

These Terms and Conditions apply to all and any Sale and/or Service of Medical Devices by Metromed (Hereinafter the "Seller") to any Organization and/or Individual (Hereinafter the "Buyer") that places a purchase order with the Seller or accepts a Sales Offer from the Seller, or provides an equipment to be serviced by the Seller.

## 1 Application of Terms and Conditions

- 1.1 The Seller shall sell, and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller and
- 1.1.1 These Terms and 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 by the Seller, or any such order is made or purported to be made, by the Buyer.

## 2 Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- 2.1.1 Business Day: Means any day other than a Saturday, Sunday or bank holiday.
- 2.1.2 Buyer: Means the Organization or person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
- 2.1.3 Contract: Means the contract for the purchase and sale of the Goods which shall incorporate, and be subject to, these Terms and Conditions.
- 2.1.4 Contract Price: Means the price stated in the Contract payable for the Goods.
- 2.1.5 Delivery Date: Means the date on which the Goods are to be delivered as stipulated in the Buyer's order and accepted by the Seller, as evidenced in the Contract.
- 2.1.6 Goods: Means the Goods (including any instalment of the Goods or any part for them) which the Seller is to supply in accordance with the contract.
- 2.1.7 Month: Means a calendar month and
- 2.1.8 Seller: Means Metromed and includes all employees and agents of Metromed.
- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 2.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
- 2.2.4 a Schedule is a schedule to these Terms and Conditions; and
- 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions.
- 2.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

## 3 Basis of Sale

- 3.1 The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions, or to the Contract, shall be binding unless agreed in writing between the authorized representatives of the Buyer and the Seller.
- 3.3 Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Goods or has accepted an order placed by the Buyer by whichever is the earlier of:
- 3.3.1 the Seller's written acceptance;
- 3.3.2 delivery of the Goods; or
- 3.3.3 the Seller's invoice.
- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales 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.

## 4 Orders and Specifications

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorized representative.
- 4.2 The specification for the Goods shall be that set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if such variation(s) is/are accepted by the Seller). The Goods will only be supplied in the minimum units thereof stated in the Seller's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.
- 4.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 4.5 A Buyer who cancels an order BEFORE products have been shipped will incur a 20% cancellation fee before credit is issued. A Buyer cancelling an order AFTER shipment or at delivery will be charged all shipping fees and a 30% re- stocking fee.

## 5 Price

- 5.1 The Contract Price of the Goods shall be the price listed in the Seller's price list current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer.
- 5.2 Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for 7 days only or such lesser time as the Seller may specify.
- 5.3 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or

specifications for the Goods which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 5.4 The Seller will allow the Buyer quantity discounts subject to and in accordance with the conditions set out in the Seller's published price list for the Goods current at the date of acceptance of the Buyer's order.
- 5.5 Any settlement discount specified by the Seller in the Contract will be allowed by the Seller to the Buyer in respect of Goods for which payment is received by the Seller on or before the due date and otherwise in accordance with the payment terms set out in these Terms and Conditions and provided that no other amounts owing by the Buyer to the Seller are overdue and unpaid.
- 5.6 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 exclusive of VAT and delivery charges.
- 5.7 The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## **6 Payment**

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the Contract Price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the Contract Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2 The Buyer shall pay the Contract Price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction, credit or set off) within 30 days of the date of the Seller's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time for the payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 The Seller has the right to charge interest at 8.00% per annum above IBOR base rate from time to time for invoices not paid within the agreed terms.
- 6.4 All payments shall be made to the Seller as indicated on the form of acceptance or invoice issued by the Seller.
- 6.5 All Bank charges incurred in transmitting payments to the Seller are payable by the Buyer.
- 6.6 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding sub-Clause 6.2 of these Terms and Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.
- 6.7 The Seller reserves the right to pass on all costs incurred in the collection of overdue accounts.

## **7 Delivery**

- 7.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place specified in the Buyer's order and/or the Seller's acceptance and/or the Contract as the location to which the Goods are to be delivered by the Seller or, if no place of delivery is so specified, by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 7.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.
- 7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.4 If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licenses, consents or authorizations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.

## **8 Non-Delivery**

- 8.1 If the Seller fails to deliver the Goods or any part thereof on the Delivery Date other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault if the Seller delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery.

