

PARTNERS FOR ENDOSCOPY LIMITED
CONDITIONS FOR THE SALE OF GOODS

1. INTERPRETATION

1.1 In these conditions, the following expressions shall have the meanings below:

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
PfE	Partners for Endoscopy Limited registered office at Hartley House, Galveston Grove, Stoke-on-Trent ST4 3PE (registered in England and Wales with company number 05119030).
Capital Equipment	Goods excluding consumables & service contracts.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.
Contract	the contract between PfE and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer	the person or firm who purchases the Goods from PfE.
Force Majeure Event	has the meaning given in clause 12.
Goods	the goods (or any part of them) set out in the Order.
Order	the Customer's order for the Goods, as set out in the Customer's purchase order form which has been acknowledged in writing by PfE.
Specification	the specification for the Goods, that is agreed in writing and signed by the Customer and PfE which shall form part of the Order.

2. CONSTRUCTION

In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as in force at the time of this contract. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as in force at the time of this contract.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes.

3. BASIS OF CONTRACT

- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 3.3 The Order shall only be deemed to be accepted when PfE issues a written acceptance of the Order, at which point the Contract shall come into existence and these Conditions will be incorporated into the Contract and shall constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of PfE which is not set out in the Contract.
- 3.4 Any samples, drawings, descriptive matter, or advertising produced by PfE and any descriptions or illustrations contained in PfE's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.5 Any quotations given for the Goods by PfE shall not constitute an offer and PfE reserves the right to amend such quotation at any time and for any reason.

4. GOODS

- 4.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer warrants and undertakes full

responsibility not only for the suitability and fitness of such Specification but also that such Specification does not infringe any proprietary right of any third party and the Customer shall indemnify PfE against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by PfE in connection with any claim made against PfE for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with PfE's use of the Specification. This clause 4.1 shall survive termination of the Contract.

4.2 Unless otherwise agreed in writing, PfE will be the sole owner of all intellectual property rights that arise as a result of the Contract.

4.3 PfE reserve the right at any time and in its sole discretion, to amend or alter in any way the Goods and/or the Specification if required by any applicable statutory or regulatory requirements.

5. DELIVERY

5.1 Subject to Customers who do not have an approved credit account making payment in full in advance of delivery, PfE shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after PfE notifies the Customer that the Goods are ready. Generally, Orders received before 12.00 pm will be delivered the next Business Day, provided adequate stock levels are available. Should the Customer require specific timed delivery, PfE will, where possible, accommodate such request, subject to Customer making payment of the appropriate fees.

5.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

5.3 Whilst PfE will make a reasonable effort to deliver the Goods on the dates quoted, any such dates quoted for delivery are approximate only, and the time of delivery is not of the essence. PfE shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide PfE with adequate delivery instructions or any other instructions that are relevant to the supply and delivery of the Goods.

5.4 Time for delivery is given as accurately as possible but is not guaranteed. If PfE fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. PfE shall have no liability whatsoever for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide PfE with

prompt adequate delivery instructions or any other instructions that are relevant to the supply and delivery of the Goods.

5.5 If the Customer fails to take delivery of the Goods within one Business Day of PfE notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or PfE's failure to comply materially with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am one Business Day after the day on which PfE notified the Customer that the Goods are ready; and

(b) PfE shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) in relation to the Customer's failure to take delivery of the Goods. Such costs will be payable to PfE on demand.

5.6 If, 10 Business Days after the day on which PfE notified the Customer that the Goods were ready for delivery the Customer has still not taken delivery of them, PfE may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5.7 The Customer shall not be entitled to reject the Goods if PfE delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment reflecting an increase or decrease, as applicable, shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

5.8 PfE may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY

6.1 Subject to clause 6.7, PfE warrants that on delivery, the Goods shall materially conform to the Specification and be fit for the purpose held out by the Customer as notified in writing to PfE in advance and accepted by PfE in writing.

