

TRANSPLANT SYSTEMS PTY LTD
TERMS AND CONDITIONS OF ORDER AND SUPPLY
Current as at April 2012

1. "Transplant" refers to Transplant Systems Pty Ltd ABN 87 050 197 012
"Customer" refers to the person or company by or on behalf of whom these Terms and Conditions are accepted and who places an order with Transplant for the supply of Goods.
"Goods" means goods ordered by the Customer from Transplant from time to time.

2.1 These signed Terms and Conditions of Order and Supply are the only terms and conditions upon which Transplant will accept orders for Goods and can only be varied by prior written agreement of Transplant.

2.2 These Terms and Conditions are also subject to the terms of any credit arrangement between Transplant and the Customer, including the provision of a Deed of Guarantee and Indemnity.

3. ORDERING OF GOODS

3.1 All particulars of any order for Goods must be confirmed by customer's purchase order listing the required goods.

3.2 Transplant will confirm receipt of all orders and their particulars, including delivery dates, with the Customer by email, facsimile or post.

3.3 Transplant will use its best endeavours to make delivery on the scheduled delivery date/s specified in the accepted order PROVIDED HOWEVER that Transplant shall not be liable to the Customer for any failure to deliver all or any of the Goods on the said scheduled delivery date/s nor will such failure entitle the Customer to cancel or terminate the order or any part thereof.

4. PRICE AND PAYMENT

4.1 The Customer shall pay Transplant for any Goods in \$AUD in accordance with Transplant's quoted price current at the date of delivery of the Goods unless otherwise agreed in writing with Transplant.

4.2 Unless otherwise agreed in writing with Transplant, payment by the Customer for the Goods and all other fees and charges shall be made within 30 days of invoice from Transplant. The Customer shall pay Transplant interest at the rate of 10% per annum on all overdue amounts from the date such amount falls due until all outstanding amounts have been paid in full. Payment shall not be taken to have been made until the funds received are cleared into Transplant's account.

4.3 In addition to the purchase price of the Goods, the Customer shall pay GST plus other Government levies or charges which may be imposed in respect of the Goods.

4.4 The Customer shall fully indemnify and hold Transplant harmless against all loss, costs and expenses incurred by Transplant as a direct or indirect result of the Customer failing to comply with any of the Terms and Conditions (including without limitation in respect of this term, debt collection fee and charges and legal costs on a solicitor own client basis incurred by Transplant whether or not legal proceedings to recover any amount outstanding are issued).

4.5 To the extent permitted by applicable legislation, the customer shall forfeit any deposits paid upon the cancellation by it of the order for whatever reason other than the inability of Transplant to supply the Goods within a reasonable time of the delivery date where such delay is not caused by force majeure. Transplant shall not be liable to the Customer or its Agents for any losses whatsoever and howsoever arising incurred as a result of the cancellation of an order or any part thereof by Transplant beyond the return of the deposit to the Customer where such cancellation is without cause.

4.6 Transplant may at its discretion charge a storage fee for any machinery order or part thereof that is delayed for shipment as a result of a Customer request to delay a shipment.

4.7 Transplant may recover any costs incurred howsoever from the Customer for freight, storage, handling or any other charges not mentioned here incurred as a direct or indirect result of the Customer's request to cancel or delay delivery of an order or any part thereof.

4.8 The Customer may not seek to claim any compensation either monetarily or in any other kind as a result of delays in installation due to any additional on-site works that may need to be carried out as a result of the commissioning or installation of any equipment supplied by Transplant.

5. DELIVERY AND INSTALLATION

5.1 All freight charges, insurance costs and other costs associated with transporting the Goods to the Customer shall be met by the Customer unless otherwise agreed in writing.

5.2 Transplant will arrange delivery of the Goods to the Customer at the Customer's delivery address specified on any order or as otherwise requested in writing by the Customer.

