

# APTUS®

by

# medartis®

## **APTUS® Loan and Consignment Agreement**

Agreement with:-

To loan and consign the following products and sets:

Please sign 2 copies of this document and return 1 copy to Medartis Ltd, as detailed below, to confirm your agreement, and your acceptance of the products and sets.

# APTUS® Loan and Consignment Agreement

## Scope of Agreement

This document sets out an agreement under which Medartis Limited agrees to loan and consign certain Products and sets of Products to the Customer and the Customer agrees to take on loan and consignment these Products and/or sets, as detailed below. The Products are loaned under this Agreement, where the Products are intended to be reusable, such as instruments. The Products are consigned under this Agreement, where the Products are intended to be consumable or implanted, such as twist drills, plates, and screws. The Customer shall indemnify Medartis against any loss or damage occurring in relation to the Products and sets of Products being loaned and consigned.

## Agreement Reference Details

<b>Agreement Date:</b>	
<b>Customer PO Number:</b>	To follow upon return of set(s)
<b>Customer Set(s) Reference Number(s):</b>	
<b>MIA Numbers (for NHS customers only)</b>	IFA254 (W) and IFB254 (W)

## Customer Details

<b>Name</b>	
<b>Address</b>	
<b>Fax</b>	
<b>Email</b>	

## Product Details

<b>Description</b>	A full breakdown of the Products and sets of Products covered by this Agreement is set out in the Delivery Note(s) with the following numbers attached to this Agreement: Delivery Note Nr Date:
<b>Approximate Total Value (if Products were purchased)</b>	£ (excluding VAT)
<b>Trial/Testing to be carried out by Customer if any</b>	[N/A]

## Delivery Information

<b>Delivery Location(s)</b>	
<b>Date Products were received</b>	
<b>Storage Location(s)</b>	Same as delivery location.
<b>Usage Location(s)</b>	Same as delivery location.

## Loan and Consignment Duration

This is an Open Ended Loan. The loan and consignment shall start on the Agreement Date stated above, and shall continue indefinitely, but the loan and consignment and this Agreement may be terminated by either party at any time by giving to the other 30 days' prior notice in writing.
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## Charges

The Customer will be required to pay for any Consigned Products used for and any Products which are not returned at the end of this Agreement. The Customer will need to separately order and purchase from Medartis Ltd any replenishments for the Consigned Products as and when used.

## Incorporation of terms

This Agreement shall incorporate Medartis Supply Policies' set out in Appendix 1, and Medartis Standard Terms of Supply August 2015 Version, set out in Appendix 2, a copy of which is also available on request.

## Signatures

By signing this Agreement the Customer acknowledges receipt of the Products detailed above. By signing this Agreement each and offers and agrees to enter into this Agreement on the terms stated above.

Customer	Medartis
Signed by a duly authorised representative for and on behalf of the Customer named above.	Signed by a duly authorised representative for and on behalf of Medartis Limited.
Signature: .....	Signature: .....
Print Name: .....	Print Name: .....
Position: .....	Position: .....
Date: .....	Date: .....

# Appendix 1 - Medartis Supply Policies

## 1. PURCHASING OF ADDITIONAL PRODUCTS

During the course of this Agreement you may order from us additional Products for use as part of or in connection with the sets supplied to you by us under this Agreement, including as replenishments for the Consigned Products which you use and consume from time to time, and as additional stock, such as new twist drills, plates and screws. The following summarises the basic terms concerning this:-

### 1.1 Prices and Loan Charges

Unless otherwise agreed by us, the prices for such additional Products will be Medartis' list price at the date of your order. If you want to loan any further instruments and other re-usable Products from us, then we may apply a loan charge, and our loan charges will be again our list price loan charges at the date of your order. Medartis Ltd may alter any prices or loan charges quoted to you, but this alteration will not affect any agreements already concluded with you for the sale and purchase of any additional Products at that time.

### 1.2 VAT

All prices, loan charges and delivery charges are exclusive of VAT, which you must pay in addition.

### 1.3 Ordering

Orders for additional Products may be made through the following channels and are subject to our acceptance:

E-mail: [orders\\_uk@medartis.com](mailto:orders_uk@medartis.com), Phone: 01924 476699, Fax: 01924 472000

### 1.4 Standard Terms of Supply

If you order any additional Products, then (a) this will be by way of purchase, and not loan, unless otherwise agreed by us in writing, and (b) Medartis Standard Terms of Supply August 2015 Version (or such future replacement version as we may notify to you) shall apply to such order and the resulting agreement, which are available on request. Each order will form a separate agreement.

### 1.5 Delivery Date

Where the additional Products are in stock, you may ask for a next business day delivery. In any other case, we will need to agree an estimated delivery date with you based on when we are able to procure or manufacture the Products.

### 1.6 Order Time

If the additional Products are in stock, and you would like delivery by the next business day, you must place your order before 3:00 pm on a business day. If you place your order after 3:00pm, or not on a business day, then delivery may not be until the second business day after the day of your order.

### 1.7 Basic Courier Service

Unless we agree otherwise with you, your orders will be despatched (when the Products are available to be dispatched) using the basic next business day service of our chosen courier, and the cost of this is inclusive in our prices and loan charges.

### 1.8 Guaranteed Time / Weekend Courier Service

If you want a guaranteed time of delivery, or delivery not on a business day, then we may make an additional delivery charge, and our list price delivery charges (if any) at the time of your order shall apply, or if there are none, we may quote to you a delivery charge for this. By way of rough indication only, such delivery charges have in the past been the following per set, but these indicative prices are not binding on us: Prior to 09:00 am: £50.00 + VAT. Prior to 12:00 pm: £12.00 + VAT. Saturday delivery: £50.00 + VAT. Any listed delivery charges apply to the UK mainland only, and a special delivery charge will need to be negotiated for delivery elsewhere. The availability of any guaranteed time or weekend delivery service will also be dependent on the postal code of the address for delivery.

