

TRANSPLANT SYSTEMS PTY LTD
TERMS AND CONDITIONS OF ORDER AND SUPPLY
Current as at April, 2007

1. "Transplant" refers to Transplant Systems Pty Ltd ABN 87 050 197 012

"Customer" refers to the person or company by or on behalf of whom these Terms and Conditions are accepted and who places an order with Transplant for the supply of Goods.

"Goods" means goods ordered by the Customer from Transplant from time, to time.

2.1 These Terms and Conditions of Order and Supply are the only terms and conditions upon which Transplant will accept orders for Goods and can only be varied by prior written agreement of Transplant.

2.2 These Terms and Conditions are also subject to the terms of any credit arrangement between Transplant and the Customer, including the provision of a Deed of Guarantee and Indemnity.

3. ORDERING OF GOODS

3.1 All particulars of any order for Goods must be in writing.

3.2 Transplant will confirm receipt of all orders by facsimile or by post and its acknowledgement of the particulars of the order, including the delivery dates specified by the Customer.

3.3 Transplant will use its best endeavours to make delivery on the scheduled delivery date/s specified in the accepted order PROVIDED HOWEVER that Transplant shall not be liable to the Customer for any failure to deliver all or any of the Goods on the said scheduled delivery date/s nor will such failure entitle the Customer to cancel or terminate the order or any part thereof.

4. PRICE AND PAYMENT

4.1 The Customer shall pay Transplant for any Goods in \$AUD in accordance with Transplant's price list current at the date of delivery of the Goods unless otherwise agreed in writing with Transplant.

4.2 Unless otherwise agreed in writing with Transplant, payment by the Customer for the Goods and all other fees and charges shall be made within 30 days of invoice from Transplant. The Customer shall pay Transplant interest at the rate of [10%] per annum on all overdue amounts from the date such amount falls due until all outstanding amounts have been paid in full. Payment shall not be taken to have been made until the funds received are cleared into Transplant's account.

4.3 In addition to the purchase price of the Goods, the Customer shall pay all taxes (including sales tax except where the Customer has provided Transplant with a sales tax exemption number), duties, fees or other Government levies or charges which may be imposed in respect of the Goods.

4.4 The Customer shall fully indemnify and hold Transplant harmless against all loss, costs and expenses incurred by Transplant as a direct or indirect result of the Customer failing to comply with any of the Terms and Conditions (including without limitation in respect of this term, debt collection fee and charges and legal costs on a solicitor own client basis incurred by Transplant whether or not legal proceedings to recover any amount outstanding are issued).

4.5 The customer shall forfeit any deposits paid as a result of cancellation of the order for whatever reason. Transplant Systems shall not be held liable by the Customer or its Agents for any losses incurred howsoever as a result of the cancellation of an order or any part thereof.

4.6 Transplant Systems may at its discretion charge a storage fee for any machinery order or part thereof that is delayed for shipment as a result of a Customer request to delay a shipment. The current rate at time of publication is Euro 10 per m².

4.7 Transplant Systems Pty Ltd may recover any costs incurred howsoever from the Customer for freight, storage, handling or any other charges not mentioned here incurred as a direct or indirect result of a customer request to Cancel or delay delivery of an order or any part thereof.

4.8 The customer may not seek to claim any compensation either monetarily or in any other kind as a result of delays in installation due to any additional on-site works that may need to be carried out as a result of the commissioning or installation of any equipment supplied by Transplant Systems.

5. DELIVERY AND INSTALLATION

5.1 All freight charges, insurance costs and other costs associated with transporting the Goods to the Customer shall be met by the Customer. Such costs shall be separately itemised in the invoice generated by Transplant.

5.2 Transplant will arrange delivery of the Goods to the Customer at the Customer's delivery address specified on any order or as otherwise requested in writing by the Customer.

5.3 Where the Goods supplied by Transplant under a particular order are to be installed or commissioned by Transplant, Transplant will explain to the Customer how the Goods operate and shall inform the Customer of any then applicable health and safety requirements. PROVIDED HOWEVER it shall be the Customer's responsibility to ensure that the Goods are operated in accordance with any applicable statutory or regulatory provision and that all persons operating the Goods are appropriately trained and/or qualified. The Customer hereby releases and forever discharges Transplant from any liability or obligation in respect of any regulatory requirements or approvals applicable to the installation or use of any Goods.

5.4 Transplant Systems staff or staff hired by Transplant Systems for the purposes of carrying out commissioning or installation work will give full and unimpeded access to the site locations and facilities so as required to allow the commissioning and installation work to be carried out. Transplant Systems staff may as they desire request assistance on site from staff employed by the customer at no cost to Transplant Systems. Transplant Systems may request that staff or agents of the customer vacate the area of commissioning or installation so as to allow the works to be carried out without impediment.

5.5 The customer may not interfere in any form so as to disrupt the works being carried out to install or commission equipment.

6. TITLE AND RISK

6.1 All ownership of, property in and legal title to all tangible property in the Goods shall remain with Transplant until such time as the Customer has paid both the full contract price for the said Goods and all other debts owing by the Customer to Transplant at the relevant times. Until such time as the Customer has paid in full all monies owed to it by Transplant the relationship between Transplant and the Customer shall be a fiduciary relationship and during this time the Customer shall hold all Goods separately as bailee for Transplant in such a way that they can be traced and identified as having been supplied pursuant to a particular order. Nevertheless, the Customer shall be entitled to sell the Goods to a customer within the framework of the normal carrying on of its business and to deliver the Goods to the Customer on condition that so long as the Customer has not fully discharged its debt under any order to Transplant, the Customer shall hold in trust for Transplant all moneys resulting from the sale for such Goods pending payment of the moneys due, to Transplant and shall hand over to Transplant any claims it has against the Customer resulting from the transaction.

