

**TERMS AND CONDITIONS
FOR SALE OF GOODS**

OF

HipScaler Ltd

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.2 "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.5 "Seller" means HipScaler Ltd of 52 Bryher Island, Port Solent, Portsmouth PO6 4UF. Company registration number 06052864.
- 1.6 "Product" means a HipScaler Xray scaling device.
- 1.7 "Product Maintenance" means Product disinfection before and after each and every use.
- 1.8 "Product Use" means the use of the Product in accordance with the instruction sheets provided with the Product.
- 1.9 "User(s)" means the individual(s) who is/are actively positioning the HipScaler device on a patient in order to accurately scale a digital x-ray, or the individual(s) who is/are templating an xray that has been scaled using the HipScaler device.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 PRICE AND PAYMENT

- 3.1 The price shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. Carriage shall be paid for by the Buyer.
- 3.2 Payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller. Goods will not be despatched until payment has cleared.
- 3.3 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 5.00% per annum above the base rate of the Bank of England.
- 3.4 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - 3.4.1 require payment in advance of delivery in relation to any Goods not previously delivered;
 - 3.4.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
 - 3.4.3 terminate the contract.

4 DESCRIPTION

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

5 SAMPLE

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

6 DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract.
- 6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- 6.4 The Buyer shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Buyer must notify the Seller of the damage within 24 hours of delivery.

7 PRODUCT MAINTENANCE

- 7.1 HipScaler Ltd, its Directors or Employees will not be held liable for any direct or indirect injury to staff or patients following use of the HipScaler device.
- 7.2 HipScaler Ltd recommends disinfecting the HipScaler device before and after each and every use, or ensuring the device is enclosed within a single use disposable sealable plastic bag, to prevent soiling of the HipScaler device. As such HipScaler Ltd, its Directors or Employees will not be held liable for any soiling, contamination or colonisation of the HipScaler device.

8 PRODUCT USE

- 8.1 The user of the HipScaler Device agrees to utilise the device as described in the Radiographer Instruction Sheet and Templating Instruction Sheet. The user further accepts and acknowledges that templating information produced by its use is for guidance purposes only and does not take the place of the surgeons' professional judgement and experience.
- 8.2 HipScaler Ltd, its Directors or Employees will not be held liable for inaccurate radiograph scaling due to improper use of the HipScaler or following its inaccurate positioning.
- 8.3 The User agrees to utilise HipScaler for the sole purpose of improving Xray scaling accuracy and accepts that HipScaler cannot be held liable for errors in templating or implant selection.

9 RISK

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller's premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

- 10 TITLE**
- 10.1 Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.
- 10.2 Once the title of the Goods has passed to the Buyer, the Buyer accepts full responsibility for ensuring the correct Product Maintenance and correct Product Use procedures are adopted by the Users.
- 11 WARRANTY**
- 11.1 Where the Goods have been manufactured by the Seller and are found to be defective, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge within 1 month from the date of delivery, subject to the following conditions:
- 11.1.1 the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;
- 11.1.2 the defect being due to the faulty design, materials or workmanship of the Seller.
- 11.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.
- 11.3 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.
- 11.4 The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.
- 11.5 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 10 and 11 below.
- 12 LIABILITY**
- 12.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:
- 12.1.1 the correspondence of the Goods with any description;
- 12.1.2 the quality of the Goods; or
- 12.1.3 the fitness of the Goods for any purpose whatsoever.
- 12.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:
- 12.2.1 the correspondence of the Goods with any description;
- 12.2.2 the quality of the Goods; or
- 12.2.3 the fitness of the Goods for any purpose whatsoever.
- 12.3 All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Seller or not) are hereby excluded from the contract.
- 13 LIMITATION OF LIABILITY**
- 13.1 Where any court or arbitrator determines that any part of Clause 10 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.
- 13.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

- 14 INTELLECTUAL PROPERTY RIGHTS**
- All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
- 15 FORCE MAJEURE**
- The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.
- 16 RELATIONSHIP OF PARTIES**
- Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.
- 17 ASSIGNMENT AND SUB-CONTRACTING**
- The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.
- 18 WAIVER**
- The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 19 SEVERABILITY**
- If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.
- 20 GOVERNING LAW AND JURISDICTION**
- This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.