6.2 Subject to clause 6.3, the Customer shall inspect the Goods immediately upon delivery and inform PfE within 48 hours of the date of delivery of any apparent defects arising in accordance with clause 6.1 and provided that:

(a) PfE is given a reasonable opportunity to examine such Goods; and

- (b) the Customer (if asked to do so by PfE) returns such Goods to PfE's place of business.

PfE, at its sole discretion, may elect to either repair or replace the defective Goods, or refund the price paid for the defective Goods.

6.3 PfE shall not be liable for Goods' failure to comply with clause 6.1 if in PfE's absolute opinion it determines that any of the following events have occurred:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2; or
- (b) the defect arises because the Customer failed to follow PfE's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- (c) the defect arises as a result of PfE following any instructions and/or drawing, design or Specification supplied by the Customer; or
- (d) the Customer alters, modifies, or repairs such Goods without the written consent of PfE; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (g) the Customer has not made payment in full in respect of the Goods delivered.

6.4 Except as provided in this clause 6, PfE shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1 whether expressed or implied by statute, common law or otherwise, as is permitted by law and PfE's liability shall be limited in accordance with clause 11.

6.5 Unless otherwise agreed in writing PfE does not warrant the fitness or suitability of the Goods and the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by PfE.

6.7 Where PfE is not the manufacturer of the Goods, PfE gives no assurances or guarantees to the Customer that the sale or use of the Goods will not infringe any intellectual property rights, whether registered or unregistered that any third party may have and, to the extent possible, PfE shall extend to the Customer the benefit of any guarantee, conditions and warranties given by the manufacturer of the Goods to PfE at the request and cost of the Customer and on terms which are acceptable to

PfE, but PfE does not make any assurances or guarantees whatsoever in relation to the Goods.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until PfE receives payment in full (in cash or cleared funds) for the Goods, and until such time and notwithstanding clause 7.1, full legal and beneficial ownership of the Goods shall be retained by PfE in which case title to the Goods shall pass at the time of payment of all such sums due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as PfE's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) take proper care of the Goods and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and procure that PfE's interest as owner of the Goods is noted on the policy of such insurance and a copy provided to PfE on demand;
 - (d) notify PfE immediately if it becomes subject to any of the events listed in clause 10.2; and
 - (e) give PfE such information relating to the Goods as PfE may require and request from time to time and the Customer hereby grants PfE the right to enter the Customer's or any third party premises where the Goods are stored at any time during the continuation of the Contract to check that the Customer is complying fully with its obligations under this clause 7.
- 7.4 The Customer will immediately return the Goods to PfE upon notification to do so prior to PfE receiving full payment. If the Customer fails to return the Goods to PfE then in accordance with clause 7.3 PfE shall be entitled to enter the Customer's premise or the premises of any third party's where the Goods are stored in order to retrieve them.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, then, without limiting any other right or remedy PfE may have:
- (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
 - (b) PfE may at any time:

- (i) require the Customer to deliver up the Goods to PfE immediately; and
- (ii) if the Customer fails to do so promptly, PfE shall be entitled to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in the Order, excluding delivery costs or, if no price is quoted, the price set out in the published price list in force as at the date of delivery.
- 8.2 PfE may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the control (including but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give PfE adequate or accurate information or instructions.
- 8.3 The price of the Goods is exclusive of the costs and charges of delivery, packaging, insurance and transport of the Goods, which shall be invoiced to the Customer separately a quotation for such costs is available upon request.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from PfE, pay to PfE such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The Company may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.6 Customers with approved credit accounts shall pay invoices in full and in cleared funds within 30 days of the date of the invoice. Customers who do not have an approved credit account must make payment in advance of delivery. Payment may be payable by cheque or bank transfer. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to PfE under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3.5% per annum above the Bank of England's base rate from time to time.

Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 8.8 The Customer shall pay all amounts due under the Contract in full without any right to set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by PfE to the Customer.

9. CANCELLATION AND VARIATION

- 9.1 If the Customer requires a variation of the Order this will only be accepted in PfE's sole discretion and all costs associated with such variation incurred by PfE shall be reimbursed by the Customer to PfE on demand.

