

## 1. Definitions

- a) "Customer" means any firm, company, registered charity, NGO, trust or person who purchases products from Mom Incubators Ltd ("mOm").
- b) "Consumables" means those Products supplied as single or short-term use only items.
- c) "Orders" means any order placed by the Customer and accepted by mOm subject to these General Conditions.
- d) "Products" refers to all items sold or loaned by mOm, including Consumables and Third Party Products.
- e) "Third Party Products" refers to products not manufactured or assembled by mOm and supplied to mOm by third parties for re-sale by mOm.

## 2. General

- a) Unless otherwise agreed in writing or except where they are at variance with (i) the regulations governing the sale of Products to government bodies or any other public entity or (ii) the mandatory provisions of local law, all Orders, offers, quotes and resulting contracts between mOm and the Customer shall be governed by these general terms and conditions of sale (the "General Conditions") which shall supersede and exclude any terms and conditions proposed, stipulated or referred to by the Customer.
- b) No order will be deemed accepted until mOm issues a written confirmation or, if no confirmation is issued, upon shipment of the Products by mOm. All descriptions, specifications and illustrations contained in mOm 's catalogues, price lists and advertisements or otherwise communicated to the Customer are intended to present a general idea of the Products described therein, and are not integrated herein by reference.
- c) Changes may be made to the specifications of the Products (i) at mOm's sole discretion, when required to conform with applicable statutory or EU requirements or (ii) at the request of the Customer to the extent that the changes will not, in the sole opinion of mOm, materially affect the Products' quality or performance.

## 3. Price and Payment

- a) Unless otherwise specified, all prices quoted are exclusive of Value Added Tax and any other applicable taxes or duties and are further exclusive of packing, transportation and insurance costs. For the avoidance of doubt, mOm reserves the right to charge the Customer any additional costs that may be incurred by mOm as a result of special shipment or packaging requests made by the Customer.
- b) Prices shall be as listed in mOm's quote or price agreed in writing at the date of acceptance of the Order and in any case as shown on the invoice. mOm reserves the right, at any time prior to delivery and with written notice, to increase the price to reflect costs of business, inflation or increases in cost to mOm due to causes beyond mOm's control (such as, by way of example, foreign exchange fluctuations, currency regulations, changes to delivery dates, quantities or specifications requested by the Customer, or any other delay due to any act or omission of the Customer).
- c) Unless otherwise specified by mOm all sums invoiced will be due within thirty (30) calendar days from the invoice date (the "Due Date"), failing which interest will become due at a rate of Libor +8% per annum (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received. mOm may require payment up front before delivery if successful financial validation is not possible. Non-

payment of an invoice when due may, at the sole option of mOm, result in acceleration of all outstanding invoices and mOm shall further have the right to suspend or cancel outstanding orders without the need for formal notice. mOm may also elect to bring action for the collection of unpaid amounts in any court having competent jurisdiction.

- d) Payment shall be treated as having been made only when any cheque, draft, bill of exchange or other instrument of payment given by the Customer has been honoured according to its terms.
- e) The Customer shall not be entitled to retain or defer payment of any sums due to mOm on account of any dispute, counter claim or set off which it may allege against mOm.

#### **4. Delivery; Passing of risk and title**

- a) Unless otherwise stipulated in writing, all Products are sold EXW (Incoterms 2000).
- b) mOm will use commercially reasonable efforts to adhere to agreed delivery dates; however, any delivery dates given are estimates only and the time of delivery shall not be of the essence.
- c) Partial deliveries will be allowed.
- d) The Products shall remain mOm's property until mOm has received payment in full by way of cleared funds. Payment shall be applied to invoices in the order in which they were issued and to the Products in the order in which they are listed in the invoices; until such time The Customer shall hold the Products as bailee.
- e) Notwithstanding the foregoing, risk in the Products shall be transferred to the Customer at the time of delivery and the Customer shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of mOm.
- f) If payment is overdue in whole or in part or if the Customer goes into administration, receivership or liquidation or being an individual declares bankruptcy then mOm shall be entitled to the immediate return of all Products sold by mOm to the Customer for which title has not yet passed to the Customer, and the Customer hereby authorizes mOm to recover the Products and to enter any premises of the Customer for that purpose. Demand for or recovery of the Products by mOm shall not of itself discharge either the Customer's liability to pay all outstanding amounts and take delivery of the Products or mOm's right to sue for payment of the outstanding amounts.

