



## ***ITEC Medical BV- General Terms and Conditions***

Issued: October 2016

### **I. Scope of Application:**

1. The General Terms and Conditions ("General Terms") hereinafter set forth shall exclusively apply to all transactions, supplies, services and offers with and from ITEC Medical BV, hereinafter referred to as "ITEC" with a registered seat in Enschede, the Netherlands. They form part of all contracts that ITEC Medical BV ("ITEC") enters into with its contracting parties ("Buyer of Buyers") concerning the supplies of products or services offered. They also govern all future supplies of products or services or offers even if these are not the subjects of separate contracts.
2. The General Terms as amended from time to time shall also apply to future transactions even if in a particular case they have not been transmitted or otherwise delivered to the buyer.

### **II. Offers and Acceptance:**

1. All offers made by ITEC are without obligation and non-binding, unless they have been expressly described in writing as binding. In addition, unless otherwise specified, all offers are made on the basis of normal conditions and delivery times.
2. The legal relationship between ITEC and Buyer will be based solely on a contract concluded in writing, including these General Terms (together the "Contract"). Any additions and amendments to the Contract, including these General Terms, will only be effective if in writing.

### **III. Buyer's General Terms and Conditions:**

The (general) terms of Buyer, or its branch organisation, shall not apply to any transaction and are hereby rejected. Even if ITEC makes reference to a letter, which contains or refers to the terms and conditions of Buyer or a third party or any customary terms, this will not constitute consent to the validity of those terms and conditions.

### **IV. Payment:**

1. Unless otherwise agreed upon between Buyer and ITEC in writing, invoices shall be paid without any deductions within 30 business days following the date of the invoice on the bank account so indicated by ITEC. With effect from the first day after the 30th business day, any outstanding amounts will be subject to interest at a rate of 8,05 % p.a., which amount shall cumulate on a monthly basis and shall apply until the payment in full of such outstanding amounts and any sum of interest due thereon, together with administration costs of EUR 30.00. This provision shall not affect ITEC's right to claim a higher rate of interest or additional compensation in the event of late payment.
2. ITEC reserves the right to suspend any provision of services or product to Buyer where any amounts are overdue until all amounts have been paid.
3. Invoices shall be paid in the currency in which they are quoted by ITEC and all costs in respect of payment of invoices are to be paid by the Buyer.
4. All costs of enforcement of payment by or on behalf of ITEC whether relating to legal or other costs, shall be for the account of Buyer.
5. Any set-off with a counterclaim shall be permitted only if such counterclaim is undisputed by ITEC or has been confirmed by a non-appealable court decision.

### **V. Shipment and Passing of Risk/Export Controls:**

1. ITEC delivers "ex works" (INCOTERMS 2010); packaging is charged separately. ITEC shall be entitled to use such delivery method, as it considers appropriate.
2. Except as otherwise provided herein, risk in and ownership of the products transfers to Buyer upon delivery on behalf of ITEC to forwarder, carrier or any third party involved with the transport. This shall apply even in the case of partial shipments, and/or even if ITEC has assumed additional obligations such as freight or shipping charges, or direct delivery and installation.
3. Buyer shall be responsible for obtaining insurance coverage against theft, breakage, transport, fire and water damage, as well as other insurable risks.
4. If dispatch or shipment is delayed due to circumstances for which the Buyer is responsible, the risk shall pass to the buyer as of the date of notification of readiness for dispatch.
5. If the delivery of ITEC's products is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, ITEC may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and ITEC may rescind the transaction without incurring any liability towards Buyer. Furthermore, if an end-user statement is required, Buyer shall inform ITEC thereof, and Buyer shall provide ITEC with such document upon ITEC's first written request. If an import license is required, buyer shall inform ITEC immediately thereof and Buyer shall provide ITEC with such document as soon as it is available. By accepting ITEC's offer, entering into any transaction, and/or accepting any ITEC's products, Buyer agrees that it will not deal with the ITEC products and/or documentation related hereto in violation of any applicable export or import control laws and regulations.
6. Periods and dates quoted by ITEC for the delivery of products and services will be deemed not to be binding. ITEC excludes liability if delivery is impossible or delayed, including failed or untimely delivery by its own suppliers, for reasons for which it is not responsible. Buyer will only be entitled to claim compensation for loss due to the delay in the event of wilful misconduct or gross negligence. Any such claims will be subject to the provisions of Article XI below.
7. Buyer is responsible for compliance with all laws and regulations following delivery of the products, including regulations relating to medical devices. ITEC accepts no obligation or liability of any kind in respect of legal and regulatory compliance once risk in the products has transferred to Buyer. If Buyer fails to perform its duties arising from this provision, it will be obliged to compensate ITEC for any resulting injury, loss or damage.

