

Terms & Conditions

1. Interpretation

- 1.1 In these Conditions:
 'BUYER' means the person(s) or entity(-ies) (including permitted assigns, agents or employees) who issues the Seller with a Purchase Order or whose order for the Goods and/or Services is accepted by the Seller by way of Sales Order.
 'CONDITIONS' means the terms and conditions of sale of the Seller set out in this document and includes any special terms and conditions agreed in Writing between the Buyer and the Seller.
 'CONTRACT' means an agreement for the supply of goods and/or services between Buyer and Seller made in accordance with these Conditions, consisting of a Purchase Order, a Sales Order and these Conditions.
 'GOODS' the goods, products, equipment, materials or other tangible movable items (along with any ancillaries) to be supplied by the Seller (including any instalment of the Goods or any parts for them) as described in the Contract which the Seller is to supply in accordance with these Conditions.
 'PURCHASE ORDER' means any verbal or written order for Goods and/or Services issued by the Buyer or notification received by the Seller from the Buyer that the Goods have been used by the Buyer.
 'SALES ORDER' means any acceptance, acknowledgement or confirmation of a Purchase Order confirmed in Writing by the Seller or its authorised representatives to which these Conditions are attached and issued to the Buyer.
 'SELLER' means Uniphar Medtech (registered in Ireland under number 47888).
 'SERVICES' means the services to be provided by the Seller as described in the Contract.
 'WRITING' includes facsimile transmission, electronic mail and post and any other comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 In interpreting these Conditions, no regard shall be had to the *contra proferentem* rule or any similar rule of interpretation which would narrow the meaning of the words used in these Conditions in a manner prejudicial to one party only.
- 1.5 Any words following the terms "including", "include", "in particular" or any similar expression in these Conditions shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- ### 2. Basis of the Sale
- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with the terms of a Contract. A Contract shall not come into existence unless and until the Buyer issues a Purchase Order to the Seller which is confirmed by the Seller by way of Sales Order.
- 2.2 These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer, and/or which are implied by trade, custom, practice or course of dealing.
- 2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders & Specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Purchase Order (including any applicable specification) and for giving the Seller any necessary information relating to the Goods and/or Services required within a sufficient time to enable the Seller to issue an accurate Sales Order and perform the Contract in accordance with its terms.
- 3.2 The quantity, description of and any specification for the Goods and/or Services shall be those set out in the Purchase Order (and if accepted by the Seller, in the Sales Order).
- 3.3 The specification and design of the Goods and/or Services (including the copyright, design right or other intellectual property in them) shall be the property of the Seller or its licensors.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable medical, safety or other statutory requirements.
- 3.5 A Sales Order may not be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall reimburse the Seller in full against all loss (including loss of profit) and costs incurred by the Seller as a result of cancellation.
- ### 4. Price of the Goods
- 4.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Purchase Order. Where the Goods are supplied for export from Ireland, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance of that price by the Buyer, after which time the prices quoted may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving at a minimum 14 days advance notice in Writing to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, including but not limited to:
- (a) any change in mode or timing of delivery, performance dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer;
 - (b) any increase in the costs to the Seller of materials, labour and services (even if caused by currency fluctuations); or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods and/or Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and installation costs.
- 4.4 The price of the Goods and/or Services is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of collection of any returnable containers or ancillaries will be borne by the Seller but the Buyer shall be responsible for ensuring such returnable containers are not lost, damaged or destroyed prior to collection. If such loss or damage occurs prior to return to the Seller, the Buyer shall be responsible for any costs, loss or damage incurred by the Seller in respect of same.
- 4.6 Unless otherwise stated, any software updates or upgrades are excluded from the price of the Goods.

5. **Terms of Payment**

5.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services at any time after a Contract is entered into for the Goods.

5.2 The Buyer shall pay the price of the Goods and/or Services within 30 days of the date of the Seller's invoice, unless otherwise agreed between the parties in Writing, even if delivery has not taken place due to circumstances attributable to the Buyer. Time shall be of the essence with regard to payment of the price under the Contract. Receipts for payment will be issued only upon request by the Buyer. Except as otherwise agreed in Writing between the Buyer and the Seller, payment can be made by cheque, cash, credit card, bank draft or electronic funds transfer in the currency specified in the Seller's invoice.

