

1. SURGICAL HOLDINGS – TERMS AND CONDITIONS (V4.1)

- 1.1 These Conditions establish the basis upon which We supply You with Goods and or Services to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by any trade, custom, practice, or course of dealing, or which may have previously applied in any contract or arrangement between You and Us.
- 1.2 You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by Us or on Our behalf which is not set out in the Contract.
- 1.3 You must read this document carefully. If You are in any doubt as to any aspect of these Conditions You should seek Your own advice.

2. INTERPRETATION

- 2.1 **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 usual commercial business.

Charges: the charges payable by You for the supply of the Goods and or Services in accordance with clause 11.

Commencement Date: has the meaning set out in the Schedule.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.8.

Contract: the contract between Us and You for the supply of Goods and or Services in accordance with these Conditions including each Order.

Goods: goods, including but not limited to Instruments, that We may supply to You in accordance with these Conditions.

Instruments: surgical and medical instruments of all types including endoscopes, scopes, air tools, and power tools for which We may at Our discretion perform the Services.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: Your order for Goods and or Services as set out in Your purchase order form to include all relevant information that We may from time require, including Your purchase order number.

Minimum Order Level: the minimum level of Our Charges per month for Our Services as more particularly described in the Schedule.

Services: the repair and or refurbishment of Instruments to the standard required to permit normal medical and surgical use.

Term: has the meaning set out in the Schedule and includes any extension thereof.

Us or Our or We: P.W. Coole & Son Limited incorporated and registered in England and Wales with company number 03090951 whose registered office is at Unit 8 Parkside Centre, Potters Way, Temple Farm Industrial Estate, Southend on Sea, Essex SS2 5SJ trading as Surgical Holdings.

You or Your: the person or company or organisation or body or similar the purchases the Goods and or Services from Us.

- 2.2 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 successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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; and
- (e) a reference to writing or written includes faxes and e-mails but not any other form of electronic communication.

3. COMMENCEMENT AND DURATION

- 3.1 This Contract shall be deemed to commence on the Commencement Date and, in the case of the supply of Services, continue for the Term and, after that, shall continue unless this Contract is terminated by either party giving to the other not less than three months' notice, unless this Contract is terminated in accordance with clause 15.

4. BASIS OF CONTRACT

- 4.1 Your Order constitutes Your offer to purchase Goods and or Services in accordance with these Conditions which We may accept or reject at Our discretion.
- 4.2 Your Order shall only be deemed to be accepted when We issue Our written acceptance of it.
- 4.3 The Contract constitutes the entire agreement between the parties.
- 4.4 Any samples, drawings, descriptive matter or advertising issued by Us, and any descriptions or illustrations contained in Our catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and or Services described in them. They shall not form part of the Contract or have any contractual force.

5. SUPPLY OF GOODS

- 5.1 Your Order for Goods must specify where You would like the Goods delivered (the "Delivery Location")
- 5.2 Delivery of the Goods shall be completed on unloading of the Goods at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or Your failure to provide Us with adequate instructions that are relevant to the supply or delivery of the Goods.
- 5.4 If You fail to accept or take delivery of the Goods at the Delivery Location during working hours on a Business Day, then except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 11.00 am on the Business Day following the day on which We attempted delivery; and
- (b) We shall store the Goods until delivery takes place, and charge You for all related costs and expenses (including insurance).

5.5 If 20 Business Days after We attempt delivery of the Goods You have not accepted or taken delivery of them, We may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge You for any shortfall below the price of the Goods.

6. TITLE AND RISK

6.1 Risk in the Goods passes to You on completion of delivery.

6.2 Title to the Goods shall not pass to You until We have received payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods passes to You, You shall:

- (a) hold the Goods on a fiduciary basis as Our bailee;
- (b) store the Goods separately from all other goods held by You so that they remain readily identifiable as Our 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 on Our behalf from the date of delivery;
- (e) notify Us immediately if You become subject to any of the events listed in clause 15.1(b) to clause 15.1(j) (inclusive); and
- (f) give Us such information relating to the Goods as We may require from time to time, but You may resell or use the Goods in the ordinary course of Your business.

6.4 If before title to the Goods passes to You, You become subject to any of the events listed in clause 15.1(b) to clause 15.1(j) (inclusive); or We reasonably believe that any such event is about to happen and We notify You accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy We may have, We may at any time require You to deliver up the Goods and, if You fail to do so promptly, enter any of Your premises or the premises of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 Upon receipt of Your Order for Services We shall inspect Your enclosed Instrument to ensure that it is capable of being repaired or refurbished or otherwise capable of receiving the Services, and if so, We shall use reasonable endeavours to perform the Services in accordance with Your Order in all material respects.

7.2 We shall use all reasonable endeavours to despatch completed Orders within 10 (ten) Business Days of receipt, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

7.3 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

7.4 We warrant to You that the Services will be provided using reasonable care and skill, and where appropriate in accordance with the requirements of ISO9001 and ISO13485.

7.5 Risk in each completed Order shall pass to You on completion of delivery to the address stated in Your Order, or if none, Your usual business address.