### 1.9 Same Day Courier Service

If you want us to deliver the Products on the same day as order, then a special delivery charge will need to be negotiated on request, and it will be subject to Product availability, courier service availability, and post code.

### 1.10 Delays

Medartis does not accept liability for any delays in carriage after dispatch.

### 1.11 Delivery Note

You will be required to sign a delivery note to confirm the Products received, before the Products will be handed over. This delivery note will be conclusive evidence of what Products you received.

### 1.12 Payment

You must pay our invoices in full within 30 days of the invoice date. The Late Payment of Commercial Debts (Interest) Act 1998 applies to all overdue account balances.

### 1.13 Title to Purchased Products

If you purchase any additional Products, title will pass to you on the date of delivery.

## 2. LOAN AND CONSIGNMENT POLICIES

With respect to any Products loaned or consigned to you, the following summarises the basic terms concerning these:-

### 2.1 Loan or Consignment

The Products are loaned under this Agreement, where the Products are intended to be reusable, such as instruments. The Products are consigned under this Agreement, where the Products are intended to be consumable or implanted, such as twist drills, plates, and screw

### 2.2 Duration

The loan and consignment shall start on delivery may be terminated by either party at any time by giving to the other 30 days' prior notice in writing.

### 2.3 Title

Title in any Consigned Products (such as screws, plates and twist drills) will remain with us until they are used by you, at which point a deemed purchase arises. Title to any Loaned Products always remains with us.

### 2.4 Price for Consigned Products

The Consigned Products will be deemed to be purchased by you when used (including if you open any packaging or seals), and a separate agreement will arise for such sale and purchase which incorporates our Standard Terms of Supply. The prices for such Consigned Products will be Medartis' list price at the date this Agreement is terminated, when the Consigned Products should otherwise have been returned, or if we chose this, at the date of deemed purchase.

### 2.5 Loss and Damage

The Customer must indemnify Medartis against loss or damage of the Products being loaned or consigned, to their full new replacement value.

### 2.6 Condition

It is your responsibility to keep the Loaned Products and Consigned Products in the condition in which they were received.

## **2.7 Inspection**

You must make all Loaned Products and Consigned Products available for inspection on reasonable notice. You must allow Medartis Ltd staff to carry out regular review and inspection of all Loaned Products and Consigned Products, and co-operate with this.

## **2.8 Used, missing and damaged items**

If any Consigned Product is damaged, lost, used or missing (against the delivery note), then you are deemed to have purchased it. If any Loaned Product is damaged or missing (against the delivery note), you will be liable for it for its full new replacement value, and we may deem you to have purchased it. In each case, you must issue a purchase order in order to cover the price / cost of the Products which will be charged to you at our most recent list price.

## **2.9 No lending**

Our Products are not allowed to be lent or given to other parties unless approved by Medartis Ltd, but may be used by you or your affiliate companies.

## **2.10 Replacement after procedure**

It is your responsibility to manage the Products and Sets of Products, to keep them together, and to replenish any used Consignment Products after each procedure. This must be done by ordering in accordance with Section 1 above.

## **3. OTHER NOTES**

### **3.1 Purchase Order Numbers**

You must supply us with purchase order numbers for each deemed purchase of any Products or other amount payable by you.

### **3.2 Training**

Medartis Ltd will provide staff training to you on Medartis Ltd's Products for theatre and sterilization departments by prior arrangement and agreement.

### **3.3 Guidelines**

Medartis Ltd will provide sterilization and handling guidelines with each complete Set of Products, which you must comply with. You must also advise any patient in whom the Products are implanted of how to care for the Products and the design limits of the Products. You must only use the Products for what they are designed for, and any other use is at your own risk.

### **3.4 Usage and Repair**

The instruments and other Products must only be used for their intended purposes, and have to be treated in accordance with the guidelines provided with them. Suspected deficiencies or defects with the Products must be promptly notified to Medartis Ltd for full investigation. Changes or repairs to the Products or any Set of Products must only be executed by Medartis Ltd.

### **3.5 Twist Drills**

To avoid the risk of the transmission of diseases (e.g. Creutzfeldt-Jakob) or infections, Medartis Ltd strongly recommends the single-use of all twist drills and other drill bits. These shall be treated as consumables and Consigned Products.

### **3.6 Prohibited Use**

Medartis Ltd is not responsible for any failure of any Products when used in conjunction with components, instruments, products, or equipment, from other companies or outside the accompanying instructions for use.

## **4. RETURNS**

### **4.1 Authorisation and Re-Stocking Charge**

Before returning any Products, you must call Customer Services (01924 476699) for a return authorization from Medartis Ltd, and request full instructions on how to do so. No Products shall be returned without such authorization, and a credit will not be issued for any Products returned without authorisation. No return will be considered for authorization after 5 working days of receipt. If Medartis authorise a return of any Products you have purchased, then we may charge a re-stocking fee of 40% of the purchase price, which we may deduct from any refund of the purchase price to you.

### **4.2 Products sent in error**

For any Products sent in error by Medartis Ltd, which are still in their original packaging and unused, Medartis Ltd will apply a full credit.

### **4.3 Removal from packaging**

You may not return an item for credit when its packaging has been opened or seals have been broken.

### **4.4 Decontamination**

All Products returned (including for repair or investigation) must be decontaminated. The Product must be accompanied by a decontamination certificate to comply with Health & Safety legislation and the Department of Health requirements. The decontamination certificate must be included with the return.

### **4.5 Products returned damaged**

Products returned damaged (including due to incorrect or negligent use) will be charged in full to you.