## **9 Inspection/Shortage**

- 9.1 The Buyer is under a duty to inspect the Goods on delivery or on collection as the case may be.
- 9.2 The Seller shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this Clause 9 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within 2 Business Days of delivery detailing the alleged damage or shortage.
- 9.3 In all cases where defects or shortages are complained of the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Seller before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 9.4 Subject to sub-Clauses 9.2 and 9.3, the Seller shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## **10 Risk and Retention of Title**

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer at:
- 10.1.1 in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 10.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

- 10.3 Sub-Clause 10.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Seller and the Buyer has repaid all moneys owed to the Seller, regardless of how such indebtedness arose.
- 10.4 Until payment has been made to the Seller in accordance with these Terms and Conditions and the Contract and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for the Seller and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Seller and shall insure the Goods against all reasonable risks.
- 10.5 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 money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 10.6 The Seller reserves the right to repossess any Goods in which the Seller retains title without notice. The Buyer irrevocably authorizes the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title or inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 10.4.
- 10.7 The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:
- 10.7.1 the Buyer commits or permits any material breach of his obligations under these Terms and Conditions;
- 10.7.2 the Buyer enters into a voluntary arrangement of Insolvency, or any other scheme or arrangement is made with his creditors;
- 10.7.3 the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 10.7.4 the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder, a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

#### 11 Assignment

- 11.1 The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller which shall not be unreasonably withheld.

#### 12 Defective Goods

- 12.1 The Seller warrants to the Buyer that the Goods shall be fit and sufficient for the purpose intended by the Buyer and are of merchantable quality and free from defects. The products shall come with a manufacturer warranty. For any suspected warranty issues the Buyer should contact the Seller's local office where a fault-finding process will be followed. If found faulty a Return Merchandise Authorization ("RMA") will be issued.
- 12.2 Customized, Promotion, Liquidation, Demo and Used Goods are non-returnable.
- 12.3 No Goods may be returned to the Seller without approval in advance from the Seller and must be returned with a RMA number issued by the Seller. Returns without an RMA number will not be accepted by the Seller.
- 12.4 Where Goods have been returned to the Seller with an RMA number any credit given will be based on the original invoice and amount.
- 12.5 A re-stocking charge of 20% of the original invoice value will be made against any credit issued for returned goods unless such returns are :-
- 12.5.1 the result of an order processing error by the Seller or
- 12.5.2 accepted as defective
- 12.6 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any willful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
- 12.7 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.8 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
- 12.9 The Buyer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.

#### 13 Buyers Default

- 13.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 13.1.1 Cancel the order or suspend any further deliveries to the Buyer;
- 13.1.2 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 13.1.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above IBOR base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 13.2 This condition applies if:
- 13.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
- 13.2.2 the Buyer becomes subject to an administration order or enters into a voluntary Insolvency becomes bankrupt or (being a company) goes into liquidation;
- 13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;
- 13.2.4 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.2.5 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.

- 13.3 If sub-Clause 13.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14 Buyer's Responsibilities**

- 14.1 The Buyer shall provide full information in a timely manner regarding requirements for and limitations on the Buyer's objectives, schedule, constraints and criteria.
- 14.2 The Buyer shall furnish to the Seller information necessary and relevant for the Seller to evaluate, give notice of, or enforce lien rights. The Buyer grants and the Seller shall retain a lien over all goods delivered to the Buyer before the Buyer makes full payment of the Contract.
- 14.3 The Buyer shall designate a representative authorized to act on the Buyer's behalf with respect to the Contract. The Buyer or the designated representative shall render decisions in a timely manner pertaining to documents submitted by the Seller in order to avoid unreasonable delay in the orderly and sequential progress of the Seller's Services.
- 14.4 The Buyer shall furnish the Services, at the Buyer's expense, of any and all consultants and/or contractors reasonably required for the proper execution of the Project as and when requested by the Seller. The Seller shall be entitled to rely upon the accuracy and completeness of any information provided by these consultants or contractors on behalf of the Buyer.
- 14.5 The Buyer shall provide prompt notice to Seller if the Buyer becomes aware of any fault or defect in the Contract or the Goods, including any errors, omissions, or inconsistencies.
- 14.6 If installation of the Goods occurs after the Site has been handed over to the Buyer, prior to installation of the Goods, the Buyer shall prepare the Site and render the Site in a condition so as to allow the Goods to be installed in a square and plumb manner. The Buyer shall ensure that the Site is:
- 14.6.1 broom clean,
  - 14.6.2 free from obstructions, including separate contractors and workers,
  - 14.6.3 dust-free before and after installation of the Equipment,
  - 14.6.4 safe and secure, and
  - 14.6.5 compliant with all load requirements specified by Seller. Where there are any additional load requirements over those that will be provided at the Site at handover, then the Buyer shall ensure that such additional load requirements are made available.
- 14.7 Further, the Buyer shall ensure that the Site is secure and set up for both pre-wiring and installation of the Goods in accordance with the requirements of Seller. The Buyer shall be solely responsible for the working condition of the Site, including the security, safety, and fitness of the areas in which Seller's Services are to be performed. The Buyer warrants to Seller that the Site is adequate and sufficient to install, use, and store the Goods.
- 14.8 The Buyer shall provide electrical outlets, cabling, and work surfaces for the operation of the Goods as specified by Seller in the Technical Documents of the Goods. Further, the Buyer shall be responsible for compliance with all applicable laws and codes regarding the installation and subsequent use of the electrical circuits. The Buyer shall be solely responsible for any unforeseen costs resulting from existing conditions at the Site, including, but not limited to, the conditions or locations of electrical outlets or other Buyer Furnished Products, including cabling.
- 14.9 At the time of signing of this Agreement, the Buyer shall have identified and provide information to the Seller of all other equipment and connections that will interface with the Goods to be provided by the Seller related to the Contract, with the understanding that any omissions to the information provided may result in additional charges from the Seller in order to accommodate such changes or omissions.
- 14.10 The Buyer shall provide access to the Site during normal business hours to allow Seller to perform its Services in a timely and orderly manner. Further, the Buyer shall provide suitable and secure locations at the Site for storage of the Goods prior to installation.
- 14.11 The Buyer shall provide a representative to accept delivery of equipment from the Seller as required at the Site, and shall remain liable for any loss or damage to the Goods located at the Site.

