and taxes, safety, environment, hygiene, product designation or otherwise as applicable under applicable law and at the location of the works. All costs of measures, including remedial action, in order to comply with these rules or ensure compliance, and any penalties and/or damages resulting from the failure to comply with these provisions, are always for the account of the Seller, even if borne by the Purchaser in first instance.

11. Liability

11.1 Any failure of the Seller to meet its obligations entitles the Purchaser to oblige the Seller to undo partially or fully the failure and/or its consequences at the risk and expense of the Seller.

11.2 The Seller is liable for any loss that is suffered by the Purchaser and/or any subsequent purchasers or users, including - eventually - the consumer of the goods delivered (whether or not processed) due to a failure of the Seller to meet its obligations and/or due to any act or failure to act by the Seller or by the Seller's staff or any third parties engaged by the Seller. The Seller shall be liable for both direct and indirect losses.

11.3 The Seller shall hold the Purchaser harmless against any possible claims by third parties with respect to the Agreement or any goods or services delivered in relation thereto.

11.4 The Seller is obliged to take out sufficient insurance against the losses referred to in article 11.2. This insurance obligation also applies to any means which are in any way used in the execution of the Agreement. The Seller shall have a remark made on its insurance policies that any payout by the insurance company shall be made direct to the party that effectively suffered the loss. The Seller shall, at the Purchaser's first request, allow the Purchaser to inspect the relevant policies.

11.5 The Purchaser is not liable for any losses suffered on the part of the Seller, unless the loss has been caused by deliberate intent on the part of solely the supervisory staff of the Purchaser. The Purchaser expressly exonerates itself for its gross negligence and gross negligence of its employees, as well as the deliberate intent of its non-supervisory staff.

12. Recall

12.1 If any defect in the goods delivered (including packages) becomes known to one of the parties, the party is obliged to inform the other party immediately of such defect, stating:

- a. the type of defect;
- b. the goods affected; and
- c. any other information that may be relevant.

12.2 The parties shall then in consultation with each other take any measures necessary given the circumstances. The measures to be taken may mean discontinuation of deliveries, discontinuation of the manufacturing of products, blocking of stocks of products (whether or not at customers of the Purchaser) and/or a recall. Solely the Purchaser is entitled to decide whether any measures and, if so, which of the aforementioned measures will be taken and how the execution thereof shall take place. Insofar as applicable, the Purchaser shall take into account, when taking such decision, that it markets high-quality products and therefore has to protect its reputation. The Seller should participate in any reasonable way in the execution of such measures and, insofar as the Seller is to blame, bear the costs thereof, without prejudice to the provisions of articles 10 and 11.

12.3 The Seller is obliged to keep secret any information relating to measures that may or will be taken.

13. Intellectual property rights

13.1 The Seller grants to the Purchaser a non-exclusive, eternal, irrevocable, global and transferable right to use any intellectual property rights regarding goods and/or services provided by the Seller. This right of use includes the rights to grant such right of use to (possible) purchasers or other third parties with whom the Purchaser has relations in respect of the running of its business.

13.2 The Seller guarantees that the use (including resale) of goods supplied or services provided by the Seller will not infringe on any intellectual property rights or other (property) rights of third parties.

13.3 The Seller holds the Purchaser harmless against any claims by third parties arising from any infringement on the rights set out in article 13.2 of these general purchase conditions and the Seller shall compensate the Purchaser for any ensuing losses.

13.4 Insofar as the Purchaser makes available to the Seller any means of which the Purchaser possesses an intellectual property right, the Seller acknowledges that the Purchaser is and shall at all times remain the owner of such means and that the Seller shall not obtain any intellectual property rights or title as regards such means. The Seller shall manage all means referred to in this paragraph at its own risk and expenses and keep them in good repair. The Seller shall not use the means for or have the means used by third parties unless the Seller has been authorised in writing by the Purchaser to do so. Article 15 applies mutatis mutandis to any means referred to in this article 13.4.

13.5 If the Seller, within the scope of the Agreement, develops goods for the Purchaser, then any intellectual property rights to be invoked shall accrue exclusively to the Purchaser. Any fee for this shall be deemed to be included in the agreed price of the goods. Insofar as necessary the Seller shall render full assistance in the creation or the transfer of such rights to the Purchaser.