### **4.6 Replacements**

We may supply you with replacements for any Products returned for repair or investigation. If we have supplied you with a defective Product that does not meet the requirements of this Agreement, then such replacement will be free of charge.

### **4.7 Ancillary Items**

You must return with any Products the Medartis Ltd loan set check list, accompanying folder and any storage cabinets placed in the hospital by Medartis Ltd.

### **4.8 Returns Check**

On return of any Products, a member of Medartis Ltd Customer Services will check the returned Products and this will be the definitive check for purposes of determining and billing for contaminated, missing, damaged and used items.

### **4.9 Invoice for missing / damaged items**

If any Products or other items which are missing (against what was supplied, as detailed in the delivery notes), or damaged, you will be charged the most recent full new list price for the same.

### **4.10 Twist Drills**

On return of any Products all twist drills and other drill bits must be removed and discarded. These Products will be charged to you as used Consigned Products. As noted, these items are recommended for single use only.

### **4.11 Excess Returns**

Any additional stock/extra stock returned over that which was expected to be returned will not be refunded or paid for by Medartis, and may be retained by Medartis.

# Appendix 2 - Medartis Standard Terms of Supply

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PRECISION IN FIXATION

## STANDARD TERMS OF SUPPLY AUGUST 2015 VERSION

This document sets out the standard terms of supply for the sale and purchase, loan and consignment of products by Medartis Limited.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:-

**"Affiliate"** means in relation to party, any person that directly or indirectly controls that party, is controlled by that party, or is under common control with that party, where **"control"** shall be as defined in section 1124 of the Corporation Tax Act 2010;

**"Agreement"** means the agreement which incorporates these Standard Terms of Supply;

**"Agreement Date"** means the date on which this Agreement was made;

**"Agreement Terms"** means the terms of this Agreement as identified in Clause 2;

**"Agreement Specific Terms"** means the Agreement Terms, other than these Standard Terms of Supply;

**"Ancillary Items"** means anything supplied by Medartis to the Customer which is not explicitly identified as being a Product under any Agreement Specific Terms, including check-lists, information files and folders, storage cabinets, containers, racks, modules, spacers, cases and trays, and including anything else supplied in connection with or for use with the Products;

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**"Charges"** means any amounts stated in this Agreement as the charges, or payable by the Customer under this Agreement, other than VAT, including the Purchase Price, the Loan Charges and the Delivery Charges;

**"Consigned Products"** means those Products which are explicitly identified in the Agreement Specific Terms as being Consigned Products, or as being supplied on consignment, or are implied by any other Agreement Terms or any circumstances to be Consigned Products. In the event of any doubt, all Products which are Consumable Products shall be Consigned Products, unless they are Purchased Products;

**"Consumable Products"** means Products which are designed to be implanted in the human body or only used for one procedure, such as screws, plates, filters, seals, and twist drills and other drill bits;

**"Customer", "you" or "your"** means the legal entity that enters into the Agreement with Medartis;

**"Defect"** means in relation to any Product or Set: (a) any non-conformity of the Product or Set with the Agreement Terms; (b) any condition or aspect of the Product or Set present at the time of delivery which represents a non-conformity with or breach of any law applicable to the Product or Set in the United Kingdom; or (c) any condition or aspect of the Product or Set present at the time of delivery which represents a breach by Medartis of any contractual or tortious duty of care owed by Medartis to the Customer, or its Affiliates or any other third party respect of the Product or Set;

**"Delivery Agent"** means any third party courier, postal or transportation service or other sub-contractor used by Medartis to transport and/or deliver the Products;

**"Delivery Charge"** means the charge for transportation and delivery of a Product or a Set, or Ancillary Items, to the Delivery Location, which shall be as determined in accordance with Clause 4.3 and the Agreement Specific Terms;

**"Delivery Date"** means the date specified in the Agreement Specific Terms for delivery of the Products to the Customer at the Delivery Location, or if a date is not so specified: (a) by the 3rd Business Day from (but not including) the day that this Agreement was made, if the Products are in stock at Medartis at the Agreement Date; (b) within a reasonable time, including time to procure the Products, if the Products are not so in stock;

**"Delivery Time"** means the time of day by which delivery is to be made, and if a time is not so specified, 18:00;

**"Delivery Location"** means the location specified in the Agreement Specific Terms for delivery of the Products, or if not so specified, such premises of the Customer as Medartis may decide in its sole and absolute discretion;

**"Delivery Hours"** means the hours specified in the Agreement Specific Terms, or if not so specified 08:00 to 18:00 on any day;

**"Delivery Service Option"** means, where the Delivery Agent offers a range of different delivery services, including as to delivery times, delivery on non-Business Days, level of guarantee, and tracking and tracing, such service as may be specified in the Agreement Specific Terms, or if not so specified, the Delivery Agent's basic service;

**"Fixed Term Loan"** means a loan of Loaned Products for use in multiple surgical procedures for an agreed fixed period specified in the Agreement Specific Terms, or if not so specified, the period stated in Clause 9.5(b) below;

**"Force Majeure Event"** means any of the following events, whether affecting Medartis or any of its Affiliates, Delivery Agents, or sub-contractors: (a) acts of God; (b) storms, floods, snow, heatwaves, and other adverse weather conditions; (c) fire; (d) riots, sabotage, civil commotion or civil unrest; (e) acts of or interference by civil or military authorities; (f) acts of war (declared or undeclared) or armed hostilities; (g) any national or international calamity; (h) acts of terrorism; (i) failures or shortages of energy sources; (j) road closures and restrictions, and traffic congestion; (k) accidents and breakdowns; (l) strikes and other industrial action (including by own employees); (m) closures of sea and airports, rail routes, and any delays in transportation affecting or caused by any Delivery Agents used by Medartis or any of its Affiliates; and (n) any event of force majeure or other event beyond the control of Medartis or any of its Affiliates or sub-contractors, in addition to any of the other events listed above;