5.3 Where the Goods supplied by Transplant under a particular order are to be installed or commissioned by Transplant, Transplant will explain to the Customer how the Goods operate and shall inform the Customer of any then applicable health and safety requirements, PROVIDED HOWEVER it shall be the Customer's responsibility to ensure that the Goods are operated in accordance with any applicable statutory or regulatory provision(s) and that all persons operating the Goods are appropriately trained and/or qualified. The Customer hereby releases and forever discharges Transplant from any liability or obligation in respect of any regulatory requirements or approvals applicable to the installation or use of any Goods.

5.4 Transplant staff or staff hired by Transplant for the purposes of carrying out commissioning or installation work will be given full and unimpeded access to the site locations and facilities so as required to allow the commissioning and installation work to be carried out. Transplant staff may as they desire request assistance on site from staff employed by the Customer at no cost to Transplant. Transplant may request that staff or agents of the Customer to vacate the area of commissioning or installation so as to allow the works to be carried out without impediment.

5.5 The Customer may not interfere in any form so as to disrupt the works being carried out to install or commission equipment.

5.6 All machinery installations by Transplant Systems are to be paid for in accordance with the relating signed acceptance of offer and if required to be installed, commissioned and operators to be trained the customer shall after operator training has been completed sign Transplants commissioning acceptance document retaining a copy of same..

6. TITLE AND RISK

6.1 All ownership of, property in and legal title to all tangible property in the Goods shall remain with Transplant until such time as the Customer has paid both the full contract price for the said Goods and all other debts owing by the Customer to Transplant at the relevant times. Until such time as the Customer has paid in full all monies owed to it by Transplant the relationship between Transplant and the Customer shall be in a fiduciary relationship and during this time the Customer shall hold all Goods separately as bailee for Transplant in such a way that they can be traced and identified as having been supplied pursuant to a particular order. Nevertheless, the Customer shall be entitled to sell the Goods to a customer within the framework of the normal carrying on of its business and to deliver the Goods to the customer on condition that so long as the Customer has not fully discharged its debt under any order to Transplant, the Customer shall hold in trust for Transplant all moneys resulting from the sale for such Goods pending payment of the moneys due to Transplant and shall hand over to Transplant any claims it has against the customer resulting from the transaction.

6.2 Without prejudice to any other rights or remedies available to Transplant, in the event of non- payment of all sums due by the Customer to Transplant, Transplant shall:

- (a) Have the right to suspend performance or terminate any other agreement between Transplant and the Customer, and
- (b) Have the right to repossess any Goods for which payment has not been received, and any documentation, dates records or information relating thereto. For this purpose, Transplant or any one or more of its agents or authorised representatives shall be entitled at any time without notice to enter upon any premises in which the Goods are or are reasonably believed by Transplant to be kept, stored or used, and to repossess the same on behalf of Transplant and shall not be responsible for any damage reasonably necessary in enforcing its right.

6.3 Risk of loss or damage to the Goods passes to the Customer from the time that the Goods are handed by Transplant, its servants or agents, to the freight carrier arranged by or for the Customer by Transplant Systems

6.4 The Customer consents to the registration by Transplant of the security interest created by condition 6.1 above on the Personal Property Securities Register established by the Personal Property Securities Act 2009.

7. RETURN OF GOODS

7.1 If any of the Goods delivered in purported performance of any order are not in accordance with the requirements of a particular order and the Terms and Conditions set out herein in every respect the Customer may return those Goods to Transplant PROVIDED HOWEVER that, to the extent permitted by applicable legislation:

- (i) such Goods must be received by Transplant within fourteen (14) days of initial delivery to the Customer, and
- (ii) the packaging of the Goods remains intact and the Goods are, in Transplant's opinion, in an 'as new condition.

Except where otherwise provided in the warranty against defects in Annexure A (Urbinati brand equipment applicable) of these Terms and Conditions or where prohibited by applicable legislation, the return of any Goods supplied will be at the Customer's expense and risk. Upon receipt of the returned Goods, Transplant shall decide whether the Customer is entitled to return these Goods. If it so decides, Transplant shall refund to the Customer the reasonable cost of returning those Goods. Except as expressly provided herein or as required by applicable legislation, Transplant shall not be under any obligation to accept the return of any Goods supplied to the Customer.

