

Ossis Standard Customer Terms of Trade

1. Definitions

- 1.1 **“Customer”** means (a) any person that buys a Product, whether directly from Ossis or from another person, (b) any person that uses a Product and (c) any person into which Product is implanted.
- 1.2 **“Custom Product”** means (a) any Product that Ossis manufactures from information and specifications provided by a Customer and (b) any stock Product that Ossis modifies at the request of a Customer.
- 1.3 **“Ossis”** means Ossis Limited, a New Zealand company.
- 1.4 **“Information”** means all information in relation to the Products that Ossis may provide, from time to time, to the Customer including, without limitation, surgical techniques, instructions for use, product labels, design history files and marketing information.
- 1.5 **“Intellectual Property”** means Ossis’ proprietary interests in the Products and Information, whether arising under statutory or common law, including without limitation: Ossis’ brands; its patents and patent applications; know-how; designs; copyrights; specifications; manufacturing methods; research and development; quality control procedures; technical and marketing documentation; and trade secrets.
- 1.6 **“Products”** means the full range of products (including Custom Product where applicable) that Ossis designs, manufactures and sells from time to time.

2. General

- 2.1 All sales by Ossis shall be subject to these Terms.
- 2.2 Any purchase order submitted by the Customer shall be subject to these Terms. Any conditions in the Customer’s purchase order, or otherwise proposed by the Customer, shall not bind Ossis unless Ossis expressly accepts such conditions in writing.
- 2.3 The Customer’s receipt of the Products shall constitute its acceptance of these Terms.
- 2.4 To modify these Terms, both parties must sign an agreement to that effect.
- 2.5 Sales quotations are valid for 30 days from date of issuance, after which they will lapse.

3. Price

- 3.1 The price does not include the following charges: (a) applicable taxes, such as goods and services tax (GST) and the like, (b) the cost of freight and insurance and (c) any customs clearance charges, duties, taxes and the like. Ossis shall add such charges, where applicable, to the price of the

Products and such charges shall appear as separate items on the invoice. Ossis may issue a supplementary invoice for any deferred or delayed charges that would otherwise be payable by the Customer but for the fact that they were not known on the date of invoice.

- 3.2 Ossis shall specify the currency in its sales quotation.

4. Shipping Terms

- 4.1 Ossis’ standard shipping terms are ex Ossis’ facility in Christchurch, New Zealand.
- 4.2 Although the shipping terms are ex Ossis’ premises, Ossis shall, if requested in writing by the customer, provide a door-to-door delivery service at the Customer’s risk and expense. For purposes of clarification, when Ossis provides a door-to-door delivery service, it does so purely as an accommodation to the Customer and as agent for the Customer.
- 4.3 The Customer may elect to pick-up the Products and make its own shipping arrangements, provided it notes such preference when placing an order.
- 4.4 Ossis shall ship the Products as soon as they are ready for delivery. The Customer may neither delay delivery nor fail nor refuse to accept delivery.
- 4.5 Consistent with the shipping terms described in clause 4.2, risk of loss or damage to the Products shall pass from Ossis to the Customer from the moment the Products leave Ossis’ premises.
- 4.6 Any delivery dates given, whether oral or in writing, shall be deemed good faith estimates only. Time is not of the essence.
- 4.7 Ossis shall use all reasonable endeavours to meet any delivery date specified in an order that it has accepted. However, Ossis shall not be responsible for late delivery due to circumstances beyond its reasonable control
- 4.8 Ossis accepts no liability whatsoever for any loss or damage suffered by the Customer because of any delay or failure to deliver any of the Products, irrespective of the cause.
- 4.9 To assist with timely delivery, the Customer shall promptly provide all prescriptions and other information that Ossis requires to design and manufacture a Custom Product.

5. Payment

- 5.1 Payment is due no later than five (5) working days after delivery to the location nominated by the customer. Ossis shall invoice the Customer on the date of shipment.
- 5.2 The Customer shall pay the invoice price in full and shall have no right to set off against such price any claims that the Customer may have against Ossis.
- 5.3 Ossis shall provide the Customer with bank details for payments made by electronic or internet transfer.

6. Inspection

- 6.1 The Customer shall visually inspect the Products, to the extent practicable, for any obvious damage, defects or other evidence that the Products do not conform to the order.
- 6.2 For any defect that the Customer could have reasonably discovered through prompt visual inspection, the Customer must give written notice to Ossis of such defect within five (5) working days of receipt of the Products. Otherwise, the Customer shall have waived its right to make a warranty claim in respect to such defect.

