



By proceeding with a purchase, you acknowledge that you have read and agree to be bound by Stark Medical's **Terms and Conditions of Sale**.

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TERMS AND CONDITIONS OF SALE

1 General

- 1.1 All goods and services are sold by Stark Medical pursuant to these terms and conditions which may only be waived expressly in writing by Stark Medical and will otherwise prevail over any other terms or representations, to the extent of any inconsistency.
- 1.2 Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

2 Online purchases

- 2.1 If you are ordering on the website of Stark Medical, you must pay for your order in full at the time of ordering by one of the payment methods provided on the website. You must be fully entitled to use the payment method or account used for your purchase and your payment method or account must have sufficient funds or credit facilities to cover the purchase.
- 2.2 If you discover that you have made a mistake with your order after you have submitted it, please contact Stark Medical immediately. However, we cannot guarantee that we will be able to amend your order in accordance with your instructions.
- 2.3 All goods and services advertised on the website of Stark Medical constitute an invitation to treat and shall not give rise to a contractual relationship between you and Stark Medical until such time as Stark Medical has confirmed by email that it has accepted your order.
- 2.4 The price and availability of a good or service advertised on the website of Stark Medical are calculated from time to time based on manufacturers costs, exchange rates and transportation costs. These prices are not guaranteed and Stark Medical reserves the right to amend the advertised purchase price of goods at any time prior to delivery or installation.
- 2.5 If Stark Medical amends the purchase price of goods or services you have ordered, you will be asked to re-confirm whether you wish to proceed with your order at the amended price. If you do not proceed with the order at the amended price, the order shall be cancelled and any moneys paid to Stark Medical for the order shall be refunded to you within 7 days. In the event that you do not proceed with the order at the amended price, Stark Medical will be under no obligation to supply the goods at the original advertised price.

3 Quotations

- 3.1 If a quotation is provided to you by Stark Medical, it will be valid for a period of 14 days from the date shown of the quotation after which it shall expire and be

withdrawn. Should you wish to accept a quotation, you must do so by returning a copy of the quotation signed by you within this time period. Stark Medical reserves the right to withdraw or vary a quotation at any time prior to acceptance of the order.

- 3.2 By accepting the quotation, you agree to enter into a contract for sale for the goods or services on these terms and conditions subject to manufacturer availability.

4 Price and Payment

- 4.1 Unless stated to the contrary, the purchase price is in Australian dollars and is exclusive of goods and Services Tax (**GST**).
- 4.2 The purchase price includes all input costs and charges associated with the delivery of the goods including all freight, insurance, customs duties and handling charges and is calculated as at the date the purchase price is advertised or quoted by Stark Medical. Installation of goods may incur additional fees.
- 4.3 Unless otherwise agreed in writing by Stark Medical, you must pay the purchase price in full before goods will be dispatched for delivery. Stark Medical may, at its sole and absolute discretion, extend terms of credit to you in which case you are required to pay the purchase price in full within 14 days of receipt of an invoice or the goods, whichever is the earlier.
- 4.4 Without prejudice to any other remedy, Stark Medical may charge interest on any overdue amount at a rate of 10% per annum calculated daily from the payment due date until the overdue amount is paid in full.
- 4.5 Each order shall be considered a separate and independent transaction and payment therefore shall be made accordingly.

5 Delivery

- 5.1 Stark Medical will deliver the goods to the delivery address you specify by post, unless another freight method is agreed by you and Stark Medical.
- 5.2 Stark Medical will reasonably endeavour to advise you of the date and, if possible, the time the goods will be delivered to the address you specify. Any delivery dates or times advised to you are estimates only.
- 5.3 If installation of the goods is required, Stark Medical will liaise with you to find a suitable date and time during business hours, Monday to Friday, for installation.
- 5.4 Under no circumstances will Stark Medical be liable for any loss or damages (including consequential loss, special or incidental damages or loss of opportunity) or will you be able to rescind your agreement with Stark Medical as a result of or in connection to a failure to

deliver or late delivery or late installation of the goods or delivery of the goods by instalments.

5.5 If Stark Medical is unable to deliver the goods or services at the delivery address due to no fault of its own or of any other third party courier or postal service, or is unable to install the goods on the date and time agreed to by you, it reserves the right to charge an additional attendance charge for any re-attempted delivery or installation of the goods that may be required.

5.6 Goods will be deemed to have been delivered to you upon the arrival of the goods at the delivery address at which time you assume all risk, custody and control of the goods. You are responsible for arranging any necessary insurances from this time.

6 Inspection and Return

6.1 You shall be deemed to have inspected all goods upon delivery. You must notify Stark Medical of any delivery discrepancies as to the quantity of or the type or brand of goods ordered within 1 business day of the date of delivery after which your order is deemed to have been fully satisfied and the delivered goods to be accepted by you.

6.2 If any goods are required to be returned to Stark Medical as a result of an error in delivery (which is notified by you within 1 business day), you must not use, damage or dispose the goods and keep the goods safe and in their original packaging for return to Stark Medical and follow any reasonable direction from Stark Medical to facilitate the return of the incorrectly delivered goods.

6.3 If Stark Medical is unable to rectify its error delivery (which is notified by you within 1 business day) and your original order cannot be completely fulfilled, it will refund that portion of the paid purchase price of the goods ordered which remain undelivered. Stark Medical shall not be liable for any other loss or damages arising from the failure to complete your order.