**15 Representations**

- 15.1 The Seller is not, and does not represent to be, a licensed architect, electrician, electrical engineer, mechanical engineer, or structural engineer and shall not perform, nor be responsible for the performance of, the work of such persons. All information, drawings, schematics, specifications, or other documents containing references to, or depictions of, architectural, electrical, or mechanical attributes which are supplied to the Buyer by the Seller hereunder will be provided for the sole purpose of indicating the Seller's suggestions related to the Work, and the Seller shall have no liability whatsoever, including liability for the Buyer's reliance thereon, except as such information, drawings, documents, specifications, or other documents may relate to the performance of the System.
- 15.2 The Buyer's signing and delivery of this Agreement and its performance of its obligations hereunder:
- 15.2.1 have been duly authorized by all necessary corporate action;
  - 15.2.2 do not conflict with any terms or conditions of its Certificate of Incorporation or By-laws;
  - 15.2.3 do not violate any law, regulation, order, judgment or decree by which it may be bound; and
  - 15.2.4 will not violate or result in a breach, acceleration, or default under any agreement or understanding to which it is a party or by which it may be bound which will materially affect its ability to perform its obligations hereunder.
- 15.3 When the Contract is accepted by the Buyer, These Terms and Conditions will constitute the legal, valid and binding obligation of the Buyer, and will be enforceable against it in accordance with its terms and conditions, subject only to the rights of creditors under applicable laws relating to bankruptcy or the relief of debtors.

**16 Warranties**

- 16.1 Seller warrants that all Equipment and installation shall be fit for its intended purpose and free from defects in materials and workmanship.
- 16.2 Notwithstanding the foregoing, Seller's warranty obligations shall not apply to the extent that the Goods have been subjected to abuse, unauthorized modifications or alterations, improper maintenance, unauthorized or improper repair and misuse, including, but not limited to, operating the Equipment outside of its environmental, performance, electrical, temperature, or humidity specification.
- 16.3 For any Services covered under the Seller's warranty, Seller shall be the sole source utilized for repairs. The Buyer agrees to provide access for any scheduled or requested services of the System or Equipment. If the Equipment is not available during the scheduled time, Seller may charge the Buyer its normal trip

charge and, if asked to wait on-site, Seller's current published hourly rates for standing by until the goods are made available or until instructed to return at another time.

**16.4 Duration of warranty**

- 16.4.1 All warranties made herein by Seller shall commence as of the execution of the Contract, and shall remain in effect for a period of one year following the Delivery of the Goods.
- 16.4.2 In the event that the Buyer desires to engage Seller to perform and/or provide additional services and/or maintenance following the expiration of the said one year warranty period, Seller shall submit to the Buyer a quotation for an extended service and/or maintenance arrangement.

**16.5 Warranty claims**

- 16.5.1 Upon receipt of written notice from the Buyer of any warranty claim pursuant to this Section, the Buyer may, as its sole remedy against Seller under these Terms and Conditions, require Seller to correct any Services not conforming to the warranties set forth herein.
- 16.5.2 Seller's sole obligation in connection with this Section shall be limited to the correction and/or repair of any Services, or the repair and/or replacement of any goods, materials, or Equipment sold or provided to the Buyer in connection therewith, which do not conform to the warranties set forth herein.
- 16.5.3 Seller shall assume no liability or expense for any corrections, repairs, or replacements except those performed by Seller or its authorized agents, and Seller shall not be liable for any expense or damages beyond the actual cost of correction, repair, or replacement as set forth in this Section. With respect to all repair and/or replacement obligations imposed upon Seller pursuant to this Section, it shall be within the Seller's sole discretion as to whether to repair or replace any deficient goods, materials, or equipment; which option shall in all events be accepted by the Buyer so long as the deficient goods, materials, or equipment, as applicable, are made to conform to the warranties set forth by Seller pursuant to this Section.

