

1. **General.** These terms and conditions ("Terms and Conditions") shall apply to and govern the sale of Goods by Beaver-Visitec International Sales Limited ("BVI") to Buyer to the exclusion of all other terms and conditions including any terms and conditions which Buyer may purport to apply under any purchase order or similar document or which could be implied by trade custom, practice or course of dealing. BVI objects to other terms and conditions that may be proposed by Buyer. Any variation to these Terms and Conditions (including any special terms agreed between the parties) shall be inapplicable unless agreed in writing by BVI.

No particulars, statements or descriptions, whether contained in any advertising matter, catalogues, brochures, price lists or otherwise provided by BVI concerning the Goods, nor any oral representations by any employee, agent or representative of BVI shall form part of the Contract/Purchaser Order or these Terms and Conditions or be treated as a representation on the part of BVI.

Definitions:

- (A) "Buyer" means the person, firm, company or authority to which Goods are supplied subject to these Terms and Conditions.
 (B) "Goods" means the goods supplied by BVI to Buyer subject to these Terms and Conditions.
 (C) "Contract" and/or "Purchase Order" mean any agreement for the purchase of Goods by Buyer to which these Terms and Conditions relate.
 (D) "Price List" means the standard price list for the Goods issued by BVI from time to time as amended from time to time.

2. **Prices and Minimum Order Values.** Prices, unless specified separately, will be those quoted in the Price List in force at the date that the relevant Goods are dispatched and are subject to variation by BVI without notice prior to the dispatch of the relevant Goods. BVI may increase prices at any time, unless there is a written agreement stating otherwise. Additional freight/delivery charges are applicable for certain Goods or quantities of Goods. Where Buyer orders less than the minimum order quantity for any Goods specified in the Price List, BVI may refuse to accept such order.
3. **Cancellation.** The Contract/Purchase Order may not be cancelled by Buyer except with the written consent of BVI. BVI, at its discretion, may cancel the Contract/Purchase Order by serving written notice to Buyer in the event that:
- a petition is presented, order made, meeting convened, resolution passed or any step is taken by any person (including BVI) with a view to the winding up (whether solvent or insolvent) of Buyer, or Buyer ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganization, merger or consolidation on terms approved by BVI before that step is taken; or
 - Buyer stops or suspends or threatens to suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to do so under Section 123 of the Insolvency Act 1986; or
 - a petition for an administration order is presented or an application for an administration order is made, or an administrator is appointed or notice of intention to appoint an administrator is given, or any other step is taken by any person with a view to the administration of Buyer under the Insolvency Act 1986 including the passing of any resolution by the director or shareholders of Buyer approving the presentation of any such petition, the making of any such application or appointment of the giving of any such notice; or
 - it becomes illegal under the laws of any applicable jurisdiction for BVI to supply the Goods to Buyer.
4. **Payment.** Unless otherwise agreed in writing between the parties, the price of the Goods shall be paid in cash on or before delivery. Payment details for customers outside of the America's are detailed on invoices and/or statements. Payment details can also be provided upon request by emailing: accounts_receurope@beaver-visitec.com
- Where BVI agrees in its sole discretion to supply the Goods on credit, the Goods shall be paid for not later than the agreed terms. BVI reserves the right to close the account or withhold further supplies of Goods if a Buyer fails to settle the invoice by the Due Date, without prejudice to any existing rights BVI may have in respect of any such unpaid invoice.
 - Any credit terms or extension of credit allowed to Buyer by BVI may be changed or withdrawn at any time.
 - If Buyer defaults in the payment when due of any sum payable by it under the Contract/Purchase Order, its liability shall be increased on such sum from the Due Date until the actual payment (both before and after judgment) at that annual rate which is the rate provided for under the Late Payment of Commercial Debts Act 1998 and all applicable subordinate legislation as amended from time to time. Buyer will reimburse BVI for all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
 - Time shall be of the essence of the Contract/Purchase Order for the purposes of this Section 4 only.
 - If in the opinion of BVI, the credit-worthiness of Buyer deteriorates before delivery of the Goods, BVI may require full or partial payment of the Price prior to delivery of the Goods or the provision of security for payment by Buyer in a form acceptable to BVI. BVI will notify Buyer of this requirement.
5. **Terms of Dispatch and Delivery.** Goods will be delivered CPT (as defined by Incoterms 2010) the address in the UK and/or the European Union as notified to BVI on the Contract/Purchase Order. Times or dates quoted by BVI for delivery of the Goods are intended as estimates only and shall not be of the essence. BVI shall not be liable in any way for any direct or indirect loss, damage or expense (including loss of profits and liability to third parties) suffered or incurred by Buyer as a consequence of any delay in delivery.