- 9.2 The Customer shall have the right to cancel the Order for any reason within 10 Business Days of delivery of the Goods (**Statutory Cancellation Period**). To exercise this right to cancel, the Customer must inform PfE of its decision to cancel the Contract by a clear statement, such as a letter sent by post. The Customer may use the model cancellation form attached, however, this is not obligatory. Upon such cancellation, the Customer must immediately deliver the Goods to PfE in accordance with clause 9.3 below.

- 9.3 The Goods must be unused and in good condition and free from any defects. Upon receipt of the Goods, PfE shall reimburse any monies received in respect of the Goods to the Customer. Should PfE find that the Goods are not in good condition it shall be entitled to deduct a reasonable amount of the money payable to the Customer in respect of the Goods.

- 9.4 At the sole discretion of PfE, and after the expiry of the Statutory Cancellation Period, the Customer may return the Goods to PfE provided that the Goods:

- (a) are returned within 6 months of delivery of an Order;
- (b) have not been used or opened and are in a good condition in order for PfE to resell the Goods in question and, if applicable, are sealed;
- (c) all original packaging, a copy of the relevant Order form and signed delivery note is included.

- 9.5 If after the expiry of the Statutory Cancellation Period, the Customer cancels the Order, a cancellation fee of 25% of the Order price may be payable. If the Order contains Capital Equipment, a cancellation fee of 50% of the Order price may apply. Upon such cancellation, the Customer must immediately deliver the Goods to PfE in accordance with clause 9.3.

10. TERMINATION AND SUSPENSION

10.1 If the Customer becomes subject to any of the events listed in clause 10.2 below, PfE may terminate the Contract with immediate effect by giving written notice to the Customer.

10.2 For the purposes of clause 10.1, the relevant events are:

- (a) The Customer becomes insolvent, enters into liquidation (whether compulsory or voluntary) has a receiver or administrator appointed in respect of all or any part of its business, compounds with its creditors or suffers any similar action in consequence of debt.
- (b) The Customer ceases or threatens to cease to carry on business or the party serving notice has reasonable grounds for believing that this may happen.
- (c) The Customer's financial position deteriorates to such an extent that in PfE's opinion the Customer's ability to adequately fulfil its obligations under the contract has been placed in jeopardy.
- (d) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, PfE may suspend provision of the Goods under the Contract or any other contract between the Customer and PfE if the Customer becomes subject to any of the events listed in clause 10.2(a) to clause 10.2(d), or PfE reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to PfE all of PfE's outstanding unpaid invoices and interest.

10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

10.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude PfE's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for PfE to exclude or restrict liability.

11.2 Subject to clause 11.1:

- (a) PfE shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) PfE's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total price payable for the Goods as stipulated in the Order.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. GENERAL

13.1 Assignment and other dealings

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 Notices

- (a) Any notice required or permitted to be given to their party to the other under the Contract shall be in writing addressed to that party and delivered at its

registered address or principle place of business or such other address as notified pursuant to this provision to the party giving notice. Any notice delivered personally shall be deemed delivered when delivered; any notice sent by post shall be deemed to be received 48 hours after posting; and any notice delivered by facsimile shall be deemed delivered 12 hours after it was sent as indicated by the transmission that is not a party to it.

13.3 **Severance**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.4 **Waiver**

No waiver by PfE of any breach of any provision of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision and PfE shall not be prejudiced by any forbearance or indulgence granted by it to the Customer.

13.5 **Third party rights**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.6 **Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by PfE.

13.7 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

PARTNERS FOR ENDOSCOPY LIMITED CANCELLATION FORM

To: Partners for Endoscopy Limited
Hartley House
Galveston Grove
Stoke-on-Trent
ST4 3PE

Tel: +44 (0) 1782 594164
Fax: +44 (0) 1782 323148
Email: sales@pfemedical.co.uk

I/We [] hereby give notice that I/we cancel my/our agreement for the supply of goods from Partners for Endoscopy Limited.

Order reference number: [] (this can be located on the Order form received from Partners for Endoscopy).

Received on [] (this is the date on which you received your Order from Partners for Endoscopy).

Name:

Address:
.....
.....

Signature: Signature:

Date: Date: