

Terms of Sale

Sale of Products

1. **ZOLL Medical Australia Pty Limited** ACN 097 377 261 (we) agrees to sell and the buyer (you) agrees to buy the Products.

Definitions

2. **Contract** means these terms and conditions and any special conditions in the purchase order.
Price means the prices pacified by us in the purchase order.
Products means the goods specified in the purchase order.

Delivery, title and risk

3. All deliveries shall be F.O.B shipping point. Delivery of the Products will be to you at the address within Australia specified in the purchase order.
4. Risk of loss or damage to the Products passes to the customer upon delivery of the equipment to the carrier.
5. Title to the Products passes from us to you when the equipment is delivered to the carrier. Failure of the customer to pay the purchase price for any product when due shall give ZOLL Medical Australia the right, without liability, to repossess the equipment, with or without notice.

Price

6. You must pay the Price plus any amounts in clauses 9 to 11. You must not make any deductions or set off any amount in relation to payments to us.
7. Time is of the essence in relation to payments by you.
8. All payments made under this agreement must be made in Australian dollars. We reserve the right to add to the Price any increase in cost brought about by a change in the Australian dollar exchange rate with that of any other currency before delivery of the Products.
9. Unless expressly included, the consideration for any supply under or in connection with this Contract does not include any goods or services tax (GST). To the extent that any supply made under or in connection with this Contract is a taxable supply, you must pay, in addition to the consideration to be provided under this Contract for that supply (unless it expressly includes GST) an amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply).
10. Any tax, charge, fee, withholding or duty (including any interest or penalty imposed on any of the foregoing) of any nature whatsoever levied by any government authority either directly or indirectly upon the sale or use of the Products will be paid and borne by you. We reserve the right to add to the Price any increase in any tax, charge, fee, withholding or duty levied during the currency of this Contract and before delivery of the Products.
11. Interest is payable on any amounts owing by you to us under this Contract from the due date for payment until the amount outstanding is paid in full (both dates inclusive) at the Commonwealth Bank of Australia Limited's overdraft reference rate from time to time or, if that rate is not published at any time, at the rate charged for prime corporate borrowings by any major Australian trading bank specified by us, calculated on a daily basis.

No warranty

12. We make no warranty in relation to the Products other than any warranties implied by law and any express written warranties agreed with you. In particular, we will not be responsible in any circumstances for:
 - a. any defect in the Products or any failure of the Products to perform any specified function. or any other non-conformance of the Products attributable to:
 - i. any modification of the Products by you without our prior consent;
 - ii. the use of the Products with any associated or complementary goods, accessories or software not supplied by us; or
 - iii. any misuse or abuse of the Products including exposure of the Products to conditions beyond the environmental, power or operating constraints specified by us or installation or wiring of the Products other than in accordance with our instructions; or
 - b. any Products subject to normal wear and burnout during use including lamps, fuses, batteries, patient cables, electrodes and accessories or to software included as part of the Products.

Software licence

13. You acknowledge that software may be included as part of the Products (including software embodied in read-only memory) (**Software**). We grant you a non-exclusive, non-transferable licence to use the Software on the following terms:
 - a. you may only use the Software in connection with the use of the Products;
 - b. you may not copy, distribute, modify, translate or adapt the Software;
 - c. you may not, except to the extent permitted in the Copyright Act 1968 (Cth), disassemble or reverse compile the Software or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained in the Software;
 - d. you may not sell, transfer, lease, license or otherwise dispose of the Software;
 - e. you will have no rights or interests in the Software other than the rights granted in this Contract; and
 - f. we may terminate your use of the Software at any time if you are in breach of this Contract.

Return of Products

14. You must inspect the Products immediately upon delivery and, within not more than 7 days from the date of delivery, notify us in writing of any shortage of Products or any Products delivered which are not in accordance with this Contract, unless the claim is in respect of damage in transit, which must be notified within 3 days of delivery of the Products to you. If you fail to give such notice, the Products will be deemed to be in all respects in accordance with this Contract.
15. Subject to clause 14, if any of the Products delivered to you do not accord with the purchase order, you may return those goods to us provided that:
 - a. you have obtained from us a return authority number and quote that number and the invoice, delivery docket and purchase order numbers on return shipment;
 - b. the goods must be returned in their original packaging and the goods must be, in our opinion, in an "as new" condition; and
 - c. the Products have not been manufactured to meet particular requirements notified to us prior to manufacture of the Products.
16. A 25% restocking fee will be charged for returned goods, unless defective.

No reliance

17. You acknowledge that you have not entered into this Contract in reliance on any express or implied statement, representation or warranty (other than any warranties implied by law) made by us or any person on our behalf.

Contingencies

18. We will not be liable for failure to deliver or delayed delivery by reason of any act beyond our control. In the event of any delayed delivery, the date of delivery will be extended by a period equal to the time lost by reason of such delay and we may allocate Products between our customers on any reasonable basis.

Limitation of liability

19. Our liability in connection with this Contract (including in connection with breach of any express or implied warranties) or the Products is limited to, at our election, the replacement of the Products. the supply of equivalent products or the repair of the Products.

Indemnity

20. You indemnify us against any claim, action (whether in tort or otherwise including for negligence), damage, loss, liability, cost (including legal costs on a full indemnity basis), charge, expense, outgoing or payment which we pay, suffer, incur or are liable for as a direct or indirect result of any claim by a third party in relation to the Products.