5.3 If the Buyer fails to make any payment on the due date then, the Seller shall be entitled to do one or more of the following (without prejudice to any other right or remedy available to it):

- (a) appropriate any payment made by the Buyer to such of the Goods and/or Services (or Goods and/or Services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- (b) charge the Buyer interest (both before and after any judgment) on the amount unpaid, from the due date until the date of actual payment in full at the rate specified in the EC (Late Payment in Commercial Transactions) Regulations 2012;
- (c) suspend any further deliveries to the Buyer; or
- (d) terminate the Contract with immediate effect.

5.4 Where the Buyer has any amount owing to the Seller, payments must be strictly made within the terms agreed between the parties on that account.

5.5 The Seller reserves the right to impose credit limits on the Buyer where necessary and further reserves the right to alter, as it sees fit, the extent of credit offered, payment terms and acceptable payment methods.

5.6 Where the Buyer is subject to a credit limit with the Seller, payments must be strictly made within the limits agreed between the parties in Writing on that account.

6. **Delivery of Goods & Provision of Services**

6.1 Unless otherwise agreed in Writing between the parties, delivery of the Goods shall be ex-works (as defined in INCOTERMS 2010). Carriage of the Goods will be arranged on the request and at the expense of the Buyer. In the absence of specific agreement in Writing with the Buyer regarding the method of delivery, the Seller may in its sole discretion select the method of delivery of the Goods, at the Buyer's cost.

6.2 Any dates or times quoted for delivery of the Goods and/or provision of Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and/or provision of Services however caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods and/or Services may be delivered or provided by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments or the Services are to be performed in instalments, failure by the Seller to deliver and/or perform any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated and these Conditions shall apply to each instalment.

6.4 If the Seller fails to deliver the Goods or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest alternative market) of goods or services of similar specification to the Goods and/or Services to replace those not delivered or performed over the price of the Goods and/or Services.

6.5 Deviations in quantity of the Goods or the timing of the Services (representing not more than 10% by value) from that stated in the Contract shall not give the Buyer any right to reject the Goods

and/or Services or to claim damages and the Buyer shall be obliged to accept and pay the Contract rate for the quantity of the Goods and/or Services delivered.

6.6 The Seller shall not be liable for any shortage in Goods delivered unless notice thereof shall have been given to the Seller in Writing within 5 days of the date of delivery. If the Buyer fails to notify the Seller within the said period the Buyer will be deemed to have accepted the shipment of Goods in question.

6.7 If the Buyer fails or refuses to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, the Seller may:

- (a) store the Goods until actual delivery and charge the Buyer for the full price of the Goods (as per clause 4) to include reasonable costs (including insurance) of storage, transport or any other costs incurred as a result; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

7. **Risk & Property**

7.1 Unless otherwise agreed, risk of damage to or loss of the Goods shall pass to the Buyer:

- (a) at the time of delivery;
- (b) if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the Goods shall remain the sole and absolute property of the Seller until unconditional payment in full has been received by the Seller for the Goods and all other monies due to the Seller howsoever arising including, without limitation, for the value of Services performed to the date or any Goods delivered but not invoiced.

7.3 Until such time as the property in the Goods passes to the Buyer or the Goods have been used by the Buyer in the ordinary course of its business, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer or the Goods have been used by the Buyer in the ordinary course of its business and provided the Goods are still in existence the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 The Buyer shall not be entitled to withhold or delay payment of any amount payable under the Contract to the Seller nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any monies which are not then presently payable by the Seller for which the Seller disputes liability.

8. **Consignment Procedure**

8.1 To facilitate the Buyer's operational requirements the Seller may store quantities of Goods on the Buyer's premises or the Seller may loan Goods to the Buyer. In respect of such stocks the Buyer shall:

- (a) store the Goods in a secure location separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition;
- (d) notify the Seller immediately if the Buyer becomes subject to any of the events listed in clause 11.1 and grant the Seller a right of access to the Goods to reclaim