7.6 In the event that the Instrument is not able to be repaired or refurbished or otherwise capable of receiving the Services We will promptly bring this to Your attention.

7.7 We may, in certain circumstances and at Your request and cost, be able to supply You with a replacement Instrument which will be supplied as Goods in accordance with these Conditions.

8. OUR WARRANTY

8.1 Subject to the provisions of clause 8.2, or We otherwise notify You in writing, We warrant that on delivery, and for the Warranty Period Goods and or the repair or refurbishment to the Instrument shall (as appropriate):

- (a) conform in all material respects with their description;
- (b) be free from material defects in material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982); and
- (d) be fit for any purpose held out by Us.

8.2 Subject to clause 8.3, if:

- (a) You give Us written notice during the Warranty Period within a reasonable time of discovery that Goods or a repair to an Instrument does not comply with the warranty set out in clause 8.1; and
- (b) We are given a reasonable opportunity of examination; and
- (c) You (if We ask You to do so) return the Goods or the repaired Instrument to Us in accordance with Our instructions, then We shall, at Our option, repair or replace the defective Goods or repaired Instrument.

8.3 We shall not be liable for the warranty in clause 8.1 if:

- (a) We did not manufacture the Goods or provide the Services; or
- (b) You make any further use of the Goods or repaired Instrument after giving Us notice in accordance with clause 8.2; or
- (c) the defect arises because You failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Instrument or good trade practice; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- (e) the defect arises as a result of Us following any drawing, design, specification, or other instruction supplied by You; or
- (f) You alter or repair the Goods or Instrument without Our written consent; or
- (g) the defect arises as a result of fair wear and tear, wilful damage, misuse, wrongful use, vandalism, negligence, abnormal working conditions, or use in an extreme environment.

8.4 The Warranty Period referred to at clause 8.1 shall be:

- (a) a period of 12 months from the date of delivery for repairs or refurbishments to Instruments;
- (b) the expected life of the product for new Goods supplied by Us;
- (c) as stated in the Schedule or as otherwise notified to You for Goods or the Instruments subject to the Services where they are air tools or power tools.

8.5 You may reject any Goods delivered to You that do not comply with clause 8.1 provided that:

- (a) Your notice of rejection is given to Us:
 - (i) in the case of a defect that is apparent on a visual inspection, within ten Business Days of delivery; and
 - (ii) in the case of a latent defect, within ten Business Days of that defect becoming apparent; and
- (b) none of the events listed in clause 8.3 apply.

8.6 If You fail to give Us a notice of rejection in accordance with clause 8.5 then You shall be deemed to have accepted the Goods

8.7 Except as provided in this clause 8, We shall have no liability to You in respect of the Goods' or the repaired Instruments' failure to comply with the warranty set out in clause 8.1.