7. Indemnity and Disclaimer

- 7.1 The Customer defends, indemnifies and holds Ossis harmless from and against all causes of action, claims, suits, proceedings, damages and judgments by third parties (collectively "Claims"). The foregoing indemnity shall not apply to Claims based solely on an alleged manufacturing defect in the Products.
- 7.2 The Customer acknowledges that the Products are capable of being used in many different surgical procedures. Ossis provides general guidelines concerning the suitability of its Products. It is not always possible for Ossis to provide specific guidelines for all surgical procedures. Proper selection of a specific Product for a specific surgical procedure will always be the Customer's responsibility. The Customer must assume the ultimate responsibility for the selection and use of the Products. Ossis does not warrant the performance of its Products or their suitability for any specific purpose.

8. Information

- 8.1 Ossis does not warrant that the Information is timely, complete or accurate. Ossis accepts no liability for any errors or omissions in the Information. Any Information provided shall not be deemed a warranty, representation or guarantee concerning a Product's suitability or fitness for a Customer's specific purpose. The Information shall not expand Ossis' obligations under its standard Product warranty. The Information shall not constitute a warranty that the Customer will derive any particular benefits from the Products. It is the Customer's responsibility to determine the suitability of the

Products for its own use. The Customer must use its own independent judgment and assessment and should not rely on any opinions, interpretations, statements, assurances or representations in the Information or otherwise.

- 8.2 Although the Information may include surgical techniques and Product usage guidelines, Ossis cannot know the actual condition of a given patient nor the countless other variables that relate to the proper diagnosis and treatment of such patient. For that reason, the Customer shall not rely upon any Information provided by Ossis but shall rely, instead, on its own professional judgment.

- 8.3 The Customer shall keep any non-public Information (e.g. design history files) strictly confidential.

9. Product Changes

- 9.1 Because Ossis is continually improving and upgrading its Products, the specifications, dimensions and Information are subject to change without notice. The foregoing shall not apply in circumstances where the Customer has (a) furnished its own prescription and information pursuant to clause 4.10 and (b) it is an express condition of sale that Ossis manufacture the Custom Product to conform to the Customer's specifications and information.

10. Professional Advice

- 10.1 For the reasons mentioned in clause 8.2, Ossis does not provide professional advice concerning the Products or their use.
- 10.2 The Customer accepts responsibility for ensuring that it, its employees, agents, consultants and customers are appropriately trained and experienced in the use of the Products and have read any relevant Information provided by Ossis.
- 10.3 The Customer accepts responsibility for ensuring that surgeons and other end users know how to use the Products. The Customer shall discharge this responsibility through training sessions, hands-on demonstrations and technical support.

11. Traceability and Product Recall

- 11.1 Ossis has adopted Product traceability procedures conforming to relevant law. The Customer shall adopt its own Product traceability procedures conforming to the relevant law in the Customer's jurisdiction. The Customer shall procure its agents, dealers, distributors and any other persons to whom the Customer sells or transfers the Product, to adopt Product traceability procedures conforming to relevant law.
- 11.2 In the event that Ossis initiates a Product recall, the Customer shall provide reasonable and timely assistance to Ossis to enable Ossis to comply with its regulatory obligations with respect to the Products. Without limiting the generality of the foregoing, the Customer shall provide Ossis with

contact details for customers and other persons further down the distribution chain, including the end user.

12. Limitation of Liability

- 12.1 The Customer shall strictly comply with any instructions for use, care and maintenance, trouble shooting, warnings and safety procedures provided by Ossis. Where appropriate, the Customer shall pass any such instructions to its customers and end users and the Customer shall use its best endeavours to ensure that they comply with such instructions. Ossis shall not be liable for any costs or damages incurred by any person because of such person's failure to comply with such instructions.
- 12.2 To the maximum extent allowed by law, Ossis disclaims liability for direct, indirect, incidental, special or consequential costs or damages of any kind (together "damages"). Without limiting the generality of the foregoing, Ossis disclaims liability for: (a) damages to person or property caused by a Product; or (b) damages resulting from the inability to use the Product, including loss of profits, loss of operations whether incurred by the Customer, its employees or a third party.
- 12.3 The liability of Ossis under any circumstance shall not exceed the original purchase price paid by the Customer for the Product giving rise to such liability.

13. Warranty

- 13.1 All Products sold are subject to Ossis' standard limited warranty, which covers defects in materials and workmanship.
- 13.2 Ossis' standard limited warranty contains important exclusions, disclaimers and limitations of liability. Ossis has posted a copy of its warranty on its website at www.ossis.co.nz/about_us. The Customer may also obtain a copy directly from Ossis.

14. Custom Products

- 14.1 In relation to a Custom Product, the Customer acknowledges that: (a) Ossis is not responsible for developing the prescription or other information furnished by the Customer; (b) Ossis does not possess the clinical skills to determine the completeness and accuracy of any such prescription or information; (c) Ossis is not in the position to know all relevant details, applications and circumstances relating to a Custom Product and its intended use; and (d) Ossis may not know whether a Custom Product is suitable for all purposes intended by the Customer.
- 14.2 Ossis undertakes to use its skill and experience to manufacture Custom Products to meet the Customer's requirements. However, in recognition of clause 14.1, Ossis expressly disclaims any liability of any kind, nature or description resulting from the use of a Custom Product.

