

Terms & Conditions of Sale Metko Limited



1. DEFINITIONS

1.1. The definitions and rules of interpretation set out below apply in these conditions:

“Buyer” means the person, firm or company, authority or government department, which purchases the Goods from the Seller.

“Contract” means any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

“Goods” means any goods, equipment, components, spare parts and materials agreed in the Contract to be supplied to the Buyer by the Seller (*including any part or parts of them*).

“Seller” means Metko Medikal ve Tıbbi Cihazlar Dış. Tic. Ltd. Şti. whose registered office is at “İvedik Organize Sanayi Bölge Ağaç İşleri Sanayi Sitesi 1354.Cad 1358. Sok. No: 9 Yenimahalle - Ankara / TURKEY”

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Condition headings do not affect the interpretation of these conditions.

2 . APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.3, the Contract shall be subject to these terms and conditions. All other terms, conditions and warranties, whether implied by statute, common law or trade usage or expressed by the Buyer (*including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document*), are hereby excluded, with the exception of conditions expressly accepted by the Seller in writing and conditions and other terms the exclusion of which is prohibited by law.

2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. Any variation to these terms and conditions and any representations about the Goods shall have no effect unless set out in writing and signed by authorised representatives of each of the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller’s liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5. No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (*if earlier*) the Seller delivers the Goods to the Buyer. Save in respect of export sales, the minimum order value is 50,00 US Dollar and orders valued below 50,00 US Dollar may be accepted at the discretion of the Seller.

2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7. Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an

acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date unless stated otherwise and provided that the Seller has not previously withdrawn it.

3. DELIVERY

3.1. Any dates specified by the Seller for delivery of the Goods are estimates and time for delivery shall not be made of the essence by notice. If no dates are specified, time for delivery shall be within a reasonable time

3.2. Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (*all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss*), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (*even if caused by the Seller's negligence*), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

3.3. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

a- risk in the Goods shall pass to the Buyer (*including for loss or damage caused by the Seller's negligence*);

b- the Goods shall be deemed to have been delivered; and

c- the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (*including, without limitation, storage and insurance*).

3.4. The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

3.5. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4. PLACE OF DELIVERY

4.1. Unless otherwise expressly agreed in writing by the Seller, the Seller shall deliver the Goods to the Buyer and delivery shall take place at the Buyer's premises ("Delivery Point")

4.2. The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

5. LOSS OR DAMAGE IN TRANSIT

5.1. The Seller shall not be liable for loss or damage to Goods in transit unless:

5.1.1 such loss, shortage or damage is caused by the Seller's negligence.

5.1.2. the carriers and the Seller are notified thereof in writing, in the case of damage or shortage within three days of delivery or, in the case on non-delivery, within a reasonable time after the date upon which the Goods would have been delivered in the ordinary course of events, and

5.1.3. in the case of damage to Goods, the Buyer notifies the Seller's customer services department and such Goods are returned to the Seller for inspection within thirty days of delivery.

6. CHANGES AND RETURNS

6.1. If after the receipt of any order for Goods before delivery, improvements are made to their design, on giving notice to the Buyer, the Seller may make reasonable alterations so such design provided that:-

a- the performance and quality of the altered goods are at least as high as those of the Goods ordered, and

b- no price variation is made except with the Buyer's consent, and

c- delivery is not unreasonably delayed.

6.2. If in respect of any order for Goods that are manufactured to the Buyer's specification the Buyer requests any amendment to such order, the Seller shall, at its discretion, charge the Buyer in respect of any such amendments

at the rate of 25 % of the invoice value of such Goods.

6.3. If, as a result of the Buyer's error, the Buyer wishes to return Goods to the Seller and the Seller is prepared to accept the return of such Goods, the Seller reserves the right to charge the Buyer a restocking charge at the rate of 25 % of the invoice value of such Goods. Any such returns shall be at the Buyer's expense and the Goods must be unused and in good and saleable condition.

7. RISK/TITLE

7.1. The Goods are at the risk of the Buyer from the time of delivery.

7.2. Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (*in cash or cleared funds*) all sums due to it in respect of:

7.2.1. the Goods; and

7.2.2. all other sums which are or which become due to the Seller from the Buyer on any account.

7.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

7.3.1. hold the Goods on a fiduciary basis as the Seller's bailee;

7.3.2. store the Goods (*at no cost to the Seller*) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

7.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

7.3.4. maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

7.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

7.4.2. any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

7.5. The Buyer's right to possession of the Goods shall terminate immediately if:

7.5.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (*being a body corporate*) convenes a meeting of creditors (*whether formal or informal*), or enters into liquidation (*whether voluntary or compulsory*) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder or a resolution is passed or a 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; or

7.5.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts or the Buyer ceases to trade; or

7.5.3. the Buyer encumbers or in any way charges any of the Goods.

7.6. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.7. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.8. Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

7.9. On termination of the Contract, howsoever caused, the Seller's (*but not the Buyer's*) rights contained in this condition 7 shall remain in effect.

8. PRICES AND PAYMENT

8.1. Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's price list published on the date of delivery. The price for the Goods shall be exclusive of value added tax (*if any*) and all costs or charges in relation to transit and packing materials, carriage, insurance and additional labour. The Buyer shall pay any value added tax and all costs or charges in relation to transit and packing materials, installation, carriage in respect only of deliveries of Goods required by the Buyer within 24 hours, insurance and additional labour when the Buyer is due to pay for the Goods.

8.2. Subject to condition 8.8 and 12.4, payment of the price for the Goods is due in USD Dollar within 30 days of the date of invoice unless otherwise agreed by the Seller in writing. Time for payment shall be of the essence.

8.3. Payment for account Buyers is strictly monthly and to be made in accordance with invoice values. For non-account Buyers payments must be made in advance of delivery.

