SURGICAL HOLDINGS LIMITED

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SURGICAL HOLDINGS

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 **Definitions:**

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods, or Services, or Goods and Services, in accordance with these Conditions.

Customer: the person or firm who purchases the Goods or Services or Goods and Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 3.4.1

Force Majeure Event: has the meaning given to it in clause 13.

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

Good Industry Practice: the reasonable skill, care and diligence to be expected of a provider of similar size and experience to the Supplier in the provision of comparable services which are substantially similar to the Services.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing in the Quote and/or Order by the Customer and the Supplier.

Goods Warranty Period: has the meaning given clause 3.6.2.

Instruments: Goods which are surgical and medical instruments of all types including endoscopes, scopes, air tools, and power tools.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

ISO: International Organisation for Standardisation

MHRA: Medicines and Healthcare products Regulatory Agency

Minimum Order Level: the minimum level of any Order of Goods or Services which the Supplier is prepared to accept.

Order: the Customer's order for the supply of Goods or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation or via the Supplier's online portal, or as the case may be.

Quote: the Supplier's quote for the supply of Goods and Services as requested by the Customer, as set out in the Supplier's formal documentation or the Supplier's written communication or via the Supplier's online portal, or as the case may be.

Services: the services (or any part of them) set out in the Quote and/or Order

Service Specification: the description or specification for the Services provided in writing in the Quote, Order, Supplier's website or any catalogue by the Supplier to the Customer.

Service Level Specification: the description or specification for the Services provided in writing in the Quote, Order, Supplier's website or any catalogue by the Supplier to the Customer in the form set out in Customer Service Level Agreement (Template F-182).

Services Warranty Period: has the meaning given in clause 4.5.

Supplier: Surgical Holdings Limited (trading as Surgical Holdings) registered in England and Wales with company number 03090951.

Supplier Materials: has the meaning given in clause 5.1(g)

Term: the minimum period of supply of any Order of Goods or Services which the Supplier is prepared to accept, as detailed in the Order or Service Level Specification.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 **Interpretation:**

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 and permitted assigns.

c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

2.1 The Quote constitutes an offer by the Supplier to sell and/or supply Goods or Services in accordance with these Conditions.

2.2 The Customer's Order will be deemed to be an acceptance of the Quote at which point, and on which date, the Contract shall come into existence (**Commencement Date**).

2.3 Each Quote and Order shall constitute a separate Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

2.5 Once a Contract comes into existence (pursuant to clause 2.2), the Customer cannot cancel and/or return the Order, except:

a) with the Supplier's written agreement and the Customer agrees to indemnify the Supplier in full against all loss (including loss of profit), costs, charges and expenses incurred by the Supplier as a result of cancellation.

b) where the Conditions in the Contract permit it and the Customer complies with the Conditions of the Contract in full.

2.6 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 law, trade custom, practice or course of dealing.

2.7 The Supplier's Quote is only valid for a period of 30 Business Days from its date of issue.

2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.9 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Goods

3.1 The Goods are described in the Supplier's catalogue and Quote as modified by any applicable Goods Specification.

3.2 Where the Customer requests a prototype for a Goods Specification supplied by the Customer, the Supplier will provide a quote for the design and manufacture of the prototype and clauses 2.1 and 2.2 shall apply to the same.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event. If the Customer opposes any notified amendments to the Goods Specification, the parties shall negotiate in good faith to agree replacement terms for an Order in light of that change that, to the greatest extent possible, achieve the intended commercial result of the provisions of the original Order. If such equivalence cannot be agreed, the Customer may withdraw the Order,

provided that notification of withdrawal is provided within 5 Business Days of the Supplier's notice to amend.

3.4 Delivery of Goods

3.4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree **(Delivery Location)** at any time after the Supplier notifies the Customer that the Goods are ready.

3.4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier 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 the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.4.4 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

b) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

3.4.5 If, ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery, the Customer has not taken or accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, insurance and selling costs, charge the Customer for any shortfall below the price of the Goods.

