

TERMS AND CONDITIONS OF SALE

1. GENERAL -

Any order accepted by SCALA SURGICAL LIMITED (hereinafter called "Scala") is subject to the following conditions to the exclusion of all others unless expressly agreed in writing by Scala. No substitutions for the terms and conditions (even if included in or referred to in the document placing the order) shall be the binding on Scala notwithstanding that Scala may accept the same for formality. This transaction will be deemed a contract of sale.

2. VALIDITY -

Subject to section 3 below, any quotations by Scala shall remain valid (unless withdrawn) for the period stated in writing but no longer unless a further period is expressly agreed in writing. The Buyer's official order shall be communicated in writing. In the event of the statute or rule of law rendering any of these conditions or any part of them void or unenforceable, such conditions or part shall take effect to the extent permitted and shall not be wholly void or unenforceable.

3. PRICES -

(a) The prices given in quotations and price lists are based on the current costs ruling at the date thereof for materials, wages, carriage, freight, insurance, taxes statutory, and all other charges whether incurred by Scala or our sub-contractors (other than import or export duties or value added tax which where applicable are not included in the prices quoted but will be charged and payable as an extra at the rate ruling at date when the same became payable by Scala). If at any time between the date of the quotation and completion of the contract any variation shall take place in these costs or charges, the contract prices shall be increased accordingly by such an amount.

(b) Prices quoted are against quantities specified and are subject to increase for reduced quantities.

(c) Unless otherwise stated in writing, all prices are nett unpacked exworks. Any packing, carriage, freight, insurance and shipping charges will be added to the contract price by Scala.

(d) In the case of any imported products paid for by Scala in currency other than British Pound Sterling (GBP), the price quoted is based upon the rate of exchange ruling at the time of payment by the Buyer.

4. TERMS OF PAYMENT -

Unless otherwise agreed in writing by the Buyer and Scala, payment shall be made in full in British Pound Sterling (GBP) without deduction of any kind whatsoever when the order is placed. The standard credit facility is 30 days following the date of invoice and is subject to approval by Scala. In the absence of satisfactory references, or in the case of default in payment, or in the case of a non-standard product, and at the complete discretion of Scala, the right is reserved to render proforma invoices to include an estimate for all charges due, and can be adjusted when the actual costs are known. These proforma invoices are to be paid prior to the dispatch of the goods. Proportionate payments shall be made for installment deliveries. Where payment is not received on the due date, the outstanding sum will be liable to an administration fee following which, an application to commence proceedings for recovery of the debt will be made without prejudice to Scala's rights to receive payments on the due dates. Scala reserves the right at any time to suspend credit terms and request payment for goods prior to delivery, or work, or to treat the contract as repudiated in case of delay or default in any payment. Scala reserves the right to invoice any samples, sale or return, loan or demonstration equipment not returned within 30 days from the date of receipt.

5. SPECIFICATION AND PERFORMANCE -

All weights, illustrations, performance figures and dimensions given in quotations, catalogues, price lists, on the internet etc., are approximate and not binding. Scala reserves the right to alter specifications or designs at any time without prior notice. Any products which have been greatly altered from the specification illustrated or listed will be advised to the buyer before being supplied.

6. WARRANTY -

The Buyer shall determine the application and suitability of the products which the Buyer purchases. Scala does not accept or imply any representation of use or suitability of any products it manufactures or supplies. All surgical instruments supplied by Scala are guaranteed for life against faulty workmanship and materials. This guarantee does not cover consumable parts of any product or fair wear and tear. Cutting edges of products will deteriorate over time and are not covered by this warranty. Single use and disposable products are not covered by this warranty. Scala must be informed in writing of any surgical instruments or sterilisation baskets purchased from Scala which are found faulty due to poor workmanship or material. After inspection by Scala, if the products are found to be faulty and are not the result of abuse, misuse, improper care or storage, inadequate maintenance, modification, (branded, stamped or etched), Scala will replace or repair the goods at its option. Any product found to be faulty must, after written acceptance from Scala, be returned to Scala carriage paid. Any products which are returned without written acceptance from Scala will remain at the buyer's risk. Scala's liability is limited to repair and replacement only. All surgical instruments are either supplied unmarked or branded with Scala's brand marks. Any items which the buyer brands himself or which Scala brands on the buyers behalf are not covered by this guarantee. The liability of any such products remains with the Buyer. Scala will not in any circumstances be held responsible for any such products. Products which are produced from the buyers patterns, drawings, specifications etc., will not be covered by this guarantee if the materials, specifications etc. are at fault. Surgical instruments which are produced by Scala are either supplied unmarked or branded: SCALA ENGLAND CE. Our brand does not imply any specific country of manufacture or origin, but is brand marked for ascertaining Scalas products which are produced to a recognised international standard and Quality approved by Scala. Products and services which are provided by Scala for companies which Scala acts as a distributor/agent etc. and any products which is not produced by Scala will be covered by the guarantees of the represented companies and not by Scala. Similarly all risks for the represented companies will be the liabilities of those companies. Any product which is used in any manner for which it was not designated will automatically render this guarantee invalid. The use of Scalas products is limited to trained professionals and qualified Physicians only.