**VI. Delivery Period:**

1. The period for delivery and performance starts upon dispatch of the acknowledgement and acceptance of the order by ITEC, but not before, if necessary, all technical details have been fully cleared up and agreed upon, all documentation, permits, approvals, clearances etc. to be supplied by the Buyer have been provided, and only after any agreed upon down payment has been received by ITEC. Compliance with the delivery period or schedule shall amongst others be dependent on performance of Buyer's obligations.
2. The delivery deadline shall be deemed to have been met if, unless otherwise agreed upon, the products to be delivered have left the premises of ITEC's production plant prior to the expiry of such deadline.
3. In case the buyer does not immediately call off the ITEC Medical products after it has been advised of readiness for shipment, such ITEC Medical products shall be invoiced to buyer after one month following such notice of readiness for dispatch, and the expense incurred for storage shall be billed to buyer at a rate of € 30.00 per unit per month for each month started. Furthermore, ITEC shall have the right, after the setting and fruitless expiry of a reasonable extension of time, to dispose otherwise of the products to be delivered and then to claim the difference between the price agreed upon with buyer and the price by disposal to a third party from buyer.

**VII. Retention of Title:**

1. ITEC has the retention right with respect to its products delivered and consequently reserves title with respect to the products, until complete payment of all the invoices and claims has been received by ITEC. Up to this moment Buyer is considered to hold the products on behalf ITEC and consequently keep the products separated from other goods clearly marking the title of ITEC.
2. Buyer shall arrange for an adequate insurance for the products delivered.
3. In case of seizure or other measures by third parties with respects to the products delivered by ITEC, Buyer shall inform ITEC immediately in writing and inform the third parties on the (retention) rights if ITEC with respect to the products.

**VIII. Duties of Inspection and Notice of Defects:**

1. All claims arising from defects shall be notified in writing to ITEC immediately following discovering thereof. Claims that can be discovered by inspections of the exterior packaging of the products upon delivery, shall be notified within 5 working days of delivery of the product to Buyer by ITEC, or to any specified partner by Buyer. Any possible other claim arising from a warranty given by ITEC or construed by law, should be notified in writing to ITEC within 14 days from the day that Buyer could have be aware of the basis of such claim and/or damage claimed and/or the defect.
2. Products, which are the subject of the claim should be photographed and logged. All digital information incl. photos will have to be sent to ITEC in written form for inspection. ITEC will decide if the goods either need to be destroyed by the Buyer or need to be returned to ITEC, within 10 days, carriage paid.

**IX. Conditions of Use, obligations of Buyer:**

1. The application and/or use of the Product by Buyer, its employees, officers or third parties contracted by Buyer shall be strictly in accordance with the conditions of use.
2. Buyer is obliged to read the conditions of use and the accompanying protocol carefully and draft, in written form, an approach for training, instructions, installation, repair and replacement, storage, post marketing notices, end of life notices and compliance with the approach, protocol, these general conditions and the conditions of use upon delivery and instruct all employees, officers and third parties, who are involved with the use of the products, to act accordingly in written form.
3. The Instructions for Use are available in Dutch, German and English, and any other language upon request. The non-return of the protocol within 6 weeks after installation and hand-over invalidates the warranty. Generally excluded from the warranty period are all wear & tear parts. The provision of section X shall remain unaffected.4. Buyer shall return the duly signed and completed protocol of receipt within 6 weeks s of delivery of the product to Buyer.5. Buyer shall inform ITEC, in written form, immediately of an serious incident in respect of a treatment of a patient for which a product delivered by ITEC is used and that resulted in the death or serious consequences of respectively for the patient or third party using the product.
4. Buyer shall inform ITEC within 10 days, in written form, of a complaint by a patient or third party that could be caused or connected with the use of the product fabricated by ITEC or any particularity related to the product.
5. Buyer is not allowed to realise any alteration, change, connection of or with the product nor remove any item, piece, EC mark, number or name.
6. Buyer is obliged to administer clearly and appropriately the serial numbers of the product upon delivery and in the patients' medical file upon when using the product.