- 14.3 Ossis shall provide development and manufacturing services on a best endeavours basis only, and entirely at the Customer's risk. The Customer agrees that Ossis shall not be liable for any errors or omissions in rendering such development and manufacturing services.

15. Intellectual Property

- 15.1 The Customer hereby acknowledges Ossis' sole and unencumbered ownership of the Intellectual Property. The Customer disclaims any interest in the Intellectual Property. The Customer shall not challenge the validity of the Intellectual Property. The Customer shall not take or support any action prejudicial to the Intellectual Property or Ossis' interests therein.

16. No Sale by Description or Sample.

- 16.1 Subject to clause 16.2, Ossis does not warrant that the Products conform to any specific design or sample. Ossis reserves the right to alter its Product dimensions, drawings, specifications, designs, materials components and construction methods. Ossis may do so without notice. Any such alterations shall not impose on Ossis an obligation to alter Products that Ossis has already delivered to the Customer.
- 16.2 Clause 16.1 shall not apply in circumstances where the Customer has (a) furnished its own specifications and information pursuant to clause 4.10 and (b) it is an express condition of sale that Ossis manufactures the Custom Product to conform to the Customer's specifications and information.

17. Changes

- 17.1 The Customer may request in writing any change to an order. Ossis shall not withhold, unreasonably, its consent. However, the Customer shall bear any additional costs incurred by Ossis because of such change.

18. Cancellation

- 18.1 Once Ossis has confirmed, in writing, a Customer's order, such order is not cancellable except with Ossis' express written agreement and upon such terms as Ossis specifies.

19. Verbal Instructions and Orders

- 19.1 The Customer shall immediately confirm, in writing, all verbal instructions and orders. Ossis may wait until the Customer does so before executing the Customer's verbal instructions and orders. If Ossis does not wait, Ossis shall execute the Customer's verbal instructions and orders entirely at the Customer's risk. In that case, Ossis accepts no responsibility for errors and omissions.

20. Purchase Money Security Interest

- 20.1 The Products shall remain personal property and shall retain their character as such even when the Customer incorporates, affixes, attaches or

assembles the Products to an instrument, instrument sets, implants or the like.

20.2 Ossis retains a purchase money security interest in the Products sold and delivered to the Customer. Ossis may perfect its security interest by registering one or more Financing Statements pursuant to the Personal Property Securities Act 1999. The Customer waives any right to receive verification of financing statements so registered.

20.3 If the Customer fails to comply with the terms of payment of Ossis, then Ossis, in addition to its rights and remedies under the Personal Property Securities Act 1999, shall be entitled to such other rights and remedies as may be available to it under either statutory or common law.

21. Representations

21.1 Ossis' staff, agents, distributors and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with these Terms, unless made in writing and signed by a duly authorized officer of Ossis. Any such unauthorized representations, statements, warranties, conditions or agreements shall not bind Ossis or form part of any contract between the Customer and Ossis.

22. Other Clauses

22.1 **Returns.** Returns (other than for warranty purposes or damage claims) shall be in Ossis' sole and absolute discretion. Products returned must be in the same condition as received.

22.2 **Governing Law.** New Zealand law shall govern these Terms. The Customer submits to the non-exclusive jurisdiction of New Zealand courts.

22.3 **Invalidity.** If any clause in these Terms is determined to be illegal or unenforceable for any reason, the parties shall modify such clause, but only to the extent necessary to make it legal and enforceable. If modification is not possible without materially altering the intent of the clause, the

parties shall sever such clause from these Terms and, if possible, renegotiate in good faith such other means to reflect the intent of such severed clause. Notwithstanding such severance, the parties shall enforce the other clauses in these Terms as if such severed clause was never a part thereof.

22.4 **Compliance with Law.** The Customer shall comply with all applicable laws within its jurisdiction.

22.5 **Conflicts.** The specific terms of any sales confirmation, sales quotations or invoice to which these Terms are attached, or incorporated by reference, shall prevail in the event of a conflict.

22.6 **Force Majeure.** Ossis shall not be liable for any failure or delay in delivering the Products resulting from circumstances beyond its reasonable control, including, without limitation: unavoidable delays in production; delays in the delivery of raw materials; default by subcontractors; default by component suppliers; strikes and labour unrest; shipping delays; shortages; war; acts of terrorism; government or regulatory intervention; fire; flood; accident; natural disaster; or any other event interpreted under New Zealand law as an "act of God". If Ossis invokes force majeure, it shall do all reasonable things within its power to end the circumstances causing the force majeure and to mitigate any losses that the Customer may suffer as a consequence thereof. However, Ossis shall not be liable for any such losses.

22.7 **Non-waiver.** No failure by Ossis to insist upon strict performance of any of these Terms, or delay in exercising any of its rights or remedies, shall constitute a waiver or variation of these Terms or a waiver of any such right or remedy.

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