7 Title

7.1 Stark Medical shall retain all ownership in property and title in all goods, including parts of the goods or anything manufactured or acquired for the purpose of incorporation in the goods, until such time as the goods have been delivered and all moneys due and payable to Stark Medical (including money owing in respect of other transactions between you and Stark Medical) have been received by Stark Medical.

7.2 Until such ownership in property and title are transferred, you:

- (a) hold the goods as a bailee of those goods; and
- (b) must keep the goods free from any charge or lien or other encumbrance; and

(c) you will not create any absolute or defeasible interest in the goods in relation to any third party; and

(d) you must not resupply any of the goods to any person outside of your ordinary or usual course of business; and

(e) must not remove or deface any identifying plate, mark or number on any of the goods; and

(f) you hold the proceeds of resupply of the goods on trust, and as agent, for Stark Medical immediately when they are receivable or are received.

7.3 If you fail to pay for the goods within the period of credit (if any) extended by Stark Medical to you, Stark Medical reserves the right to, subject to and in accordance with the *Personal Property Securities Act (Cth) 2009*, register an interest or charge over the goods, re-enter your premises without liability for trespass and retake possession of the goods and keep or resell any goods repossessed without any liability to you.

8 Consumer Warranties

8.1 Stark Medical warrants that its goods are free from defective materials and workmanship at the time of delivery in accordance with these terms and conditions.

8.2 Goods from Stark Medical come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

8.3 In the case of the supply of defective goods, Stark Medical shall rectify any such defects by either (at its sole discretion) repairing the goods at no cost to you, replacing the goods or defective part or parts of the goods or refunding the purchase price paid for the defective goods at any time during the warranty period specified by the manufacturer of the good in question, provided that:

(a) the defects have arisen solely from faulty materials or workmanship by Stark Medical or the manufacturer of the goods; and

(b) the goods have not received maltreatment, inattention or interference by you or a third party; and

(c) accessories of any kind which are connected to the goods are manufactured by or approved by the manufacturer of the goods; and

(d) you notify Stark Medical in writing within 7 days of becoming aware of the defect; and

(e) you are able to demonstrate proof of purchase which includes the date of purchase, description

- of the goods paid for and the price paid for the goods; and
- (f) you do not attempt to repair the faulty goods or any part thereof; and
- (g) you immediately cease use of the defective good or part and do not attempt to reuse the defective good or part; and
- (h) you cooperate with the reasonable direction of Stark Medical to return the defective goods or parts promptly to Stark Medical.
- 8.4 To the extent that it is able to do so at law, Stark Medical specifically excludes the following from warranties set out in these terms and conditions or which are otherwise implied by law:
- (a) defective design of any goods supplied unless the design has been wholly prepared by Stark Medical and the responsibility for the design has been specifically accepted by Stark Medical in writing; or
- (b) appearance of the goods including damage to the exterior of the goods as a result of fair wear and tear, misuse, mistreatment, abnormal service or handling or as a result of modification or alteration; or
- (c) damage to goods as a result of unauthorised modifications or connections, unauthorised repairs or use of unauthorised spare parts; or
- (d) items considered to be consumables, perishables and wear items including, but not limited to filters, drive belts, gases, magnetrons, globes and batters; or
- (e) periodic preventative maintenance tasks which are prescribed by the relevant manufacturer's instructions or which are otherwise standard practice for the type and nature of the goods.
- 8.5 In the case where Stark Medical provides services by attending your premises to install or repair goods, then Stark Medical shall warrant any defective workmanship by either (at its sole discretion) re-attending your premises to remedy the defect in workmanship or resupply the services or refund to you the moneys paid for the services. This warranty is for a period of three months from the date of the provision of the services and is limited to defective workmanship, which are attributable, in the opinion of Stark Medical, solely to the services provided by Stark Medical and not any defect in goods supplied (which are dealt with elsewhere in these terms and conditions). Stark Medical's warranty for its defective workmanship when attending your premises will be voided if the defect in workmanship is resultant from modification or repair by another party or neglect or abuse by you.
- 8.6 Except as provided in these conditions and to the extent that Stark Medical is able to do so at law, all express

and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.

- 8.7 To the extent that any warranty is implied at law that can not be excluded, such warranties are limited to the warranty period as set out in these terms and conditions or otherwise provided by the manufacturer.
- 8.8 Any warranty provided by Stark Medical does not cover death or personal injury resultant from any cause other than negligence by Stark Medical, its employees or representatives.

9 Liability

- 9.1 Where the *Competition and Consumer Act 2010*, or any other legislation, implies warranties or conditions or impose obligations upon Stark Medical, to the extent to which Stark Medical is entitled to limit its liability then its liability shall be limited to the following:

- (a) in the case of goods, any one or more of:
- (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; and
- (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services:
- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

whichever is the lowest amount.

- 9.2 To the extent it is able to do so at law and without unlawfully excluding or limiting the consumer guarantees provided to you by Schedule 2 of the *Competition and Consumer Act 2010* (Cth), Stark Medical excludes all liability for commercial property damages or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of Stark Medical's negligence or in any way.

10 Cancellation

Except where expressly provided for in these terms and conditions, no order may be cancelled by you except with the written consent of the Stark Medical. If there is

a cancellation of the order by you, the Stark Medical has the right to claim indemnity against all losses suffered by the Stark Medical as a result of such cancellation.

11 Jurisdiction

These terms and conditions are governed by and construed in accordance with the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the New South Wales and the Commonwealth of Australia.

12 Severance

A clause or part of a clause of these terms and conditions that is illegal or unenforceable may be severed from these terms and conditions and the remaining clauses or parts of the clause of these terms and conditions continue in force.