BVI reserves the right to deliver the Goods by installments in any sequence and to tender a separate invoice in respect of each installment. Where the Goods are delivered by installments, the Contract/Purchaser Order shall become severable and each installment shall be deemed to be the subject of a separate Contract/Purchaser Order. No default or failure by BVI in respect of one or more installments shall entitle Buyer to treat the Contract/Purchase Order as repudiated or to damages.

6. **Acceptance.** On receipt of the Goods Buyer shall immediately inspect and examine the Goods, and, within ten (10) days of delivery, shall give written notice of any alleged shortage, or alleged defect not apparent from the visual exterior examination, to BVI. Buyer shall be deemed to have accepted the Goods if no such written notice is served on BVI within ten (10) days of the date of delivery. After acceptance the Buyer shall not be entitled to reject any Goods which are not in accordance with the Contract/Purchase Order. Buyer shall permit BVI to inspect any Goods alleged to be defective or damaged or any cases or packing in any consignment where shortage is alleged to have occurred and, if so requested by BVI, shall return the same to BVI.

If Buyer fails to comply in any respect with the Section 6, the Goods shall be conclusively presumed to be in accordance with the Contract/Purchase Order and free from any defect or damage which would be apparent on a reasonable examination of the Goods and Buyer shall be deemed to have accepted the Goods. If Buyer, having complied with the Section 6, establishes to BVI's reasonable satisfaction that the Goods are not in accordance with the Contract/Purchase Order or are defective, Buyer's sole remedy in respect thereof shall be limited, as BVI may elect to making good any shortage, to replacing such Goods or refunding all, or part of, the Contract/Purchase Order price against return of the Goods.

7. **Return of Goods to BVI.** All Goods must be returned in accordance with BVI's Return Policy.
8. **Property and risk.** For the purposes of this Section 8, "Delivery" shall take place when the Goods are delivered to the first carrier. Risk in the Goods shall pass to Buyer on Delivery. Title, property and ownership in the Goods, notwithstanding delivery of the Goods to Buyer, shall not pass from BVI until (a) Buyer shall have paid BVI in full therefore pursuant to Section 4; and (b) no other sums are then outstanding from Buyer to BVI on any account whatever whether or not such sums have become due for payment.

While property in the Goods remains with BVI pursuant to this Section 8, Buyer shall hold the Goods on a fiduciary basis only and as bailee for BVI. Buyer shall store the Goods separately from its own Goods and those of any other person in good condition and marked in such a way that they are clearly identifiable as the property of BVI and shall insure the Goods to their full value against "All Risks" to the reasonable satisfaction of BVI. In the event that BVI is entitled to exercise any of its rights under this Section 8, any right of Buyer to sell, dispose of, deal or in any way use Goods in which the property remains vested in BVI shall cease forthwith. Buyer shall immediately place any of the Goods in its possession or under its control at the disposal of BVI and BVI shall (without prejudice to any of its other rights and remedies) have the right to re-possess and use such Goods and may together with its servants or agents, enter upon any land or building, vehicle or vessel or other place upon which such Goods are reasonably thought to be situated for the purpose of removing any such Goods.

For the purpose of so taking possession Buyer gives to BVI irrevocable authority to enter its premises without notice for the purpose of collecting and removing the Goods. Notwithstanding the foregoing, Buyer may (subject to Section 9 below) sell the Goods in the ordinary course of its business, but may not otherwise deal with, sell, part with possession of, consume or otherwise dispose of the Goods until title to them has passed to Buyer as aforesaid. Any sale by Buyer permitted by Section 8 as between Buyer and its customer, be effected by Buyer as principal and not as agent, but as between Buyer and BVI, Buyer shall have a fiduciary duty to account to BVI for the proceeds of any such sale up to the total amount outstanding to BVI as aforesaid, and pending such accounting shall hold the same on trust for BVI.