**"List Purchase Price"** means, at any time specified in the Agreement Terms, the list price for the sale and purchase each Product or Set as set out in the most recent Product Catalogue at that time, or if no time is given, at the Agreement Date;

**"Loaned Products"** means those Products which are expressly identified in the Agreement Specific Terms as being Loaned Products or as being supplied on loan, or are implied by any other Agreement Terms or any circumstances to be Loaned Products. In event of any doubt, all Products which are Reusable Products shall be Loaned Products, if they are not Purchased Products;

**"Loan Charge"** means the charge for the loan of a Loaned Product or all Loaned Products in a Set, as specified in the Agreement Specific Terms, or if not so specified, as detailed in the most recent Product Catalogue at the time the Agreement was made, or if not so detailed, a reasonable charge;

**"Loan Type"** means the type of any loan of Loaned Products, which shall be a Specified Procedure Loan, a Fixed Term Loan, or an Open Ended Loan, as specified under the Agreement Specific Terms, or, if not so specified, shall be an Open Ended Loan;

**"Medartis", "we", "us", or "our"** means Medartis Limited, a company registered in England and Wales with registered number 4604437 whose registered office is at 17A St Christopher's Way, Pride Park, Derby, Derbyshire DE24 8JY;

**"Open Ended Loan"** means a loan of Loaned Products for use in multiple surgical procedures, for an indefinite period;

**"Products"** means the products identified in this Agreement, including the Agreement Specific Terms, being either Consigned Products, Loaned Products or Purchased Products;

**"Product Catalogue"** means (a) generally all Medartis' confidential lists of its Products and Sets, including Ancillary Items, and associated List Purchase Prices, Loan Charges, and/or Delivery Charges for the same; and (b) at any time specified in the Agreement Terms, Medartis most recent Product Catalogue at that time, or if no time is specified, at the Agreement Date;

**"Purchase Price"** means the price for the sale and purchase of the Purchased Products, which shall be as determined in accordance with Clause 4.1 and the Agreement Specific Terms;

**"Purchased Products"** means: (a) those Products which are expressly identified in the Agreement Specific Terms as being Purchased Products, or Products which are otherwise identified in the Agreement Terms as being sold and purchased, or which are implied by any Agreement Term to be sold and purchased, or in respect of which the Customer pays a Purchase Price; and (b) those Consigned Products and other Products which are subsequently deemed to be purchased under Clause 8.3, which shall be deemed to be Purchased Products at that point;

**"Reusable Products"** means any Products which are not Consumable Products, being products designed for multiple use, such as instruments, drill guides, depth gauges, screwdriver handles and blades, sleeves, forceps, pliers, aiming devices, bone elevators, hooks, retractors, and Ancillary Items;

**"Set"** means a set or kit of Products designed or supplied by Medartis tailored for a specific procedure or range of procedures, including as may be identified in an applicable Product Catalogue or the Agreement Specific Terms;

**"Specified Procedure Loan"** means a temporary short term loan of Products for use in one or a fixed number of specified surgical procedures with specified procedure types and operation dates in the Agreement Specific Terms;

**"Specification"** means the specification of the Products as set out in: (a) the applicable Product Catalogue; (b) any product brochures published by Medartis on its website, and (c) any written information supplied by Medartis with any Product or Set;

**"Storage Location"** means the premises where any Consigned Products and Loaned Products are to be stored as specified in the Agreement Specific Terms, or if not so specified, the Delivery Location;

**"Territory"** means any country explicitly specified as the Territory in the other Agreement Terms, or if not so specified, the United Kingdom; and

**"Usage Location"** means the premises where any Loaned or Consigned Products are to be used, as specified in the Agreement Specific Terms, or if not so specified, the Storage Location.

#### 1.2 Interpretation

References to a **"person"** or **"legal entity"** include any natural person, and any company, body corporate, LLP, partnership, unincorporated association, or other entity with recognised legal personality in any part of the world. References to the singular include the plural and vice versa. References to **"include"** or **"including"** are deemed to be followed by **"(without limitation)"**. References to any legislation include any secondary legislation made under it from time to time, and include any amendment or replacement of such legislation or secondary legislation. The headings in this Agreement are for convenience only and shall not affect its interpretation.

### 2. FORMATION OF AGREEMENT

#### 2.1 Agreement Terms

Subject to Clause 2.2, the terms of this Agreement shall comprise the following: (a) these Standard Terms of Supply; (b) any documents incorporated by reference by these Standard Terms of Supply; (c) any written document concerning this Agreement signed by or on behalf of both parties, and any documents incorporated by reference by such signed document; (d) each acknowledgement or confirmation of order, acceptance, counter-offer, quotation or proposal from Medartis to the Customer in the chain of communications which led to this Agreement; (e) each acceptance, offer or order from the Customer in the chain of communications which led to this Agreement; and (f) any terms implied by law which are not otherwise excluded by the foregoing Agreement Terms. In the event of conflict, the each listed item in the previous sentence shall take precedence over those listed after it.