7. DELIVERY -

Scala will make every effort to deliver the order within the time period quoted (which will commence from the receipt of orders by Scala in writing). Scala accepts no responsibility or liability of any kind for failure to deliver within the time period quoted. If the delays in the completion of deliveries are beyond the control of Scala, the buyer will not be entitled to cancel the order or refuse delivery. Scala reserves the option to supply all orders in partial shipments and to invoice the same separately. If the buyer is unwilling or unable to take or accept delivery after 14 days from being informed that the goods are ready for dispatch, the liability for loss or damage and risk to the goods shall pass to the buyer.

Scala will not be liable for any delay in delivery or non delivery due to reasons which are beyond its control. These reasons may include without limitations, restrictions by governments authorities, fire, flood, strike, industrial disputes, breakdown of machinery, explosions, war and delay in delivery by Scala's suppliers or any other cause beyond its control. Under any of the above, suspension, cancellation or extension of delivery may result at the discretion of Scala.

8. DAMAGE AND LOSS IN TRANSIT -

Goods which are lost or damaged in transit will be replaced, repaired or the cost of the goods refunded at the option of Scala. Scala will not incur any liability further than the value of the goods irrespective of any damages or otherwise to the buyer. Any claims by the buyer regarding loss in transit will not be entertained unless reported in writing within 14 days from the date of invoice. Damage and short deliveries must be reported in writing within 3 days of receipt of the goods to the carrier and Scala. Any goods which are returned for replacement due to damage in transit must be done so carriage paid at the buyer's expense, and Scala will reimburse any reasonable costs.

9. RETURNING OF GOODS -

Goods will not be accepted back for credit if: returned after 30 days from the date of invoice, are produced as specials, are discontinued lines, or have been used, or are modified or altered in any way. In any event written permission is required from Scala before any goods can be returned. Scala may refuse to accept back goods for credit, refund or replacement or repair at its discretion. Any goods authorised for return by Scala are sent at the sender's own risk. Scala will not be liable for goods which are not received by Scala due to non delivery or damage caused by any delivery service the sender has used to return the goods. Insurance and carriage for returned goods is the responsibility of the sender.

10. LEGAL CONSTRUCTION -

Any contract formed by acceptance of the Buyer's order shall be construed and governed by all respects in accordance with English law.

11. PATENT AND TRADEMARKS -

In any contract covered by these terms and conditions the purchaser agrees that no licence, whether granted expressly or implication, under any Letters Patent, Registered Designs or Trade Marks, is granted by Scala in respect of the equipment and undertakes hereby not to register any Patent, Registered Design or Trade Mark in respect of any goods on offer by Scala. Scala accepts no liability when producing goods to the Buyer's specifications or patterns if the specifications or patterns infringe any patents or registered design laws. Any patents or registered designs which are infringed are the sole responsibility of Buyer, and Scala will not be liable to any penalties or costs. If the buyer is aware that a design etc. infringes a known registered design or patent, the buyer must inform Scala in writing of this.

12. SPECIAL CONDITIONS APPLICABLE TO SALE OF GOODS OUTSIDE THE U.K. -

(a) Any order accepted by Scala for shipment outside the U.K., is conditional upon the Buyer ensuring that full and adequate documentation to enable the goods to enter the Country of Buyers choice is prepared in accordance with the requirements of the Country to which the goods are being dispatched.

(b) Any expense incurred by the Buyer in raising the correct documentation must be borne by the Buyer, while the liability for any loss caused by the incorrect presentation of documents which results in a loss of Scala shall be recovered from the Buyer.

13. TITLE/BANKRUPTCY-

If the Buyer should commit any act of bankruptcy or if a petition or receiving order in bankruptcy should be made against him or a court order made or a resolution passed for the winding up (except for the purposes of reconstruction and amalgamation) or become unable to pay its debts, Scala will be entitled to enter upon the Buyer's premises and to repossess any goods to which Scala has title to. The Buyer will be liable for any damages to the goods and once the goods are in the Buyer's possession, will insure the goods against all risks. The title of any goods or services supplied by Scala will remain with Scala until paid in full by the Buyer.

14. RISK IN GOODS -

The risk in the goods sold by Scala shall pass to the Buyer when the goods are delivered to the Buyer or in accordance with the Buyers instructions.

15. EXCLUSION OF LIABILITY -

Except as otherwise expressly mentioned in these conditions, Scala shall have no liability of any kind whatsoever to the Buyer in respect of any loss or damage (whether direct, indirect or consequential) suffered by the Buyer in respect of any goods supplied or work done by Scala.

16. LIMITATION OF LIABILITY -

Scala's liability to any Buyer shall be limited to a sum equal to the relevant to the contract value. Any claim against Scala must be made within 14 days of the alleged fault being detected or reasonable detectable by the Buyer. The Buyer contracts that (unless otherwise agreed) he contracts with Scala in the course of his business and not as a consumer.