9. **Default by Buyer.** In the event of any of the following:
- Buyer fails to pay for the Goods in accordance with Section 4;
 - Buyer fails to pay any other debt due and payable to BVI;
 - Buyer commits a material breach of these Terms and Conditions or the Contract/Purchaser Order. For the avoidance of doubt, and without limitation, any breach of Sections 4, 12 and 17 will be considered a material breach;
 - if any distress or execution shall be levied upon any of Buyer's goods;
 - Buyer offers to make any arrangement with or composition for the benefit of its creditors, any petition for the winding-up of Buyer (being a limited company) is passed or represented (other than for the purpose of amalgamation or reconstruction) or (being an individual or partnership) commits an act of bankruptcy or bankruptcy proceedings are commenced or if a receiver or administrative receiver, administrator or manager is appointed over the whole or any part of Buyer's business or if Buyer shall suffer any analogous proceedings under foreign law; the provisions of this Section 9 shall apply.

All sums outstanding in respect of Goods supplied by BVI (whether or not such sums have become due for payment), shall immediately become payable. BVI may in its absolute discretion and without prejudice to any other rights which it may have:

- suspend or cancel all future deliveries of Goods to Buyer under any Contract/Purchaser Order and or terminate such Contract/Purchaser Orders without further notice and liability upon its part; and/or
- appropriate any payment made by Buyer for such Goods (or goods supplied under any other Contract/Purchaser Order with Buyer) as BVI may in its sole discretion think fit; and/or
- claim interest in accordance with Section 4.

10. **Warranty and Limitation of Liability.** BVI represents and warrants that the Products (excluding Endo Optiks® Ophthalmic Micro Endoscopes*) shall be free from material defects in materials and workmanship for one (1) year from the date of purchase. The foregoing warranty shall be void if the Product has been misused, neglected, improperly stored or handled, altered, abused or used for any purpose other than the one for which it was manufactured or if the Product's failure to conform to the foregoing warranty was due in whole or in part to other conditions beyond the control of BVI. BVI's liability for failure of the product to conform with the foregoing warranty shall be limited to the replacement of such Product. Customer must notify BVI of any defect promptly after the defect first comes to the customer's attention. Any replacement Products shall be at BVI's option. This warranty is not transferable and is subject to limitations herein.

* With respect to the Endo Optiks® Products, the one (1) year warranty is only applicable to Endo Optiks® systems and accessories only, and does not include the Endo Optiks® Ophthalmic Micro Endoscopes. The Endo Optiks® Ophthalmic Micro Endoscopes have a warranty against manufacturing defects, not including ordinary wear and tear, for one (1) month. Damage or defect at any time to the Endo Optiks® Ophthalmic Micro Endoscopes, within the four uses, from wear and tear, cleaning, sterilization, misuse, improper storage or handling, negligence, accident, abuse or unsuitable or abnormal maintenance will immediately void this warranty. Any returned Products will be subject to inspection and will be determinative of usage. **All ENDO OPTIKS® Ophthalmic Micro Endoscopes must be sterilized by the user before returning to BVI.** For Endo Optiks® Endoscopy Systems, the following are not covered by this warranty: Onsite Service, Any component or part of the Endo Optiks® system which fails due to user error; and Preventative Maintenance.

BVI offers an extended warranty on certain Products. For information on purchasing an extended warranty, Buyer should contact BVI Customer Service at 01865-601-256, Option 3 or e-mail at ordersuk@beaver-visitec.com.

REPAIRS ON ENDO OPTIKS® ENDOSCOPY SYSTEMS/PRODUCTS. BVI will repair and/or exchange parts for the Endo Optiks® Endoscopy Systems/Products in accordance with the terms of the applicable warranty. During the applicable warranty period, such repairs and/or replacements shall be free of charge for manufacturing defects only. However, if the warranty period has expired or such repairs are not covered by the warranty, there will be a fee for the repairs, including parts and labor. A loaner unit will be provided upon request during the covered period while the warranted unit has been returned for repair. Ground shipping on warranted systems will be covered by BVI.

For information on repairs of the Endo Optiks® Endoscopy Systems/Products, contact BVI Customer Service at 01865-601-256, Option 3 or e-mail at ordersuk@beaver-visitec.com.

Limitation of Liability. The provisions of this Section 10 set out the entire liability of BVI (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of any breach of these Terms and Conditions, and any representation, statement or tortious act or omission including negligence arising under or in connection with these Terms and Conditions.

THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE REGARDING THE PRODUCTS AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY STATUTES OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER AGREES THAT BVI IS NOT RESPONSIBLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR BUSINESS DAMAGES), WHICH MAY BE SUFFERED AS A RESULT OF THE PURCHASE OR THE USE OF THE PRODUCTS, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR USE, WHETHER ARISING IN CONTRACT (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT OR BREACH OF WARRANTY), IN TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY OF RELIEF, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AS A RESULT ANY REMEDY ARISING HEREUNDER OR UNDER APPLICABLE LAW FAILS OF ITS ESSENTIAL PURPOSE, HOWSOEVER ARISING, OR WHETHER OCCASIONED BY THE NEGLIGENCE OF BVI, ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS.

Except as expressly stated in these Terms and Conditions, BVI does not give any representations, warranties or undertakings in relation to the Goods or in relation to the performance of its obligations under these Terms and Conditions. Any representation, condition or warranty which might be implied or incorporated into these Terms and Conditions by reason of statute, common law or otherwise is excluded to the fullest extent permitted by law. Subject to Section 10, BVI's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract/Purchaser Order shall be limited to the Contract/Purchaser Order price.

Nothing in the Contract/Purchase Order or these Terms and Conditions shall restrict or exclude BVI's liability:

- under Part 1 of the Consumer Protection Act 1987;
- in respect of fraudulent misrepresentation;
- for death or personal injury caused by BVI's negligence or the negligence of its employees or sub-contractors;
- arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- any other liability which may not be lawfully excluded or limited.

Each of the exclusions or limitations of liability in this Section 10 shall be construed as a separate and independent exclusion. If any exclusion is found by a court or competent authority of any jurisdiction to be void or unenforceable, the parties shall negotiate in good faith to replace such void or unenforceable exclusion with a valid exclusion which, as far as possible, has the same legal and commercial effect as that which it has replaced; and the legality, validity and enforceability of the remainder of these Terms and Conditions in that jurisdiction shall not be affected.

11. **INDEMNIFICATION:** BUYER shall indemnify and hold harmless BVI, its affiliates, directors, officers, employees, agents, successors and assignees from and against any suits, claims, losses, demands, liabilities, damages, costs and expenses (including costs, reasonable attorney's fees and reasonable investigative costs) in connection with any suit, demand or action by any third party to the extent such suit, demand, or action arises out of or results from its use or sale of the products purchased by BUYER from BVI, except to the extent that such suit, demand or action arises out of the failure of such products to meet the warranty set forth above.

BVI shall indemnify and hold BUYER, its successors, assignees, directors, officers, agents and employees harmless from and against any and all losses incurred or suffered by BUYER that are caused by, arise out of, or relate to any defective product supplied by BVI; provided, however, BVI shall not have any obligation to indemnify BUYER for any losses to the extent such losses are caused by, arise out of, or relate to the acts, negligence, willful misconduct or omissions of BUYER.

Notwithstanding anything to the contrary contained herein, BVI shall be required to indemnify and hold harmless BUYER only up to an amount not to exceed the purchase price of the product giving rise to the claim.

12. **Trade Compliance.** BVI and Buyer agree to fully comply with all applicable laws, including but not limited to export control laws, governing trans-border sales, re-sales, shipments and transfers of Goods. BVI's obligation to supply Goods is contingent upon receiving any required governmental authorizations. If a license or consent of any government or other authority is required for the acquisition, or use of the Goods, Buyer shall obtain the license and consent at its own expense and if requested produce evidence of it to BVI on demand. Failure to obtain any license or consent does not entitle Buyer to withhold or delay any payment of the price of the Goods. Any additional expenses or charges incurred by BVI resulting from such failure shall be paid by Buyer.
13. **Set off and counterclaim.** Buyer shall not be entitled to withhold payment of any invoice after its Due Date by reason of any right of set off or counterclaim which Buyer may have or allege to have against BVI or for any other reason whatsoever. BVI shall be entitled to set off against monies it is owed by Buyer for the supply of Goods any monies which BVI owes Buyer.
14. **Force Majeure.** If delivery of any or all of the Goods is prevented or delayed by an event of Force Majeure (as defined herein), BVI shall be entitled to cancel or suspend deliveries of the Goods without prejudice to its rights to payment for any Goods already delivered. Force Majeure means any circumstances not within the reasonable control of BVI, including, without limitation to the generality of the foregoing, industrial action, war, governmental action or regulation, act of God, riots or non-availability of stocks or materials. BVI shall not be liable for any loss or damage arising directly or indirectly through or in consequence of such Force Majeure. Either party may terminate an affected Contract/Purchaser Order if an event of Force Majeure continues for a period of six (6) months.
15. **Assignment:** Buyer may not assign, sub-contract or in any way dispose of its rights and obligations under the Contract/Purchaser Order without the prior written consent of BVI.
16. **Entire Agreement.** Without prejudice to the generality of these Terms and Conditions, these Terms and Conditions, together with any documents referred to in it, constitute the whole agreement between the parties relating to the subject matter and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Buyer acknowledges that it has not been induced to enter into the Contract/Purchase Order by any representation or