**X. Warranty of Quality of New ITEC Medical Products:**

1. Any warranty of ITEC, either construed by law or given in the conditions of use, is fully under the condition that Buyer completely fulfilled its obligations under the conditions of use of the product, these terms and conditions and namely article VIII, IX and X hereof.
2. In case where claims arising from defects are justified, Buyer shall return the respective products if so requested, carriage paid by the most appropriate and reasonable means of transport, which costs shall be refund by ITEC.
3. In case a claim is accepted by ITEC, ITEC shall only be obliged to repair the product or supply a perfect replacement. Buyer shall only be entitled to terminate the contract in the event that the repair of replacement is impossible, unacceptable or unreasonably delayed.
4. Any repair is realised in accordance with the instructions of ITEC and the conditions of use.
5. The validity of any warranty in respect of a product of ITEC is twelve (12) months after delivery to Buyer.

**XI. Liability and indemnification:**

1. Except where stated otherwise in the General Terms or required by mandatory law, all warranties, representations, obligations, liabilities and other terms, whether express or implied by law in connection with the products and services supplied by ITEC (amongst others in relation to performance, care and compliance with representations) are excluded from these General Terms.
2. Except where stated otherwise in the General Terms or required by mandatory law ITEC (also acting on behalf of its directors and employees and officers) can only be held liable for damages in respect of the (use) of its products provided that Buyer, its officers, employees or third parties hired by Buyer, complied completely with the obligations arising from or in respect to) the conditions of use, the Contract inclusive of the General Terms.
3. Any liability is further limited to gross negligence or wilful misconduct of ITEC, its directors, employees or officers except as otherwise required by mandatory law and restricted to the compensation paid under the insurance of ITEC and if such compensation is not paid, to the maximum of the purchase sum paid by Buyer.
4. Any form of consequential damages is excluded.
5. Buyer indemnifies ITEC for any claims arising out of the use of the product by Buyer in contravention with the conditions of use, these General Terms and conditions or the professional standards.

**XII. Intellectual Property:**

1. All materials, documents, data, information, instructions and/or inventions provided by or on behalf of ITEC Medical shall be and remain the sole and exclusive property of ITEC. Such documents may not be made available to any third parties without ITEC 's prior written consent. Buyer shall only use such property only for the purposes contemplated by the Contract and the conditions of use.

2 All rights with respect to the products delivered by or on behalf of ITEC shall be and remain the sole and exclusive property of ITEC.

Buyer may not remove any mark, number or reference to ITEC or perform any (other) act or transaction that could harm the rights of ITEC in respect of these products. 3. ITEC shall, at its sole discretion, defend any legal proceeding brought by a third party against Buyer in respect of alleged infringement of the patent, copyright, trademark, or trade secret claimed by such third party.

4. ITEC Medical shall have no obligation or liability to buyer under subsection 2 of this section XII,

(a) if ITEC Medical is not:

(i) promptly notified in writing of any such claim;

(ii) given the sole right to control and direct the investigation, preparation, defence and settlement of such claim, including the selection of counsel; and

(iii) given full reasonable assistance and cooperation by Buyer in such investigation, preparation, settlement and defence; and/or

(b) if the claim is made after a period of three (2) years from the date of delivery of the ITEC Medical product.

**XIII. Place of Performance and Place of Jurisdiction, Arbitration:**

1. Place of performance for all payments and delivery is at ITEC's head office.

The place of jurisdiction for any disputes arising from the business relationship between ITEC and Buyer is ITEC's head office. However ITEC is entitled to bring legal actions at any other statutory place of jurisdiction.

2. Relations between ITEC and Buyer are governed solely by the laws of the Netherlands, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and.

Any dispute, controversy or claim arising out of or in relation to this transaction, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Netherlands Arbitrage Institute (<http://nai-nl.org/en>) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three; however, for disputes having a value below 500,000.00 EUR, the number of arbitrators shall be limited to one. The seat of the arbitration shall be in Almelo, the Netherlands. The substantive law of the Netherlands shall apply. The arbitration shall be final and binding upon the Parties).

3. The arbitral proceedings shall be conducted in the Dutch language.

-- End of General Terms and Conditions --