8. EXCLUSION AND LIMITATION OF LIABILITY

8.1 Except to the extent that the exclusion, restriction or modification of certain guarantees, conditions, warranties and rights is prohibited or voided in the context of these Term and Conditions of Order and Supply by the *Competition and Consumer Act 2010* (Cth) or any other applicable legislation, these Terms and Conditions are in lieu of and to the exclusion of all other guarantees, conditions and warranties, express or implied, relating to the supply of any Goods or the provision of Services, including but not limited to the implied guarantees of merchantability and fitness for a particular purpose.

8.2 Where such limitation of liability is not prohibited or void under any Act of Parliament, the

liability of Transplant to the Customer for any loss, damage or injury whatsoever (including consequential and economic loss) howsoever arising directly or indirectly in connection with any Goods, the supply of or use of any Goods or the supply of any services shall be limited to any one or more of the following as determined by Transplant in its absolute discretion:

(a) In the case of any Goods:

- (i) The replacement of the Goods or the supply of equivalent goods;
- (ii) The repair of the Goods;
- (iii) The payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (iv) The payment of the, cost of having the Goods repaired; and

(b) In the case of any services:

- (i) The supplying of the services again; or
- (ii) The payment of the costs of having the services supplied again.

8.3 Under no circumstances will Transplant be liable for any loss, damage or injury whatsoever or howsoever arising as a result of any incorrect or inappropriate use of any Goods or the failure of the Customer to follow instructions provided as part of the services.

9. If Transplant is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, then it shall be excused from performance or the punctual performance as the case may be, for so long as such circumstance shall continue. Where Transplant is so prevented or delayed it shall within 14 days of the onset of the circumstance give written notice of that fact to the Customer, together with details of the Force Majeure circumstance, and an indication of the likely duration of that circumstance. Force Majeure shall mean all circumstances beyond the reasonable control of Transplant, and shall include, but without limiting the generality thereof, strikes, lockouts, acts of God, flood, fire, shortages of raw materials and delays in arrival or clearance of imported goods.

10. ACCEPTANCE

The Customer by signing the acceptance provisions below agrees that these Terms and Conditions in respect of all orders placed by it shall form part of any contract for the supply of Goods or the provision of any services entered into by the Customer with Transplant in the future unless expressly provided for in writing to the contrary and signed by Transplant..

11. GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of The State of Victoria, Australia.

ACCEPTANCE:

THE CUSTOMER HEREBY ACKNOWLEDGES THAT THEY HAVE READ AND AGREE TO THESE TERMS AND CONDITIONS OF ORDER AND SUPPLY AND THAT THESE TERMS AND CONDITIONS OF ORDER AND SUPPLY SHALL UNTIL VARIED IN WRITING FORM PART OF ANY CONTRACT FOR THE SUPPLY OF GOODS OR THE PROVISION OF SERVICES PLACED BY THE CUSTOMER WITH TRANSPLANT IN THE FUTURE:

CUSTOMER NAME:

COMPANY NAME •

(Full legal entity)

ABN/ ACN •

AUTHORISED SIGNATORY

I / we hereby acknowledge that I/we the undersigned am an authorized signatory acting for the above mentioned Company and have read in full and fully understand the Terms and Conditions of Order and Supply and agree that we will be bound by them. I / we understand that Transplant Systems Pty Ltd may vary the Terms and Conditions of Order and Supply without notice and furthermore understand that a current copy of the prevailing Terms and Conditions of Order and Supply can be found on the website :- <http://www.transplantsystems.com.au/> and also can be supplied in print form upon request by telephoning Transplant Systems 03 97699733. These Terms and Conditions of Order and Supply do not alter your rights as a consumer under any applicable legislation.

Signed ' Date : / /

Witnessed by • Date : / /

Please now photocopy all pages and keep a copy in your file for your own records. Please return the fully completed document to :- Transplant Systems Pty Ltd 63 Enterprise Avenue, Berwick, Victoria, 3806