

OsteoCare Implant System Limited

Terms & Conditions

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

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 OsteoCare 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 OsteoCare.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: patents, rights to invention, copyright and related rights, moral rights trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, fax, email, telephone conversation or the Customer's written acceptance of OsteoCare's quotation as the case may be.

OsteoCare: the supplier as identified on the quotation and/or invoice relating to the Goods.

OsteoCare Warranty: the product warranty offered by OsteoCare as annexed to these Conditions or otherwise notified to the Customer from time to time. Please refer to our [Warranty Document](#) for further details.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and OsteoCare.

1.2 **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 amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(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 and e-mails.

2. BASIS OF CONTRACT

2.1 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.

2.2 Orders may be placed in writing or by telephone. 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.

2.3 The Order shall only be deemed to be accepted when OsteoCare issues a written acceptance of the Order or accepts the Order by its conduct in delivering the Goods, at which point the Contract shall come into existence.

- 2.4 The Contract constitutes 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 OsteoCare which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by OsteoCare and any descriptions or illustrations contained in OsteoCare'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.
- 2.6 A quotation for the Goods given by OsteoCare shall not constitute an offer. A quotation shall only be valid for the period stated in the quotation or, where no period is stated, for a period of 10 Business Days from its date of issue.
- 2.7 The Conditions are subject to and supplementary to the OsteoCare Warranty to the extent the OsteoCare Warranty applies to the Sale of Goods.

3. GOODS

- 3.1 The Goods are described in OsteoCare's catalogue as modified by any applicable specification.
- 3.2 OsteoCare reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 OsteoCare shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and OsteoCare reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. OsteoCare 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 OsteoCare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If OsteoCare 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. OsteoCare shall have no liability 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 OsteoCare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or OsteoCare's failure to comply with its obligations under the Contract:
(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which OsteoCare notified the Customer that the Goods were ready; and
(b) OsteoCare shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 10 Business Days after the day on which OsteoCare notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, OsteoCare 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.
- 4.7 OsteoCare 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.

5. QUALITY OF GOODS, RETURN & WARRANTY

- 5.1 OsteoCare warrants that on delivery, the Goods shall:
(a) conform in all material respects with their description and any applicable specification;
(b) be free from material defects in design, material and workmanship; and
(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 The Customer may reject any Goods delivered to it that do not comply with clause 5.1, provided that:

- (a) notice of rejection is given to OsteoCare within 7 Business Days of delivery;
 - (b) OsteoCare is given a reasonable opportunity of examining such Goods;
 - (c) the Customer (if asked to do so by OsteoCare) returns such Goods to OsteoCare's place of business at OsteoCare's cost; and
 - (d) none of the events listed in clause 5.3 apply.
- 5.3 OsteoCare shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow OsteoCare'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;
 - (c) the defect arises as a result of OsteoCare following any drawing, design or specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of OsteoCare;
 - (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 their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5 and/or OsteoCare Warranty, OsteoCare shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The Customer may, subject to Clause 5.7, return unwanted Goods on the following terms:
- (a) returns within thirty (30) days of receipt by the Customer are allowed provided the Customer has placed a further order of equal or greater value than the returned order; or
 - (b) returns within ninety (90) days of receipt by the Customer are allowed provided the Customer has placed a further order of equal or greater value than the returned order but in such circumstances OsteoCare is entitled to charge a handling fee of twenty-five (25) GBP/EUR/USD (GBP if the Customer is situated in Great Britain, EUR if the Customer is situated in Europe and USD if the Customer is situated in any other region) in relation to the return.
- 5.6 No returns will be accepted later than ninety (90) days after receipt by the Customer.
- 5.7 To be eligible for return in accordance with Clause 5.5:
- (a) Goods must be unopened, tamper free and in their original unopened and undamaged packaging with no visible defects;
 - (b) Goods must be listed in the current OsteoCare catalogue at the date of return;
 - (c) Goods purchased as part of a kit cannot be returned as individual components; and
 - (d) Goods must be sent by traceable methods to such address as is notified by the Supplier to the Customer in writing.
- 5.8 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.
- 5.9 These Conditions shall apply to any repaired or replacement Goods supplied by OsteoCare.
- 5.10 In the event of conflict between the provisions of clause 5.1 to 5.3 and the OsteoCare Warranty, the provisions of the OsteoCare Warranty shall take precedence.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until OsteoCare has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods or services that OsteoCare has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as OsteoCare's bailee;

- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as OsteoCare's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify OsteoCare immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give OsteoCare such information relating to the Goods as OsteoCare may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or OsteoCare reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy OsteoCare may have, OsteoCare may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in OsteoCare's published price list in force as at the date of delivery.
- 7.2 OsteoCare may, by giving notice to the Customer at any time 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 OsteoCare's control (including 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 OsteoCare adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 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 OsteoCare, pay to OsteoCare such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 OsteoCare may invoice the Customer for the Goods on or at any time after receipt of the Order.
- 7.6 The Customer shall pay the invoice in full and in cleared funds on the terms set out on the invoice. Payment shall be made to the bank account nominated in writing by OsteoCare. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to OsteoCare under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc'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.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). OsteoCare 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 OsteoCare to the Customer.

8. TERMINATION

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or OsteoCare reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to OsteoCare, OsteoCare may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and OsteoCare without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer fails to pay any amount due to OsteoCare on the due date for payment;

- (b) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrance of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (h) (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(b) to clause 8.2(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (l) the Customer's financial position deteriorates to such an extent that in OsteoCare's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (m) (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.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude OsteoCare'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 OsteoCare to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) OsteoCare 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) OsteoCare'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 price of the Goods.

10. 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.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The parties acknowledge and agree that all Intellectual Property Rights in the Goods are and shall remain the exclusive property of OsteoCare or its licensors as applicable.
- 11.2 Any Goods sold under these Conditions are and subject to an implied licence to use the Goods and any associated Intellectual Property Rights only in conjunction with original OsteoCare products. Any breach of this clause 11.2 shall constitute an infringement of OsteoCare's Intellectual Property Rights by the Customer.
- 11.3 OsteoCare shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Customer's use of the Goods.
- 11.4 Liability under the indemnity at clause 11.3 is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against OsteoCare which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the Customer shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to OsteoCare, specifying the nature of the Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of OsteoCare; and
 - (c) give OsteoCare and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable OsteoCare and its professional advisers to examine them and to take copies (at OsteoCare's expense) for the purpose of assessing the Claim.

12. DATA PROTECTION

- 12.1 The Customer consents to OsteoCare processing data relating to the Customer for legal, administrative and management purposes.
- 12.2 It is the Customer's responsibility to obtain the consent of any third party to whom any personal data disclosed to OsteoCare relates to the transfer of that data to OsteoCare and the process of such data by OsteoCare in accordance with this clause 12.

13. GENERAL

13.1 Assignment and other dealings.

(a) OsteoCare 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.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of OsteoCare.

13.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax [or e-mail], one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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 OsteoCare.

13.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.8 **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).