- 8.8 We supply Goods and/or Services to Your Order specifications. Subject to clause 8.1 no Order for the supply of Goods and/or Services which has been accepted by Us may be cancelled by You except with Our agreement and in terms that you shall indemnify Us in full against all loss (including loss of profit), costs, charges and expenses incurred by Us as a result of cancellation.
- 8.9 Subject to clause 8.5 no Order for the supply of Goods and/or Services performed by Us may be returned.
- 9. YOUR OBLIGATIONS**
- 9.1 You must:
- (a) ensure that the terms of Your Order and any information provided with it or otherwise requested by Us are complete and accurate and without any omission that could affect Our supply of the Goods or Our performance of the Services;
- (b) co-operate with Us in all matters relating to the supply of Goods and performance of the Services;
- (c) provide Us with such information and materials as We may reasonably require in order to supply the Goods and perform the Services, and ensure that such information is complete and accurate and without any significant omission;
- (d) in relation to the Services:
- (i) only supply Us with Instruments in boxes and packaging materials supplied by Us;
- (ii) carefully use Our boxes and packaging- in accordance with Our instructions to send Instruments to Us;
- (iii) use Our nominated delivery service to send items to Us;
- (iv) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (v) permit Us to leave a discrete permanent marking on each Instrument for identification and or tracking purposes.
- 9.2 If the performance of any of Our obligations under the Contract is prevented or delayed by Your act or omission or Your failure to perform any relevant obligation (each "Your Default"):
- (a) We shall without limiting Our other rights or remedies have the right to suspend performance of the Contract until You remedy Your Default, and We shall rely on Your Default to relieve Us from the performance of any of Our obligations to the extent the Your Default prevents or delays Our performance of any of Our obligations;
- (b) We shall not be liable for any costs or losses that You sustain or incur arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this clause 9.2; and
- (c) You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from Your Default.
- 10. TERRITORIAL LIMITATION**
- 10.1 Goods supplied by Us and Instruments for which We have performed the Services must only be used within the United Kingdom unless We agree otherwise in writing.
- 11. CHARGES AND PAYMENT**
- 11.1 Our Charges for the Goods will be as stated on Our price list or as otherwise notified to You.
- 11.2 Our Charges for the Services shall be on a time and materials basis as set out in Our standard fee rates.
- 11.3 Our Charges for the Services will be at least equal to the Minimum Order Level during the Term.
- 11.4 We reserve the right to increase Our standard Services fee rates, provided that such charges cannot be increased more than once in any 12 month period.
- 11.5 We will give You notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to You, You must notify Us in writing within two weeks of the date of Our notice and We shall have the right without limiting Our other rights or remedies to terminate the Contract by giving four weeks' written notice to You. Notwithstanding termination, in respect of Services, You shall remain liable for all outstanding Charges and the Minimum Order Level for the remainder of the Term.
- 11.6 We shall invoice You at the start of each calendar month during the Term for the Services based on Our estimate of Your average likely level of Charges during the Term.
- 11.7 If You disagree with Our estimate of likely Charges then You may notify Us and We will consider adjusting future monthly invoices accordingly.
- 11.8 You must pay each invoice submitted by Us with cleared funds within 30 days of its date.
- 11.9 Time for payment shall be of the essence of the Contract.
- 11.10 All amounts payable by You under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT") unless otherwise stated.
- 11.11 If You fail to make any payment due to Us under the Contract by the due date for payment, then You shall pay interest on the overdue amount at the rate of 4% per cent per annum above Lloyds TSB 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. You shall pay the interest together with the overdue amount.
- 11.12 You 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).
- 11.13 We may at any time, without limiting Our other rights or remedies, set off any amount owing to Us by You against any amount payable by Us to You.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by Us.
- 12.2 We license all such rights to You free of charge and on a non-exclusive, non-transferable, and non sub-licensable basis to the minimum extent as is necessary to enable You to make reasonable use of the Goods or the repaired Instruments.
- 13. CONFIDENTIALITY**
- 13.1 A party (the "receiving party") shall keep in strict confidence all technical or commercial know-how, information, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (the "disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.
- 13.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.
- 13.3 The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 13.4 This clause 13 shall survive termination of the Contract.
- 14. LIMITATION OF LIABILITY**
- 14.1 Nothing in these Conditions shall limit or exclude Our liability for:
- (a) death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation.
- 14.2 Subject to clause 14.1:
- (a) We shall under no circumstances whatever be liable to You, 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) Our total liability to You 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:
- (i) for Services, in respect of all claims (connected or unconnected) in any consecutive 12 month period exceed the equivalent of the total Charges actually paid by You to Us for the Services in that period; and
- (ii) for Goods, the cost of those Goods.
- 14.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.4 This clause 14 shall survive termination of the Contract.
- 15. TERMINATION**
- 15.1 Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to You if:
- (a) You commit a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
- (b) You repeatedly breach any of the terms of the Contract in such a manner as to reasonably justify the opinion that Your conduct is inconsistent with You having the intention or ability to give effect to the terms of this Contract;
- (c) You fail to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment;
- (d) You suspend, or threaten to suspend, payment of Your debts or You are unable to pay Your debts as they fall due or You admit inability to pay Your debts or (being a company or limited liability partnership) You are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or You make a proposal for or enters into any compromise or arrangement with Your creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up;
- (g) a creditor or encumbrancer of the other party 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 Your assets and such attachment or process is not discharged within 14 days;
- (h) 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 You (being a company);
- (i) the holder of a qualifying floating charge over Your assets has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint or has appointed a receiver over Your assets;
- (k) any event occurs or proceeding is taken with respect to You in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(b) to clause 15.1(j) (inclusive);
- (l) You suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of Your business;
- (m) Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under the Contract has been placed in jeopardy.
- 15.2 Without limiting Our other rights or remedies, We shall have the right to suspend provision of the Services under the Contract or any other contract between You and Us if You become subject to any of the events listed in clause 15.1(b) to clause 15.1(m), or We reasonably believe that You are about to become subject to any of them, or if You fail to pay any amount due under this Contract on the due date for payment.
- 16. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) You shall immediately pay to Us all of Your outstanding unpaid invoices and interest and, in respect of Services supplied or remaining Minimum Order Level but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 17. INDEMNITY**
- 17.1 You shall indemnify Us 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 professional costs and expenses) that We suffer or incur arising out of or in connection with Your breach of any clause in these Conditions.
- 18. FORCE MAJEURE**
- 18.1 For the purposes of these Conditions, a "Force Majeure Event" means an event beyond Our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Us or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 18.2 We shall not be liable to You as a result of any delay or Our failure to perform Our obligations under this Contract as a result of a Force Majeure Event.
- 18.3 If the Force Majeure Event prevents Us from providing any of the Services for more than four weeks, We shall, without limiting Our other rights or remedies, have the right to terminate this Contract immediately by giving You written notice.
- 19. GENERAL**
- 19.1 Assignment and other dealings
- (a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent, provided

- that, in Our reasonable opinion, any subcontractor We use carries adequate insurance cover and operates to sufficient quality standards at least as good as Our own.
- (b) You shall not, without Our prior written consent, 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.
- 19.2 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 19.2(a); if sent by pre-paid first class post or other next working day delivery service, at 11.00 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.
- 19.3 Severance. 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.
- 19.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.
- 19.5 No failure or delay by a party in exercising 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 its 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.
- 19.6 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.8 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 agreed in writing and signed by Us.
- 19.9 Governing law. This 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.
- 19.10 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).