#### 2.2 Customer's Standard Terms

If the Customer seeks to apply any standard terms of purchase or business to this Agreement, including where referenced in any order, document, invoice or other communication from the Customer, they shall be excluded. If the Customer seeks to vary any terms proposed by Medartis, such variation shall only apply if Medartis

- explicitly accepts or acknowledges such variation in writing.
- 2.3 Separate Agreements**  
If the Agreement Specific Terms specify two or more Sets of Products, then there shall be deemed to be a separate Agreement for each such Set. If the Agreement Specific Terms also specify any additional Products associated with a Set, then they shall form part of the same agreement as such Set. If the Agreement Specific Terms specify any Products not forming part of or associated with a Set, then there shall be deemed to be a separate Agreement for all such additional Products.
- 2.4 Consideration**  
In addition to any other consideration, the consideration for the Agreement shall be the sum of £1 paid by each party to the other, receipt of which the other party hereby acknowledges.
- 3. SCOPE OF AGREEMENT**  
Under this Agreement and on and subject to the Agreement Terms:
- 3.1 Supply**  
Medartis agrees to supply and the Customer agrees to take delivery of the Products.
- 3.2 Purchased Products**  
Medartis agrees to sell and the Customer agrees to purchase the Purchased Products.
- 3.3 Consigned Products**  
Medartis agrees to bail to the Customer and the Customer agrees to take possession of the Consigned Products, for the purposes of either consuming and purchasing those Consigned Products at a later date, in accordance with Clause 8.3, or returning them to Medartis if not so consumed and purchased.
- 3.4 Loaned Products**  
Medartis agrees to loan and the Customer agrees to take on loan the Loaned Products.
- 3.5 Ancillary Items**  
The Customer also acknowledges that Medartis may supply Ancillary Items with or at the same time as delivery of the Products, and if the Customer takes delivery of the same, these are supplied on loan to the Customer and the Customer takes the same on loan.
- 3.6 Medartis Legal Compliance**  
Medartis shall obtain and maintain in force for so long as may be reasonably required all licences, permissions, authorisations, consents and permits needed to supply the Products in accordance with the Agreement Terms in the Territory, and shall comply with all applicable laws relating to the packing, packaging, marking, storage, handling, transportation, and delivery of the Products in the Territory.
- 4. PRICE AND PAYMENT**
- 4.1 Purchase Price**  
For Purchased Products which are identified to be sold and purchased at the Agreement Date, the Customer shall pay the Purchase Price for each such Purchased Product which shall either be (i) as specified under the Agreement Specific Terms, or (ii) if not so specified, the List Purchase Price at the Agreement Date. For Products which are, after the Agreement Date, deemed to have been purchased under Clause 8.3, or under any other Agreement Term, the Customer shall pay the Purchase Price for each such Product which shall, unless otherwise agreed in the Agreement Specific Terms, and at the option of Medartis (which option may be exercised at any time) be the List Purchase Price at either (a) the date of deemed purchase, or (b) the date such Product should otherwise have been returned under this Agreement had such deemed purchase not arisen.
- 4.2 Loan Charge**  
For the Loaned Products (if any), the Customer shall pay the Loan Charge.
- 4.3 Delivery Charge**  
Unless otherwise specified in the Agreement Specific Terms, if the basic Delivery Service Option applies for any Product or Set, then this is inclusive in the Purchase Prices. In any other case, for each Product and Set, the Customer shall pay the Delivery Charge for such Product or Set, which shall be the Delivery Charge as specified under any Agreement Specific Terms, or if not so specified, the Delivery Charge set out in the Product Catalogue as at the Agreement date, or if not so stated a reasonable charge being at least the actual cost to Medartis of transportation and delivery of the Products and Ancillary Items.
- 4.4 VAT**  
All Charges are exclusive of any sales taxes, value added taxes and other consumption taxes. The Customer shall, on receipt of a valid tax invoice from Medartis, pay to Medartis such additional amounts in respect of such taxes as are chargeable by law. If the Customer withholds any amount from any Charges on account of any taxes, including where it is required to by law, then such Charges shall be grossed-up, so that the amount received by Medartis after such withholding is the same as that which would have been received had no such withholding or tax applied.
- 4.5 Purchase Order Numbers**  
The Customer shall supply immediately on demand such purchase order numbers as are required by the Customer's own internal procedures for any payments to be made under this Agreement.
- 4.6 Invoicing**  
Medartis shall be entitled to invoice the Customer for the Charges and associated VAT, at any time after the Agreement Date. With respect to any deemed purchase under Clause 8.3, Medartis may invoice for the Purchase Price, and associated VAT, at any time after such deemed purchase arose; and it is agreed that in the case of Consigned Products, such invoice may be deferred and raised when the consignment is terminated. If any Loan Charge is a weekly or other periodical charge, Medartis may invoice the Loan Charge for a period in advance on or at any time after the start of that period, or (at Medartis' option) invoice for the accumulated Loan Charges for any completed periods in arrears at any time.
- 4.7 Invoice Information**  
Medartis shall provide all such evidence as the Customer may reasonably request in order to verify invoices submitted by Medartis. Each invoice shall quote the relevant order numbers and purchase order numbers where available.
- 4.8 Payment of Invoices**  
The Customer shall pay each invoice from Medartis for the Charges and VAT within 30 days of receipt.
- 4.9 Interest**  
The Late Payment of Commercial Debts (Interest) Act 1998 shall apply to all
- Charges and other amounts payable by the Customer under this Agreement.
- 4.10 Currency**  
All Charges and other amounts payable under this Agreement shall be payable in GBP.
- 4.11 No Set-Off**  
No payment shall be considered to have been made by the Customer unless it is received in full in cash or cleared funds by Medartis. The Customer may not set-off or withhold any amount against or from any payment due under this Agreement, or set up a counter-claim against any payment due under this Agreement.
- 5. DELIVERY OF THE PRODUCTS**  
The following terms shall apply in relation to the delivery of any Products:-
- 5.1 Delivery Location**  
The Products shall be delivered by Medartis to the Delivery Location.
- 5.2 Packaging**  
Medartis shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 5.3 Delivery Date and Time**  
Medartis shall use reasonable endeavours to deliver the Products to the Delivery Location by the Delivery Date and the Delivery Time, PROVIDED THAT (a) Medartis shall not be obliged to despatch any Products until it has received the Customer's purchase order number; and (b) if for the post-code of the Delivery Location the Delivery Agent does not offer the specified Delivery Time and/or Delivery Date, then the Delivery Time shall be by 18:00 and the Delivery Date shall be the 3<sup>rd</sup> Business Day after the stated Delivery Date.
- 5.4 Delivery Agent and Delivery Service Option**  
Medartis may sub-contract transportation and delivery of the Products, and may use a third party courier or other postal, parcel or transportation service to deliver the Products, in which case the Products will be transported and delivered using the selected or applicable Delivery Service Option.
- 5.5 Delivery Arrangements**  
Medartis and its Delivery Agent may tender delivery of the Products, and the Customer shall take delivery of the Products, at the Delivery Location, when tendered at any time during the Delivery Hours, whether before, on or after the Delivery Date. The Customer shall promptly provide a member of staff at the Delivery Location to receive the Products when delivery is tendered. Medartis will be obliged to unload the Products from the transportation vehicle to its immediate vicinity. Medartis shall not be obliged to move the Products to any place away from the immediate vicinity of the transportation vehicle unless it otherwise agrees in the Agreement Specific Terms. Delivery of the Products shall be complete on the completion of unloading of those Products at the Delivery Location.
- 5.6 Delivery Note**  
Each delivery of the Product may be accompanied by a delivery note from Medartis showing the type and quantity of Products and Ancillary Items being delivered, including the applicable code numbers of the Products and Ancillary Items. Medartis shall not be obliged to deliver or otherwise hand over possession of the Products to the Customer until such delivery note has been signed by a representative of the Customer, and the Customer shall procure that such delivery note is signed by a representative of the Customer on request, specifying any items that are found to be missing (if any). The signature by any person at the Delivery Location of such delivery note shall be deemed to be signature by or on behalf of the Customer. Any such signed delivery note shall be deemed to be proof that and agreement from the Customer that the Customer received the Products and Ancillary Items, except for any absent items noted on the delivery note, and that they were received in full and free from damage which a reasonable inspection on delivery of the Products and Ancillary Items would have revealed.
- 5.7 Failed Delivery**  
Medartis may make an additional Delivery Charge if it is not able to deliver the Products when tendered due to any breach, act or omission of the Customer or of any person at the Delivery Location.
- 6. RISK**  
Risk in the Products shall pass to the Customer on completion of unloading of the Products at the time of delivery.
- 7. PURCHASED PRODUCT SPECIFIC TERMS**  
The following terms shall apply in relation to the Purchased Products (if any) covered by this Agreement:-
- 7.1 Title**  
In the case of Purchased Products which are explicitly identified as being sold and purchased at the Agreement Date under the Agreement Specific Terms, title to such Purchased Products shall pass to the Customer on completion of delivery of those Purchased Products. In the case of any Consigned Products or other Products which are deemed, after the Agreement Date, to be sold and purchased, and to be Purchased Products, in accordance with Clause 8.3, or any other Agreement Term, title to such Purchased Products shall pass to the Customer on the occurrence of such deemed sale and purchase.
- 7.2 Warranties**  
Medartis warrants that the Purchased Products will on delivery (a) correspond to the Specifications in all material respects on delivery, (b) be of satisfactory quality within the meaning of Section 14 of the UK Sale of Goods Act 1979, and (c) comply on delivery with any applicable legislation (other than the UK Sale of Goods Act 1979 or Supply of Goods and UK Services Act 1982) in the Territory mandating that the Purchased Products meet any particular standard or condition; EXCEPT THAT Medartis only warrants that the Purchased Products will be fit for the purposes stated by Medartis in its published Specifications, and it shall not be a term of this Agreement that the Purchased Products be fit for any other purposes required by the Customer or its Affiliates.
- 8. CONSIGNMENT PRODUCT SPECIFIC TERMS**  
The following terms shall apply in relation to the Consigned Products (if any) covered by this Agreement:-
- 8.1 Title**  
Title in any Consigned Products shall remain at all times with Medartis, unless and until the those products become Purchased Products, and title passes under Clause 7.1.
- 8.2 Warranties**  
Medartis warrants that the Consigned Products will on delivery (a) correspond to