#### **5. Inspection; Warranty; Returns**

##### **Inspection and Acceptance**

- a) The Customer shall inspect the Products immediately upon receipt and shall within ten (10) calendar days from delivery give written notice to mOm of any defects or claims that the Products are not as stated on the bill of lading.
- b) Failure of the Customer to give such notice shall be an unqualified acceptance of such Products and a waiver by the Customer of all claims with respect thereto and shall further serve as confirmation that the Customer represents it has examined the Products and that they are acceptable and clinically suitable for their intended purpose.
- c) Contested Products must be kept at mOm's disposal and can only be returned to mOm upon mOm's express written consent within seven (7) calendar days from the date consent is received. No prescriptive, special, modified, discontinued- opened, damaged or defaced disposable or consumable Products may be returned.

- d) Products accepted for return are subject to a handling charge of 15% of the Order price (exclusive of VAT), which charge shall be paid upon demand. All costs of returning the Products to mOm shall be borne by the Customer. Products are returned at the risk of the Customer and any repairs undertaken by mOm in respect of damage caused in transit will, during their return, be charged to the Customer.
- e) All returned Products must be accompanied by the original packing note together with the reason for return of the Products. All Products must be returned with the appropriate decontamination certification and in accordance with regulatory requirements. mOm reserves the right to charge the Customer for any costs incurred by mOm, in the event that such Products are not decontaminated in accordance with regulatory requirements.
- f) mOm's sole obligation in the event the claim is found to be justified shall be to, at mOm's sole discretion, replace the Products or refund the purchase price (by issue of credit note if the invoice if applicable) of the Products. In the event that upon receipt of any returned Product mOm finds the claim unjustified, the Product will be returned to the Customer at the Customer's expense and the Customer will reimburse mOm for the transportation charges, labour and associated charges incurred in testing the allegedly defective Product.

#### **Warranty**

- a) With respect to consumable Products, the warranty supplied is that specified on the packaging. mOm warrants to the Customer that, at time of delivery, each Product manufactured by mOm shall be free of defects in material and workmanship and, when used for the purposes and indications described on the labelling, is fit for the purposes and indications described on the labelling. All warranties for Products shall expire as of the Products' expiration date or, in the event of disposable or consumable Products as specified on the packaging, or if none or for other Products, after one (1) year from the date of shipment from mOm. mOm's warranty hereunder shall not apply if:
  - a. Products are not used in accordance with instructions or are used for a purpose not indicated on the labelling,
  - b. any repairs, alterations or other work has been performed by the Customer or others on such Product, other than work performed with mOm's authorization and according to its approved procedures;
  - c. the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than mOm.
- b) The warranty set forth herein is conditioned upon proper storage, installation, use and maintenance in accordance with applicable written recommendations of mOm. The warranty furnished hereunder does not extend to damage to Products purchased hereunder resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by mOm.
- c) With respect to Third Party Products, the sole warranty available to the Customer shall be the one given to mOm by the manufacturer to the extent said warranty can be transferred.
- d) mOm's sole obligation shall be to repair or replace, at mOm's option, any defective component or Product and pay transportation expenses for such replacement. The Customer shall provide the labour for the removal of the defective component or Product and installation of its replacement at no charge to mOm. The Customer shall bear all risk of loss or damage to returned components and Products while in transit. In the event no defect or breach of warranty is discovered by mOm upon receipt of any returned Product, the Product will be returned to the Customer at the Customer's expense and the Customer will reimburse mOm

for the transportation charges, labour and associated charges incurred in testing the allegedly defective Product.

- e) Except as expressly provided herein and to the extent the Customer is not a person dealing as a consumer (as such term is defined in the Unfair Contract Terms Act 1977), mOm makes no representation or warranty of any kind, expressed or implied with respect to any products, parts or services provided by mOm including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Products distributed, but not manufactured, by mOm are not warranted by mOm and the Customer must instead rely on the representations and warranties, if any, provided directly to the Customer by the manufacturer of such Products. The sole and exclusive remedy for breach of any warranty is limited to the remedies provided in the paragraph above. The rights of Customers purchasing Products under a consumer transaction (as defined by the Consumer Transactions Restrictions on Statements Order 1976) are not affected by the terms of this Section.
- f) Warranties for non-disposable Products are set out in the relevant documents.