14. Force majeure

In the event of force majeure on the part of one of the parties, such party shall immediately and in writing inform the other party of such event and keep the other party informed on the development of the event of force majeure. If the situation of force majeure should last longer than seven (7) days, the other party shall have the right to terminate the Agreement with immediate effect and without court intervention by giving notice in writing, without any right to damages arising. Force majeure on the part of the Seller shall in no event be understood to mean: staff shortage, strikes, non-performance by any third party engaged by the Seller, transport problems on the part of the Seller or any third parties engaged by the Seller, failure of equipment, liquidity and/or solvency problems at the Seller or government measures affecting the Seller.

15. Secrecy

15.1 The Seller acknowledges that in the context of (the execution of) this Agreement it may come into possession of confidential information of the Purchaser. Such confidential information (including information regarding products, results of business activities, etc.) shall remain the exclusive property of the Purchaser and must not be disclosed to any third party or be used in any other way for any purpose other than the execution of the Agreement without prior written consent.

15.2 Also, the Seller shall not disclose any information about its relationship with the Purchaser to any third party without express written consent from the Purchaser.

15.3 The Seller is obliged to impose the same obligation as referred to in article 15.1 upon its employees or any third parties it engages in the execution of the Agreement. The Seller warrants that such employees/third parties shall not act in breach of the duty of secrecy.

16. Termination

16.1 The Purchaser, at its own discretion, shall be entitled to suspend partially or fully the execution of all agreements between the parties, including the Agreement, or to terminate these agreements, including the Agreement partially or fully by giving notice in writing, without court intervention (and with immediate effect) (without the Purchaser being liable to pay any damages) in the event of, insofar as permitted by law:

(i) a failure by the Seller to perform one or more of its obligations under the Agreement or of agreements relating thereto;

(ii) a procedure of judicial reorganization or a declaration of bankruptcy on the part of the Seller;

(iii) guardianship order or appointment of an administrator on the part of the Seller;

(iv) sale or termination of the business of the Seller;

(v) cancellation of any licenses of the Seller that are required for the execution of the Agreement;

(vi) seizure of a major part of the Seller's business assets; or

(vii) process of garnishment being issued against the Purchaser at the expense of the Seller.

16.2 Any claims the Purchaser may have or come to have against the Seller in the cases referred to above in article 16.1, shall be payable forthwith and in full. Furthermore, the Seller shall immediately pay back all that is paid by the Purchaser.

16.3 In the event of termination, the Purchaser is not liable to pay any form of compensation. The Seller shall indemnify and hold the Purchaser harmless against third party claims which may arise from or in connection with the termination.

17. Smith & Nephew Code of conduct and business principles

The Seller (and the Seller's parent company) has taken knowledge of the Smith & Nephew Code of conduct and business principles (the "Code") and guarantees that all its activities shall be conducted in accordance with the Code. The Purchaser may from time to time carry out an audit or other checks on Code compliance either performed by itself or any third party and each Supplier shall respond promptly to requests from the Purchaser for information relating to compliance with the Code. The Code can be accessed at the internet address: <http://www.smith-nephew.com/compliance/global-compliance-programme/code-of-conduct-and-business-principles/>.

18. Settlement

The Purchaser is entitled to deduct from the amounts which it owes for whatever reason to the Seller or to other companies forming part of the same group as the Seller the amounts which the Purchaser or other companies forming part of the Smith & Nephew group can claim for whatever reason from the Seller or from other companies forming part of the same group as the Seller. The parties hold each other harmless and each other's group companies against claims for payment of amounts which have been deducted on the grounds of the present article.

19. No waiver of right

The fact that the Purchaser does not, not immediately or not fully exercise the rights it has on the Seller, does not mean that it shall not do so in the future. Consequently this does not mean that such rights are expired or that the Purchaser waives such rights.

20. Severability

If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The invalid or unenforceable provision shall be replaced by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

21. Applicable law / Disputes

21.1 The legal relationship between the Purchaser and the Seller and any agreements relating to such legal relationship, shall solely be governed by the law of Belgium. The provisions of the United Nations Convention on International Purchase Agreements (CISG, Vienna, 11 April 1980) are not applicable.

21.2 All disputes between parties shall solely be settled by the competent court in Brussels.