warranty other than those contained in these Terms and Conditions and, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

17. **Provisions relating to these Terms and Conditions.** Any term of these Terms and Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision hereof. No waiver or forbearance by BVI, whether express or implied in enforcing any of its rights hereunder shall prejudice its right to do so in the future. All Contract/ Purchaser Orders shall be non-exclusive and shall not confer any distribution or agency rights unless otherwise specifically agreed in writing.
18. **Intellectual Property.** Unless otherwise agreed in writing all Goods shall be sold or re-sold only in the packages and packaging in which the Goods were supplied by BVI and in no case may any trade mark other than the trade mark carried by the Goods at the time of delivery be marked on or applied in relation to the Goods by Buyer. No right or license is granted under the Contract/Purchaser Order to Buyer under any patent, trade mark, copyright, registered design or other intellectual property right, except the right to use or re-sell the Goods.
19. **Notices** Any notice required or permitted to be given by pursuant to these Terms and Conditions shall be in writing and served by 1st class post or by hand. Buyer shall serve any such notice on BVI at BVI's registered office as detailed on invoices or such other address as BVI may from time to time notify to Buyer. BVI may serve any such notice on Buyer at the address notified to BVI or in default of notification to the address from which the Goods were ordered or if Buyer is a company at Buyer's registered office. A properly addressed notice sent by 1st class post shall be deemed to have been given two days after the date of posting. A properly addressed notice served by hand shall be deemed to be given upon delivery at the relevant address if it is delivered no later than 17.00 on a Business Day or if it is delivered later than 17.00 hours on a Business day or at any time on a day which is not a Business Day, at 08.00 hours on the next Business Day.
20. **Relationship of the Parties .** Nothing in these Terms and Conditions shall constitute, or be deemed to constitute a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any party the agent of any other party for any purpose. Subject to any express provisions to the contrary in these Terms and Conditions, Buyer shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of BVI or bind BVI in any way.
Except as expressly provided for in the relevant Contract/Purchaser Order, nothing in these Terms and Conditions shall be construed as BVI granting Buyer agency or distribution rights in respect of the sale or distribution of the Goods. For the avoidance of doubt, any sale of Goods as between Buyer and a third party shall be affected by Buyer as principal and not as agent or distributor of BVI and Buyer shall not hold itself out as being an agent or distributor of BVI.
21. **Third party rights.** A person who is not a party to the Contract/Purchaser Order has no right under the Contract/Purchaser Orders (Rights of Third Parties) Act 1999 to enforce any term of the Contract/Purchaser Order or these Terms and Conditions.
22. **Law and jurisdiction.** These Terms and Conditions and all Contract/Purchaser Orders shall be governed by and construed in accordance with English law and subject to the non-exclusive jurisdiction of the English Courts.
23. **Data Protection.** BVI collects, uses and discloses personal data for purposes connected with the Contract/Purchase Order, e.g. order handling, payments, etc. may be collected from individuals or from other (e.g. published) sources. In order to operate effectively as a member of the global Beaver-Visitec International group of companies, BVI may for these purposes transfer this data to any country worldwide in which BVI's companies or third party providers that process data on our behalf (e.g. centralized data centers) do business, including the United States. Laws and practices relating to the protection of personal data may differ, and such laws may not offer the same level of protection outside the European Economic Area. By proceeding with the transaction Buyer agrees, in the exceptional cases where such consent is necessary, in its own right and on behalf of all of its employees, whom Buyer shall duly inform, to this use, disclosure and transfer of personal data. Such persons have the right to access personal data that BVI holds and to update or amend any personal data. For further information, please contact BVI.