#### **6. Storage, Handling and Use of Products**

- a) The Customer shall be responsible for any mishandling, from the time that Products are received by the Customer, which results in damage to or arising from Products.
- b) The premises used to store and handle Products shall:
  - a. be suitably designed and contain sufficient space in order to facilitate storage, cleaning, maintenance and other necessary operations;
  - b. provide sufficient protection against events that may affect the quality of Products: e.g. lighting, temperature, humidity, airborne particulate and microbial contamination;
  - c. provide for an adequate separation of Products, in particular, separate and suitable areas must be available for defective Products, recalled Products and waste disposal;
- c) Operations which may produce impurities or any other matter which may contaminate Products shall not be performed in the area where Products are stored.
- d) The Customer shall put in place the following systems:
  - a. a documented preventative pest control system and be designed to prevent contamination of materials and Products.
  - b. an end user complaint tracking system to facilitate communication of complaints to mOm; and
  - c. a recall system able to trace Products by reference, by lot/batch number and by quantity. The Customer should implement appropriate systems which shall be able to track any complaints made by the Customer's customers. Said system shall enable the Customer to report such complaints to mOm.
- e) The Customer shall store, handle and use the Products in accordance with mOm's Instructions for Use.
- f) The Customer shall not resell the Products.

#### **7. Compliance**

- a) The Customer shall comply with good business practices and all laws and regulations relevant to these General Conditions such that mOm's image and reputation is promoted and safeguarded and shall in particular comply with all laws and regulations of the United Kingdom relating to the marketing, distribution, supply, sale, labelling and installation of the Products, including, but not limited to Eucomed and ABHI Guidelines.

- b) The Customer acknowledges that it is familiar with Medical Devices Regulation (EU) 2017/745 and the reporting obligations imposed on device users thereunder as transposed into local law. If the Customer is based in the United Kingdom, it further acknowledges that it is familiar with the UK Medical Device Regulations 2002 (as amended) and the reporting obligations imposed on device users thereunder. In this regard, the Customer agrees to notify mOm within three (3) calendar days of the occurrence of any event identified in the Devices Regulations imposing a reporting obligation on the Customer and/or mOm (except for events representing an imminent hazard that require notification to the relevant national health safety board (the "Safety Board") within three(3) calendar days, in which case, such notice will be delivered to the other party immediately). The Customer shall maintain adequate tracking of the Products to enable mOm to meet the requirements applicable to the tracking of medical devices.
- c) The Customer shall comply with mOm's instructions relating to
  - a. the safe disposal of batteries as regulated by the EU Batteries Directive 2006/66/EC (and its equivalent where transposed into local law),
  - b. the collection and disposal of waste generated by the Products as regulated by the EU Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC (as transposed into local law),
  - c. the requirements for registration, evaluation and authorization of chemicals as regulated by the EU Directive 1907/2006 (as transposed into local law)
  - d. the EU RoHS Directive 2002/95 (as transposed into local law), and
  - e. the EU Packaging Waste Directive 94/62/EC (as transposed into local law).
- d) The Customer shall further comply with the UK Bribery Act 2010 and further represents and warrants that it:
  - a. is familiar with the United States Foreign Corrupt Practices Act and without limiting the generality of the other provisions of these General Conditions, the Customer agrees that it will not, and will ensure that its employees, directors, officers, agents or other persons acting on its behalf (the "Related Parties") do not make any payment or give anything of value, either directly or indirectly, to an official of any government or government agency for the purpose of influencing an act or decision of the official in his or her official capacity or inducing the official to use his or her influence to obtain or maintain business or to obtain or pay for favourable treatment or any other special concession; and
  - b. has not, in the past
    - i. used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, or
    - ii. made any unlawful payment to government officials or government employees or to political parties or campaigns nor will it do so in the future.

8.

#### 9. Limitation of Liability and Indemnification

- a) The liability of mOm in respect of any claim for loss, damage or expense of any nature with respect to Products delivered or the non-delivery of Products shall in no circumstances exceed a total aggregate sum equal to the purchase price of the Products in question.
- b) mOm shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the

claims of any third party (including, without limitation, product liability claims) that may be incurred by the Customer.

- c) The Customer shall guarantee, hold harmless and indemnify mOm and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any Customer obligations hereunder.

#### **10. Intellectual Property Rights**

- a) Supply of Products shall not confer any rights upon the Customer to use any of mOm's patents, registered designs, trademarks, copyright or other intellectual property rights which shall remain the property of mOm. Any specifications, plans, drawings, process information, patterns, designs, formulae or other processes created, calculated, drawn up or designed by mOm to fulfil the requirements or comply with the instructions of the Customer in connection with the supply of Products and any information derived therefrom or otherwise communicated to the Customer in connection with the supply of Products shall remain the property of mOm at all times, and shall be kept confidential. The Customer shall not remove or alter any indication, notice or other label affixed to the Products referring to the instructions and/or recommendations of the manufacturer or mOm for use.

#### **11. Governing Law**

- a) Jurisdiction: All disputes arising out of or in connection hereunder shall be governed by and interpreted in accordance with the laws of England, and the Customer submits to the jurisdiction of the courts of England.
- b) The U.N. Convention on Contracts for the Sale of International Products is hereby excluded from application to these General Conditions. No provision of these General Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to them.