3.4.6 The Supplier 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.

3.5 Title and risk

3.5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

3.5.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

3.5.3 Until title to the Goods has passed to the Customer, the Customer shall:

a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.3(b) to clause 11.3(d); and

e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

i. the Goods; and

ii. the ongoing financial position of the Customer.

3.5.4 Subject to clause 3.5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

a) it does so as principal and not as the Supplier's agent; and

b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

3.5.5 At any time before title to the Goods passes to the Customer, the Supplier may:

a) by notice in writing, terminate the Customer's right under clause 3.5.4 to resell the Goods or use them in the ordinary course of its business; and

b) require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product 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.

3.6 Quality of Goods

3.6.1 Goods manufactured by third parties will be notified to the Customer by either the Supplier's catalogue or Quote. Third-party manufactured Goods are covered by the warranties provided by the original manufacturer or the seller of the Goods. To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Equipment to the Supplier can be assigned to the Customer, the Supplier hereby assigns them to the Customer. Third party warranties may vary from Goods to Goods. It is the Customer's responsibility to consult the applicable Goods documentation for specific warranty information. In addition, the Customer acknowledges that certain third-party Goods' warranties may limit or void the remedies that they offer if unauthorised persons perform support service on the Goods.

3.6.2 As to Goods manufactured by the Supplier, the Supplier warrants that on delivery, and for a period of 18 months from the date of delivery (**Goods Warranty Period**), the Goods shall:

a) conform in all material respects with their description and any applicable Goods Specification;

b) be free from material defects in design, material and workmanship at the time of delivery;

c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and taking account of the description of the goods, the price and other relevant circumstances);

d) be fit for any purpose held out by the Supplier in the Quote or Order; and

e) meet the relevant legislative requirements in the country of supply.

3.6.3 Subject to clause 3.6.4, if in respect of Goods manufactured by the Supplier:

a) the Customer gives notice in writing to the Supplier during the Goods Warranty

Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.6.2;

b) the Supplier is given a reasonable opportunity of examining such Goods; and

c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

3.6.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 3.6.2 if:

a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 0;

b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

d) the Customer or any third party acting on behalf of the Customer alters or repairs such Goods without the written consent of the Supplier;

e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

3.6.5 Except as provided in this clause 3.66, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.6.2.

3.6.6 This clause 3.66 shall apply to any repaired or replacement Goods supplied by the Supplier under warranty.

3.7 Return of Goods

3.7.1 Subject to law, the Supplier is under no obligation to accept the returns of Goods and shall only do so in its absolute discretion.

3.7.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, in agreeing such return, the Supplier shall be entitled to retain a 50% re-stocking charge based on net invoice value before providing a partial refund for such Goods.

4. Services

4.1 The Supplier shall supply the Services to the Customer in accordance with the Supplier's Quote as modified by any Services Specifications in all material respects.

4.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified, but any such dates shall be estimates only and time shall not be of the essence for the

performance of the Services.

4.3 The Supplier reserves the right to amend the Services/ Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill in accordance with Good Industry Practice.

4.5 Where the Services include repair or loan of Instruments, the Supplier warrants that on delivery and for the period of the Contract or at most 18 months from the date of delivery (other than for power and air tools, in which case the period will be 3 months from the date of delivery) (**Services Warranty Period**), the Instruments shall:

a) be free from material defects in design, material and workmanship;

b) be of satisfactory quality;

c) be fit for any purpose held out by the Supplier; and

d) meet the relevant legislative requirements in the country of supply of Services.

4.6 As to the warranty provided at clause 4.5, clauses 3.6.3, 3.6.4 and 3.6.5 shall apply, save that reference to 'Goods Warranty Period' shall be replaced with 'Services Warranty Period' and 'Goods' replaced with 'Instruments'.

4.7 <u>Repair Services</u>

4.7.1 On receipt of a request for repair, the Supplier will arrange for collection of the Instruments and following the Supplier's inspection of the Instruments it will provide the Customer with a Quote or confirm whether the repairs are included in the cost of the existing repair Services. Clauses 2.1 and 2.2 apply as to the commencement of the Contract.

4.7.2 On inspection of the Instrument, the Supplier is at liberty to reject the request for repair and will return the Instruments to the Customer within a reasonable period.