	any Goods that have not been sold or used by the Buyer;		
(e)	give the Seller such information relating to the Goods as the Seller may require from time to time; and		
(f)	allow the Seller to have regular access to the Goods on the Buyer's premises, subject to the provision of reasonable notice in advance, for the purposes of inspection, stock-take and re-stocking.		
8.2	The Buyer shall be entitled to use the Goods in the ordinary course of its business and, except where the Goods have been loaned to the Buyer, upon each use the Buyer shall be deemed to have purchased the relevant Goods and shall promptly furnish to the Seller a Purchase Order in respect of the Goods.		
8.3	The Seller retains the risk that Goods which are the subject matter of this clause may become obsolete if not required and used by the Buyer.		
8.4	Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods that have been loaned by the Seller to the Buyer shall not pass to the Buyer. Such Goods shall be returned by the Buyer to the Seller promptly after use.		
9.	Installation and Functionality of the Goods		
9.1	The Goods may be installed by the Seller, which will be carried out without any delay occasioned by the Buyer in accordance with the Seller's working procedure.		
9.2	Without limiting the Buyer's obligations under clause 14, it is the sole responsibility of the Buyer to prepare/ready the site for installation in accordance with the instructions specified by the Seller.		
9.3	The operation and functionality of the Goods may be dependent on third party system(s). The Seller is not liable for any loss or damage arising from a defect in any third party system or for any loss or damage arising if the operation of the third party system is incompatible with the Goods.		
9.4	The Seller warrants that installation (if applicable) will be provided by competent personnel consistent with industry norms. Training provided on installation does not constitute upon the Buyer (or any of its employees, servants or agents) a certificate of competence or licence to practice.		
9.5	Where applicable, the Seller will connect the Goods to the mains outlet provided by the Buyer in an approved location. Unless otherwise agreed in Writing, the Buyer shall be responsible for the proper electrical current to be brought to the mains outlet and will provide all structural plumbing, carpentry work, primary mains wiring, pull through of interface cables, fixing of outlet boxes and attaching of wall or ceiling mountings along with any other ancillary works required for the installation of the Goods.		
10.	Warranties & Liability		
10.1	The Seller as a re-seller of the Goods shall use all reasonable endeavours to pass on the benefit of any warranties in relation to the Goods which are received by the Seller from the manufacturer of the Goods, it being for the Buyer to ensure it complies with the terms (including manufacturer's instructions as to use of the Goods) applicable to those warranties as communicated by the Seller to the Buyer.		
10.2	The Seller shall use reasonable endeavours to provide the Services with all due care, skill and diligence.		
10.3	The Seller shall not in any event be liable in respect of any defect in the Goods arising from any specification supplied by the Buyer, wilful damage to, misuse, alteration or repair of the Goods without the Seller's approval.		
10.4	The Seller shall not be liable under clause 10.1 or 10.2 (or any other warranty, condition or guarantee) until the total price for the Goods and/or Services has been paid by the Buyer.		
10.5	Save as expressly provided in these Conditions or otherwise agreed in Writing by the Seller with the Buyer, all warranties, representations, statements, conditions or other terms express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.		
10.6	Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to the Seller within a		
	reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.		
10.7	Where any valid claim in respect of any of the Goods or Services which is based on the Seller's liability in respect of:		
	(a) any defect in the quality or condition of the Goods;		
	(b) any defect in the performance of the Services; or		
	(c) the failure of the Goods and/or Services to meet specification;		
	is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to either:		
	(i) repair the Goods (or the part in question);		
	(ii) replace the Goods (or the part in question);		
	(iii) re-perform or procure the re-performance of the Services; or		
	(iv) at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price).		
	and, to the fullest extent permitted by law, the Seller shall have no further liability to the Buyer.		
10.8	Nothing in these Conditions shall limit the Seller's liability for death or personal injury caused by the Seller's negligence, fraud, fraudulent misrepresentation or any other matter for which liability may not be limited under applicable laws.		
10.9	Subject to clause 10.6, in no event shall the Seller have any liability whatsoever to the Buyer, whether in contract, tort (including negligence), or otherwise for any indirect, special, incidental, economic or consequential loss or damage including, without limitation, loss or damage incurred as a result of loss of time, loss of savings, loss of data, loss of goodwill, loss of business or loss of profits.		
10.10	Subject to clause 10.6, the Seller's entire liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage whatsoever, arising out of or in connection with the Contract or otherwise shall not in any event exceed the price of the Goods and/or Services in respect of any event or series of connected events.		
10.11	The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations under the Contract, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:		
	(a) Act of God, explosion, flood, tempest, fire or accident;		
	(b) war or threat of war, sabotage, insurrection, civil disturbance or requisition or malicious damage;		
	(c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;		
	(d) import or export regulations or embargoes;		
	(e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);		
	(f) failure of a utility service or transport or telecommunications network; or		
	(g) difficulties of the Seller's suppliers in obtaining raw materials, labour, fuel or parts of machinery.		
11.	Insolvency of Buyer		
11.1	This clause applies if:		
	(a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to administration or is in examination or (being an individual or firm) becomes bankrupt or (being a body corporate) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);		
	(b) any action is taken by any person to appoint a receiver, administrator, administrative receiver, examiner, trustee, or similar officer of the Buyer or any of the		