the Specifications in all material respects on delivery, (b) be of satisfactory quality within the meaning of Section 14 of the UK Sale of Goods Act 1979, and (c) comply on delivery with any applicable legislation (other than the UK Sale of Goods Act 1979 or Supply of Goods and UK Services Act 1982) in the Territory mandating that the Consigned Products meet any particular standard or condition; EXCEPT THAT Medartis only warrants that the Consigned Products will be fit for the purposes stated by Medartis in its published Specifications, and it shall not be a term of this Agreement that the Consigned Products be fit for any other purposes required by the Customer or its Affiliates.

### 8.3 Deemed Purchase Agreement

Medartis offers to sell the Consigned Products, and if any of the events in Clause 8.4 affects, applies to or occurs in relation to any Consigned Product the following terms shall apply:-

#### (a) Notice

The Customer shall inform Medartis without undue delay of any such event coming to its knowledge.

#### (b) Deemed Order

The Customer will be deemed to have ordered such Consigned Product, and accepted such offer to sell the Consigned Product.

#### (c) Deemed Purchase Agreement

A separate agreement shall be implied and deemed to have automatically made in relation to that Consigned Product for the sale of the Consigned Product to the Customer and the purchase of the Consigned Product by the Customer, incorporating the Agreement Terms, the Consigned Product shall be deemed to have become a Purchased Product, and title to the Consigned Products shall be deemed to have passed at the point that such agreement was made.

#### (d) Separate Purchase Agreement

Each purchase of a Consigned Product which is deemed under this Clause 8.3, shall be deemed to be a separate agreement for the sale and purchase of that Product, which shall incorporate the Agreement Terms, including these Standard Terms of Supply.