**17 Limitation of Liability**

- 17.1 Subject to the provisions of Clauses 7, 8 and 12 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - 17.1.1 any breach of these Terms and Conditions or the Contract;
  - 17.1.2 any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 17.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 17.2 Nothing in these Terms and Conditions excludes or limits the liability of the Seller:
  - 17.2.1 for death or personal injury caused by the Seller's negligence;
  - 17.2.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
  - 17.2.3 for fraud or fraudulent misrepresentation.
- 17.3 Subject to sub-Clauses 17.1 and 17.2:
  - 17.3.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
  - 17.3.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**18 Confidentiality, Publications and Endorsements**

- 18.1 The Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.
- 18.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.
- 18.3 The Buyer will use all reasonable endeavors to ensure compliance with this Clause 18 by its employees, servants and agents.
- 18.4 The provisions of this Clause 18 shall survive the termination of the Contract.

**19 Communications**

- 19.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 19.2 Notices shall be deemed to have been duly given:
  - 19.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
  - 19.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
  - 19.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 19.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 19.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

**20 Force Majeure**

- 20.1 Neither Party shall be liable for any failure nor delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

**21 Waiver**

- 21.1 The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.



## 22 Severance

- 22.1 The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

## 23 Law and Jurisdiction

- 23.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Dubai.
- 23.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of Dubai.

## Terms & Conditions for Repair Services.

1. The given quoted price will be an estimated cost only and could be revised during the detailed repair process to make the equipment functional and/or to rectify the problem reported.
2. If the actual repair cost is higher than the initial estimate, METROMED will notify you accordingly for necessary approvals to complete the repair. If the repair cost is lower than the estimate, then the billing will be done at actual amount.
3. All Service Estimates are valid for 15 days from the estimation date, unless specified otherwise. If a response or LPO is not received within this time, METROMED will return the equipment back to you. However, no repairs shall be commenced until the LPO confirmation is received. For LPO-CDC/PDC customers, copy of CDC/PDC is required along with the LPO in order to accept the order confirmation.
4. To assess your equipment/machine, our Service Engineer might have to disassemble the unit for inspection. In the event of not going ahead with the repair and the machine cannot pass out mechanical and/or electrical safety, we may have to return the equipment in disassembled condition.
5. Metromed can provide you with the replaced parts along with the equipment delivery only based on advance request. If no request(s) is received at the order confirmation stage, METROMED reserves the right to scrap the faulty items immediately.
6. METROMED assures a warranty of 1 month for the reported issue, for all paid services including the replaced parts, excluding the normal wear and tear components and/or consumables. In case of outsourced repairs, the warranty will be as per the respective repair vendor policy.
7. Any Service Repair warranty will be null and void in case the equipment is not used as per the Manufacturer Operational Manual and/or repaired by any un-authorized personnel.
8. In the event of not-going ahead with the repair, METROMED reserves the right to charge you an amount of AED 500/- per machine and/or the amount charged by our vendor, whichever is higher, towards handling and collection. For any initial assessment of more than 2 hours, we reserve the right to entail the appropriate amount for the same.
9. For any repairs or calibration done outside METROMED Service Centre (including Manufacturer Service or 3rd Party Service center), assessment charges would be levied as per the vendor policy in case of denial. In addition to this, handling charges are applicable for all overseas outsourced repairs.
10. Metromed will not be held responsible for preserving the data on the equipment/machine. We advise the customers to take the backup of the data (if any), before dropping the machine for Service or Calibration.
11. All repaired equipment/machines have to be collected from METROMED premises after making the necessary payments within 30 days. Thereafter, METROMED reserves the right to scrap the tool without any further notice to the customer.
12. For CDC/COD customers, if the tool is not collected within 5 working days from the notification of job completion, a penalty of 5% of the total order value will be charged per day for late collection.
13. Collection/delivery charges are not included in the price quoted. Should you need this service AED 300/- will be charged extra per service.
14. For all regulated products, during the course of repairs/inspection, if METROMED or the manufacturer gets evidence of the machine being used in Embargo countries, the machine would be confiscated by the authorities and METROMED or the supplier would not be held responsible for the loss.
15. Acceptance of our Service Estimate would be construed as Acceptance of METROMED Service Terms & Conditions.