8.4. A Buyer wishing to open an account must provide recognised bank and trade references.

8.5 The Seller reserves the right to levy an interest charge in the event of failure to pay by the due date. Such charge will be at the rate of 2% per month on overdue amount from the date payment is payable until the date payment is made.

8.6. When payment of any of the Seller's invoices is overdue it may suspend performance of the Contract to which the invoice relates and/or of any other contract then in existence between the Buyer and the Seller for the period until the invoice is paid.

8.7. The Seller reserves the right to change the terms of payment offered to the Buyer following a suspension of performance under the provision of clause 8.6 above

8.8. All payments payable to the Seller under the Contract shall become due immediately on its termination notwithstanding any other provision.

8.9. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

9. WARRANTY.

9.1. The Seller warrants that (*subject to the other provisions of these conditions*) upon delivery, and for a period of 12 months from the date of delivery, the Goods shall:

- a- Conform in all material respects to all applicable drawings and specifications;
- b- Be free from defects in workmanship or materials;
- c- Be of satisfactory quality;
- d- Be reasonably fit for the purpose for which the Goods are sold; and
- e- Be reasonably fit for any particular purpose for which the Goods are bought if the Buyer had made that purpose known to the Seller in writing and the Seller had confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller.

9.2. The Seller shall not be liable for a breach of any of the warranties in condition 9.1 unless:

- a- the Buyer gives written notice of the defect to the Seller, within 21 days of the time when the Buyer discovers or ought to have discovered the defect; and
- b- the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (*if asked to do so by the Seller*) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there.

9.3. The Seller shall not be liable for a breach of any of the warranties in condition 9.2 if:

- a- the Buyer makes any further use of such Goods after giving such notice; or
- b- the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
- c- the Buyer alters or repairs such Goods without the prior written consent of the Seller.

9.4 Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 the Seller shall at its option repair or replace such Goods (*or the defective part*) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at its expense, return the Goods or the part of such Goods which is defective to the Seller.

9.5. If the Seller complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1. Subject to condition 4, condition 5 and condition 9, 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:

- a- any breach of these conditions;
- b- any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- c- any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. ALL WARRANTIES, CONDITIONS AND OTHER TERMS (WHETHER EXPRESS OR IMPLIED) AS TO QUALITY, CONDITION, DESCRIPTION, COMPLIANCE WITH SAMPLE OR FITNESS FOR PURPOSE (WHETHER STATUTORY OR OTHERWISE) OTHER THAN THOSE EXPRESSLY SET OUT IN THESE CONDITIONS ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

10.3. Nothing in these conditions excludes or limits the liability of either Party for:

- a- death or personal injury caused by the negligence of the other Party or any of its officer employees or agents;
- b- fraud or fraudulent misrepresentation; or
- c- for any matter which it would be illegal for one Party to exclude or attempt to exclude its liability to the other Party.

10.4. Subject to condition 10.2 and condition 10.3:

a- 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 invoice value of Goods ordered by the Buyer in the twelve month period ending in the month immediately prior to the month in which any such fault or defect as aforesaid first became known to the Buyer ; and

b- the Seller shall not be liable to the Buyer for any costs, claims, damages or expenses, whether arising out of or in connection with the Contract or any other breach of contract or statutory duty or any tortious act or omission;

i- of an indirect or consequential nature;

ii- that are calculated by reference to profits, income, production or accruals or any loss thereof on a time or any other basis,

iii- that are calculated by reference to a loss of business, depletion of goodwill or any other form of pure economic loss;

iv- to the extent that the same has been or will be made good or is otherwise compensated without cost to the other Party.

11. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the goods ordered by the Buyer (*without liability to the Buyer*) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including but without limitation, acts of god, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (*whether or not relating to either party's workforce*), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that if the event in question continues for a continuous period of excess of 90 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract .

12. EXPORT TERMS

12.1. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms (International Commercial Terms) 2010 shall have the same meaning in these terms and conditions but if there is any conflict between the provisions of Incoterms and these terms, the latter shall apply.

12.2. Where the Goods are supplied for export from the Turkish Republic, the provisions of this clause shall (*subject to any special terms agreed in writing between the Buyer and the Seller*) apply notwithstanding any other provision of these terms.

12.3. The minimum order value for Goods supplied for export from the Turkish Republic is 750,00 US Dollar and orders valued below 750,00 US Dollar may be accepted at the discretion of the Seller.

12.4. Payment of the price for the Goods is due according to the terms and in the currency stated on the invoice unless otherwise agreed by the Seller in writing. Time for payment shall be of the essence.

12.5. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

12.6. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered CPT as defined in Incoterms 2010 the terms.

12.7 The Buyer shall be responsible for arranging the testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

12.8. Unless otherwise required by the Seller, payment of all amounts due to the Seller shall be made by an irrevocable letter of credit in a form acceptable by the Seller to be opened by the Buyer in favour of the Seller and confirmed by a bank in the Turkey acceptable by the Seller within 14 days after the Contract is concluded.

13.GENERAL

13.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

13.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and

effect.

13.3. Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.4. Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

13.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

13.6. The Seller may assign the Contract or any part of it to any person, firm or company.

13.7 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

14. LAW AND JURISDICTION

The construction, validity and performance of these terms and conditions and matters pertaining thereto shall be governed in all respects by Turkish Law. The Turkish Courts shall have exclusive jurisdiction to settle any action brought in connection with these terms and conditions or matters pertaining thereto. The Buyer shall accept service by prepaid registered letter of any writ of summons in any such action at its principal place of business notwithstanding that it may be outside the jurisdiction of the Turkish Courts.

As of January 2013
Metko Medikal ve Tıbbi Cihazlar Dış.Tic. Ltd. Şti.