4.7.3 The Supplier reserves the right to cease any repairs and/or revise its Quote, where damage to the Instrument was not identified during the initial inspection. Where the Supplier considers that additional charges are applicable, it will send a revised Quote to the Customer and the Customer will be required to submit a new Order.

4.7.4 At all times, the Instruments provided to the Supplier for repair, remain the ownership of the Customer and the Customer remains solely responsible for all such Instruments and should continue to hold any such insurance for them.

4.7.5 If the Customer fails to accept delivery of the Instruments, clauses 3.4.4 and 3.4.5 shall apply, save that reference to 'Goods' is replaced with 'Instruments' and the Supplier will remain entitled to issue its charges for the Term together with any further and additional costs which the Supplier incurs.

4.8 <u>Loan of Instruments</u>

4.8.1 On receipt of a request for a loan of Instruments, the Supplier will provide the Customer with a Quote, which will also set out the Term of the loan and the applicable terms and conditions of the loan arrangements. Clauses 2.1 and 2.2 apply as to the commencement of the Contract.

4.8.2 The Term of the loan may be extended only by the written agreement of the Supplier and the Supplier reserves the right to revise its Quote to facilitate any amends to the Contract.

4.8.3 The Instruments will always remain in the ownership of the Supplier.

4.8.4 The Customer warrants that it:

a) will use the Instruments themselves only for their intended purposes and not for any commercial purpose without first obtaining the Supplier's written consent.

b) will not supply the Instruments to any person except those within its organisation, or allow it to be removed from its premises unless it first obtains the Supplier's written consent.

c) will use the Instruments in accordance with all applicable laws, regulations, and governmental guidelines.

d) takes the risk of any loss or damage to the Instruments on delivery and will remain liable until the Instrument has been returned to the Supplier. The Customer will insure the Instruments for its full re-instatement value.

e) will keep the Instruments in good condition and repair (fair wear and tear excepted) throughout the Term, and will be liable for the costs and expenses of maintaining and repairing the Instruments and accessories required for the use of the Instruments during the Term.

f) will not modify the Instruments without first obtaining the Supplier's written approval.

g) will within 5 Business Days after the expiry of the Term, at its expense, return the Instruments in good working order to the Supplier's trading address specified in the Services Specification.

4.8.5 No licence under any Intellectual Property owned or controlled by the Supplier is granted or implied by the acceptance of such Order, other than the right for the Customer to have possession of, and use, the Instruments in accordance with the terms of this Contract.

4.8.6 The Customer's right to use the Instrument, will come to an end on the expiry of the Term.

4.8.7 In the event that the Customer fails to return the Instruments to the Supplier in accordance with the terms of this Contract and/or the Services Specification, the Supplier is entitled to charge a daily rate for the Instruments and take such action as is necessary to recover such Instruments from the Customer, including entering any premises of the Customer or of any third party where the Instruments are stored in order to recover them and the costs of such recovery to be met by the Customer.

4.8.8 In the event that the Instruments are damaged while in the control of the Customer, the Customer agrees to indemnify the Supplier for the full re-instatement value of the Instrument and will make payment of such re-instatement value to the Supplier within 14 days from demand.

4.9 Service Level Agreement

4.9.1 Where the Customer requests Services over a period of time, the Supplier will issue to the Customer a Service Level Specification, which the Customer must sign and return to the Supplier as confirmation of the Service Level Agreement.

4.9.2 The Service Level Specification on acceptance by the Customer will form the terms of the

Service Level Agreement and the terms specified therein will take precedent over any terms contained in this agreement, in the case of a conflict.

5. Customer's obligations

5.1 The Customer shall:

a) ensure that the Quote accurately reflects the Goods and Services requested and is confirmed by its Order and any information it provides in both the Service Specification and the Goods Specification are complete and accurate;

b) co-operate with the Supplier in all matters relating to the Services;

c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

f) comply with all applicable laws, including health and safety laws;

g) keep all materials, equipment, Instruments, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

h) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

5.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2; and

c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6. Charges and payment

6.1 The price for Goods and Services shall be the price set out in the Supplier's Quote and/or the Service Level Specification (as revised where applicable) as at the date that such documentation was issued to the Customer.