- property or assets of the Buyer or any such receiver, administrator, administrative receiver, examiner, trustee, or similar officer is appointed;
- (c) the Buyer ceases, or threatens to cease, to carry on business;
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- (e) anything analogous to any of the foregoing occurs in any applicable jurisdiction.
- 11.2 If clause 11.1 applies then the Seller shall, without prejudice to any other rights of the Seller, be entitled to terminate the Contract with immediate effect and/or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods and/or Services have been delivered and/or performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11.3 In the event that the Seller exercises any rights it may have to stop the Goods in transit because of the Buyer's financial condition, the Seller may, at its option, resell such goods at public or private sale without notice to the Buyer and without affecting the Seller's rights to hold the Buyer liable for any loss or damage caused by breach of contract by the Buyer.
12. **Order Cancellation**
Any cancellation of a Purchase Order that occurs after the Seller has issued a Sales Order will be subject to the provisions set out in clause 13.
13. **Return of Goods**
Save as set out in clause 10.6, there is no right of return of the Goods and the Buyer remains fully liable for validly delivered Goods and Services but the Seller may agree at their own absolute discretion, and only in writing, to accept the return of Goods subject to the prevailing re-stocking fee and other terms quoted in the Seller's return of goods policy.
14. **Buyer Duties**
The Buyer shall:
- (a) provide free of charge adequate and safe access to the Buyer's premises, information, documents and facilities (including resources for loading and unloading of goods and equipment) to enable the Seller to carry out its duties and responsibilities under the Contract;
- (b) be responsible for the safe custody of the Seller's (and its sub-contractors') property retained on the Buyer's site for the purposes of installation, commissioning, maintenance and/or removal of equipment;
- (c) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any Goods supplied or equipment provided to the Buyer or work done on the Buyer's site; and
- (d) the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
15. **Dispute Resolution**
- 15.1 Any dispute arising out of or in connection with these Conditions or a Contract including, without limitation, the existence or formation of a Contract (a "**Dispute**") shall be referred at first instance to senior representatives of each of the parties who shall endeavour in good faith to resolve the Dispute.
- 15.2 In the event that a Dispute cannot be resolved by such senior representatives within fourteen (14) days of referral of the Dispute to them, then either party shall be entitled to refer the Dispute to mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") procedures then in force. The mediation process will be commenced by service by one party on the other of a notice in Writing that the issue is to be referred to mediation (the "Mediation Notice"), but in the event that the parties are unable to agree on a choice of mediator within seven (7) days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. Each party shall bear its own costs in respect of the mediation.
- 15.3 In the event that a Dispute remains unresolved sixty (60) days after the date of service of the Mediation Notice, then the Dispute shall be referred to and finally resolved by arbitration in accordance with the UNCITRAL Rules, as adopted by the Arbitration Act 2010, which Rules are deemed to be incorporated by reference into this clause 15.3.
- 15.4 Nothing in these Conditions shall prevent either party from seeking injunctive or other relief in a court of law to protect or enforce its legal rights.
16. **General**
- 16.1 Any notice required to be given to the Buyer under these Conditions shall be in Writing addressed to the Buyer at its registered office or principal place of business.
- 16.2 Any notice required to be given to the Seller shall be in Writing addressed to the Company Secretary, **Uniphar Medtech**, Wilton Works, Naas Road, Clondalkin, Dublin 22 or any other address notified in Writing by the Seller to the Buyer.
- 16.3 All data that is acquired, exchanged or retained will be subject to the provisions of the Data Protection Acts 1988- 2003 as reflected in the Seller's own data protection policies.
- 16.4 The Contract constitutes the entire agreement between the parties with respect to its subject matter. The Buyer acknowledges and agrees that in entering into the Contract it does not rely on and shall have no remedies in respect of, any advice, recommendation, undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in these Conditions.
- 16.5 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 All Waste Electrical and Electronic Equipment will be handled in accordance with legislation as reflected in the Seller's Environmental Policies.
- 16.7 If any provision of these Conditions, or any part of a provision of these Conditions, is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then the legality, validity and enforceability of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 16.8 Nothing in these Conditions shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties. No party shall have authority or power (and shall not represent themselves as having such authority or power) to contract in the name of the other party or to undertake any liabilities or obligation on behalf of or to pledge the credit of the other party save insofar as expressly provided in these Conditions.
- 16.9 The Contract shall be governed by and construed in accordance the laws of Ireland and, subject to clause 15, the Buyer agrees to submit to the non-exclusive jurisdiction of the Courts of Ireland for the resolution of disputes under or in relation to the Contract.