### 8.4 Events causing deemed purchase agreement

The events referred to in Clause 8.3 are:-

#### (a) Usage

If a Consigned Product is used or attempted to be used in any way, or is taken out of any Set or store and replaced, or is contaminated in any way (however minor) with any biological or other substance. Any Consigned Product shall be deemed to have been used if its packaging or any seal is opened in any way. Any twist drill or other drill bit will in any event be deemed to have been used, whether or not it has been used, if it is returned or attempted to be returned to Medartis, if it is not been used earlier, as twist drill or other drill bits are not recommended for more than one use.

#### (b) Deterioration

If the condition of a Consigned Product has deteriorated after delivery, other than deteriorations due to: (a) a Defect in a Consigned Products present at delivery; (b) normally expected changes or deteriorations occurring in storage, and not caused by an event external to the Consigned Product or breach by the Customer of this Agreement; (c) deteriorations which are so slight that they would not affect use of a Consigned Product or prevent Medartis from re-supplying a Consigned Product to a third party in a condition which would not be Defective. If a Consigned Products has a shelf life, and that shelf life expires, or has less than 1 year to run when the Consigned Product is returned.

#### (c) Found Not Present

If a Consigned Product is not found when Medartis audits or inspects any Set or store of Consigned Products, or is not found in any returned Set of which it formed part, or is not returned when it was otherwise requested to be or expected to be returned to Medartis.

#### (d) Identified Not Present

If a Consigned Product is identified in any stock return from the Customer not to be present in any Set or other store of Consigned Products.

#### (e) Security Interest

If a Consigned Product becomes subject to any security interest, or any other legal or physical impediment which does or would prevent its unencumbered return to or access by Medartis.

#### (f) Loss

If a Consigned Product is lost, stolen, damaged, or destroyed in any way and from any cause (other than any negligence of Medartis) when risk in the Consigned Product is with the Customer.

#### (g) Re-Sale

If a Consigned Product is re-sold or purported to be re-sold by the Customer to any third party.

#### (h) Transfer or loss of possession

If possession or control of a Consigned Product is given by the Customer to any third party (other than an Affiliate of the Customer), or possession or control of a Consigned Product is lost for any reason (including by the exercise of any security, confiscation, seizure, or distress).

### 8.5 Termination of Consignment

Either party may at any time terminate this Agreement with respect to all or any of the Consigned Products by 30 days' notice to the other. If the Consigned Products are part of a Set or Agreement which includes Loaned Products, then this Agreement will terminate with respect to those Consigned Products if or when the associated loan of those Loaned Products terminates for such Set.

### 8.6 Return

On termination of this Agreement with respect any Consigned Products they shall cease to be used and shall be returned to Medartis in accordance with the terms of Clause 11.

### 9. LOANED PRODUCTS SPECIFIC TERMS

The following terms shall apply in relation to the Loaned Products (if any) covered by this Agreement:-

#### 9.1 Title

Title in the Loaned Products shall remain at all times with Medartis, and no option to purchase is given to the Customer.

#### 9.2 Warranties

Medartis warrants that the Loaned Products will on delivery (a) correspond to the Specifications in all material respects on delivery, (b) be of satisfactory quality within the meaning of Section 9 of the UK Supply of Goods And Services Act 1982, and (c) comply on delivery with any applicable legislation (other than the UK Sale of Goods Act 1979 or Supply of Goods and UK Services Act 1982) in the Territory mandating that the Loaned Products meet any particular standard or condition; EXCEPT THAT (a) Medartis only warrants that the Loaned Products will be fit for the purposes stated by Medartis in its published Specifications, and it shall not be a term of this Agreement that the Loaned Products be fit for any other purposes required by the Customer or its Affiliates; (b) the Loaned Products need not be new, and may have been previously used by the Customer or any third party.

#### 9.3 Quiet Possession

Medartis agrees that it will not, except in the exercise of its rights under this Agreement or any rights at law, interfere with the Customer's quiet possession of the Loaned Products.

#### 9.4 Use

If the Loaned Products are under a Specified Procedure Loan then they shall only be used by the Customer for the procedures communicated to Medartis in writing before the Agreement Date and documented in the Agreement Specific Terms, and any other use shall be at the risk of the Customer. If the Loaned Products are under an Open Ended Loan or Fixed Term Loan then they Loaned Products may be used for multiple procedures.

#### 9.5 Termination of Loan

##### (a) Specified Procedure Loan

Where the Loan Type for the Loaned Products is a Specified Procedure Loan, then: (i) the Loan period shall start from the date of delivery of the Loaned Products; (ii) the loan of the Loaned Products shall automatically expire and terminate on completion of the associated procedure(s); and (iii) Medartis or the Customer may also terminate the loan of those Loaned Products immediately at any time after the scheduled date(s) for the associated procedure(s), or at any time on 7 days' notice in writing if a scheduled procedure date was not communicated to Medartis in writing before the Agreement Date.

##### (b) Fixed Term Loan

Where the Loan Type for the Loaned Products is a Fixed Term Loan then: (i) the Loan period shall start from the date of delivery of the Loaned Products; (ii) the loan shall continue for the fixed period stated in the Agreement Specific Terms, or if not so stated, for a fixed period of 90 days from the date of delivery. Medartis may however terminate the Fixed Term Loan at any time by giving to the Customer 30 days' notice in writing. If the Loaned Products are allowed by Medartis to be continued to be used after the fixed period, then the Fixed Term Loan shall be considered to be converted into an Open Ended Loan.

##### (c) Open Ended Loan

Where the Loan Type for the Loaned Products is an Open Ended Loan, then: (i) the Loan period shall start from the date of delivery of the Loaned Products; (ii) the loan shall continue without limit of time until terminated by either Medartis or the Customer giving to the other 30 days' notice in writing.