6.2 The Supplier reserves the right to:

a) increase the charges for the Services, pursuant to a Service Level Agreement, on an annual basis with effect from each anniversary of the Commencement Date of the same, in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;

b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

i. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

ii. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

iii. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

6.3 The Supplier shall invoice the Customer on or at any time after completion of delivery of the Goods or the Instruments (pursuant to the repair Services).

6.4 In respect of Instruments on loan and Services pursuant to a Service Level Agreement, the Supplier shall invoice the Customer on the monthly anniversary of the Commencement Date in advance based on the total Charge for the initial Term divided by the number of months specified as the Term or as specified in the Service Level Specification.

6.5 The Customer shall pay each invoice submitted by the Supplier:

a) within 30 days of the date of the invoice; and

b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

6.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

6.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Intellectual property rights

7.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the sole purpose of receiving and using the Services and the Deliverables in its business.

7.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 7.2.

7.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8. Data protection

8.1 The following definitions apply in this clause 8:

a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures**: as defined in the Data Protection Legislation.

b) **Data Protection Legislation**: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

c) **Domestic Law**: the law of the United Kingdom or a part of the United Kingdom.

8.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

8.3 The parties acknowledge that as between them for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Annex 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

8.4 Without prejudice to the generality of clause 8.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

8.5 Without prejudice to the generality of clause 8.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

a) process that Personal Data only on the documented written instructions of the Customer which are set out in Annex 2 unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;

b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

i. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

iv. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and

h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

8.6 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.

8.7 Either party may, at any time on not less than 30 days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

9. Confidentiality

9.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 9.2.

9.2 Each party may disclose the other party's confidential information:

a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

10. Indemnity and Limitation of liability

10.1 The Supplier has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding £5m per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

10.2 The Customer shall indemnify the Supplier 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 it suffers or incurs arising out of or in connection with the Customer’s breach of any clause in these Conditions.

10.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including 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 suffered or incurred by the Supplier arising out of or in connection with the manufacture of such Goods and any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

10.4 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.5 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

10.6 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

a) death or personal injury caused by negligence;
b) fraud or fraudulent misrepresentation;
c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
d) defective products under the Consumer Protection Act 1987.

10.7 The Supplier’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:

a) for Services provided pursuant to a Services Level Agreement, in respect of all claims (connected or unconnected) in any consecutive 12-month period exceed the equivalent of the total Charges actually paid by the Customer for the Services in that period; and
b) for Goods, the Supplier’s 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 and will be no more than the value of the Goods under the Order.

10.8 The Supplier 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 the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

10.9 The Supplier has given commitments as to compliance of the Goods and Services. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.10 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 As to Goods and Services for repair of Instruments, the Customer cannot terminate the Contract once the Order has been placed by it.

11.2 As to Services for the loan of Instruments and pursuant to a Service Level Agreement, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 3 months' written notice, expiring at the end of the initial Term and upon each end of Term anniversary thereafter.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

a) the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

b) The Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

c) The Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

d) The Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;

e) the Customer fails to pay any amount due under the Contract on the due date for payment; or

f) there is a change of Control of the Customer.

11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.3(b) to clause 11.3(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Contract:

a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

13. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 21 days' written notice to the affected party.

14. General

14.1 **Assignment and other dealings**

a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract and the Customer agrees to execute any documents required by the Supplier to give effect to such dealing with their rights and obligations

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

14.2 **Notices**

a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

i. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

ii. sent by email to the following addresses (or an address substituted in writing by the party to be served):

Supplier: info@surgicalholdings.co.uk

Customer: as specified in the Order/ Services Specification

b) Any notice shall be deemed to have been received:

i. if delivered by hand, at the time the notice is left at the proper address;

ii. if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or

iii. if sent by email, provided a delivery failure notification is not returned at the time of transmission, or, if this time falls outside Business Hours in the place of receipt,

when Business Hours resume.

c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 14.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

14.4 **Waiver.**

a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

14.5 **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, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.6 **Entire agreement**.

a) The Contract constitutes the entire agreement between the parties.

b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

14.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

14.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.