6.2 Without prejudice to any other rights or remedies available to Transplant, in the event of non-payment of all sums due by the Customer to Transplant, Transplant shall:

- (a) Have the right to suspend performance or terminate any other agreement between Transplant and the Customer, and
- (b) Have the right to repossess any Goods for which payment has not been received, and any documentation, dates records or information relating thereto. For each purposes, Transplant or any one or more of its agents or authorised representatives shall be entitled at any time without notice to enter upon any premises in which the Goods are or are reasonably believed by Transplant to be kept, stored or used, and to repossess the same on behalf of Transplant and shall not be responsible for any damage reasonably necessary in enforcing its right.

6.3 Risk of loss or damage to the Goods passes to the Customer from the time that the Goods are handed by Transplant, its servants or agents, to the freight carrier arranged by or for the Customer at Transplant's distribution centre.

7. RETURN OF GOODS

7.1 If any of the Goods delivered in purported performance of any order are not in accordance with the requirements of a particular order and the Term and Conditions set out herein in every respect the Customer may return those Goods to Transplant PROVIDED HOWEVER that:

- (i) such Goods must be received by Transplant within fourteen (14) days of initial delivery to the Customer, and
 - (ii) the packaging of the Goods remains intact and the Goods are, in Transplant's opinion, in an 'as new' condition.
- The return of any Goods supplied will be at the Customer's expense and risk. Upon receipt of the returned goods, Transplant shall decide whether the Customer is entitled to return these Goods. If it so decides, Transplant shall refund to the Customer the reasonable cost of returning those Goods. Except as expressly provided herein, Transplant shall not be under any obligation to accept the return of any Goods supplied to the Customer.

8. EXCLUSION AND LIMITATION OF LIABILITY

8.1 Except to the extent that the exclusion, restriction or modification of certain conditions, warranties and rights is prohibited in the context of these Term and Conditions of Order and Supply by the Trade Practices Act 1974 (C'th) or any other applicable legislation as the same may apply to the supply of any Goods by Transplant to the Customer under these, Terms and Conditions of Order and Supply, these Term and Conditions are in lieu of and to the exclusion of all other conditions and warranties, express or implied, relating to the supply of any Goods, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8.2 Where such limitation of liability is not prohibited or void under any Act of Parliament, the liability of Transplant to the Customer for any loss, damage or injury whatsoever (including consequential and economic loss) howsoever arising directly or indirectly in connection with any Goods, the supply of or use of any Goods or the supply of any services shall be limited to any one or more of the following as determined by Transplant in its absolute discretion:

- (a) In the case of any Goods:
 - (i) The replacement of the Goods or the supply of equivalent goods;
 - (ii) The repair of the Goods;
 - (iii) The payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) The payment of the, cost of having the Goods repaired; and
- (b) In the case of any services:
 - (i) The supplying of the services again; or
 - (ii) The payment of the costs of having the services supplied again.

8.3 Under no circumstances will Transplant be liable for any loss, damage or injury whatsoever or howsoever arising as a result of any incorrect or inappropriate use of any Goods.

9. ACCEPTANCE

The Customer by signing the acceptance provisions below agrees that these Terms and Conditions in respect of all orders placed by it shall for part of any contract for the supply of Goods entered into by the Customer with Transplant in the future unless expressly provided for in writing to the contrary".

10. GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of The State of Victoria, Australia.

ACCEPTANCE:

THE CUSTOMER HEREBY ACKNOWLEDGES THAT THEY HAVE READ AND AGREE TO THESE TERMS AND CONDITIONS OF ORDER AND SUPPLY AND THAT THESE TERMS AND CONDITIONS OF ORDER AND SUPPLY SHALL UNTIL VARIED IN WRITING FORM PART OF ANY CONTRACT FOR THE SUPPLY OF GOODS PLACED BY THE CUSTOMER WITH TRANSPLANT IN THE FUTURE:

CUSTOMER NAME:

COMPANY NAME :
(Full legal entity)

ABN/ ACN :

AUTHORISED SIGNATORY

I / we hereby acknowledge that I/we the undersigned am an authorized signatory acting for the above mentioned Company and have read in 'full' and 'fully' understand the Terms and Conditions of Order and Supply and agree that we will be bound by them. I / we understand that Transplant Systems Pty Ltd may vary the Terms and Conditions of Order and Supply without notice and furthermore understand that a current copy of the prevailing Terms and Conditions of Order and Supply can be found on the website :- http://www.transplantsystems.com.au/downloads_page.html and also can be supplied in print form upon request by telephoning Transplant Systems 03 97699733. These Terms and Conditions of Order and Supply do not alter your rights as a consumer.

Signed : **Date :**/...../.....

Witnessed by : **Date :**/...../.....

Please now photocopy all pages and keep a copy in your file for your own records. Please return the fully completed document to :-

Transplant Systems Pty Ltd
63 Enterprise Avenue,
Berwick,
Victoria,
3806