##### (d) Effect on Consigned Products

If the Loaned Products are part of a Set or Agreement which includes Consigned Products, then termination of the loan in accordance with the above Clauses shall also terminate this Agreement in respect of the consignment of the Consigned Products.

#### 9.6 Return

On termination of this Agreement with respect any Loaned Products they, and all Consigned Products, shall cease to be used and shall be returned to Medartis in accordance with the terms of Clause 11.

### 10. ANCILLARY ITEMS SPECIFIC TERMS

#### 10.1 Title

The title in any Ancillary Items shall remain at all times with Medartis, and no option to purchase is given to the Customer.

#### 10.2 Warranty

The same warranty as applies to the Loaned Products under Clause 9.2 shall apply to any Ancillary Items.

#### 10.3 Return

The Customer shall return to Medartis any Ancillary Items at any time on request from Medartis, in accordance with the terms of Clause 11.

### 11. PRODUCT RETURNS

The following terms shall apply to all Products and Ancillary Items which are returned or are to be returned by the Customer:-

#### 11.1 Return Fee

If the Customer asks to return any Purchased Products because it does not wish to purchase them, and Medartis agrees to such return, then Medartis will refund the Purchase Price, EXCEPT THAT: (a) Medartis shall not be obliged to refund any VAT paid or any Delivery Charges; and (b) Medartis may charge and the Customer shall pay a re-stocking fee equal to 40% of the Purchase Price of such Purchased Products, plus VAT, which may be deducted from any refund given.

#### 11.2 Time for return

The Customer shall return to Medartis without undue delay, and in any event by the next day after request from Medartis, any Products and Ancillary Items which are rejected, replaced, investigated or to be repaired, or in respect of which Medartis has accepted a return, or which are otherwise required to be returned under this Agreement. For each day late which the Customer is in returning a Product or Ancillary Item, the Customer shall pay and Medartis may charge a Loan Charge for each such Product and Ancillary Item as if they were Loaned Products.

#### 11.3 Transportation and Cost

Medartis will undertake the collection of the Products and Ancillary Items from where they are located, and their transportation back to Medartis. The Customer shall pay to Medartis a reasonable charge for such collection, except where the return is due to a breach by Medartis of this Agreement.

#### 11.4 Make Available

The Customer shall make the Products and Ancillary Items available for collection by Medartis from where they are located. The Customer shall agree and observe a reasonable date or dates on which the Products and Ancillary Items may be collected, during Delivery Hours, and within the time period in Clause 11.2, if

requested by Medartis. The Customer shall have the Products and Ancillary Items suitably packed and ready for loading onto Medartis's (including its Delivery Agent's) transport vehicle in the immediate vicinity of the parking area for the transport vehicle by the first of such date or dates.

#### 11.5 Decontamination

The Customer must decontaminate the Products and Ancillary Items, and the Customer must supply with the Products and Ancillary Items a decontamination certificate, compliant with applicable law of the Territory and the UK, and compliant with any requirements of any government of the Territory and the UK.

#### 11.6 Risk

Risk in the returned Products shall pass to Medartis on collection by or re-delivery to Medartis, when the Products are loaded onto Medartis transport vehicle. If any returned Products are subsequently re-delivered to the Customer (including after any repair), then risk shall pass back to the Customer under Clause 6.

#### 11.7 Title to Purchased Products

Except for any Products returned for repair, if any Purchased Products are collected or returned after rejection or for replacement, title to such Purchased Products shall pass to Medartis on the sooner of (a) collection by or re-delivery to Medartis of those Purchased Products, or (b) delivery of any replacement for such Purchased Products; and the Customer shall procure that such title as it received from Medartis in respect of such Purchased Products is passed back to Medartis on such collection or re-delivery.

#### 11.8 Possession

Except for any Products returned for repair, the Customer's right to possession of the Products and any Ancillary Items shall end.

#### 11.9 Licence to enter

Medartis shall have a licence to, and the Customer shall procure that Medartis shall have a licence, to come on to any premises where the Products and Ancillary Items are located for the purposes of recovering them.

#### 11.10 Final Check

On return of any Products, Medartis may check the returned Sets and Products and Ancillary Items, and this will be the definitive check for purposes of determining the presence of and condition of the returned Products and Ancillary Items, and the results of such check shall be deemed to be correct except for any manifest error.

#### 11.11 Wrong Returns

If the Customer returns to Medartis any Product which was not intended to be, or expected to be returned, then Medartis may retain this, and shall not be obliged to give any refund in relation to such Product or bring it to the attention of the Customer.

#### 11.12 Twist Drills

On return of any Products, all twist drills and other drill bits must be removed and discarded. Twist drills and other drill bits will be charged to the Customer, even if not used, as these items are recommended for single use only.

#### 11.13 Failure to return

If the Customer does not return any Products or Ancillary Items strictly in accordance with this Clause 11, then: (a) Medartis may give the Customer further time to comply with this Clause 11 to which the full terms of this Clause 11 shall apply; or (b) in the case of Consigned and Loaned Products, Medartis may deem that the Customer has purchased those Products and Ancillary Items to which Clauses 8.3(b) to 8.3(d) shall apply as if references to Consigned Products included Loaned Products; (c) any Defect or breach of this Agreement by Medartis that has led to the return shall be deemed not to exist or have occurred; and (d) any authorisation given by Medartis to return the Products or Ancillary Items shall be deemed to be revoked.

#### 11.14 Cost of Return

The expense of return of any Products shall be paid by the party terminating this Agreement, except that the expense of return of any Products resulting from any breach of this Agreement, shall be paid by the party in breach.

#### 11.15 Condition

If any Products or Ancillary Items are returned not in a condition required by this Agreement, and not in a condition which they would have been in had the Customer performed its obligations under this Agreement, then Medartis may deem that the Customer has purchased those Products and Ancillary Items, and Clauses 8.3(b) to 8.3(d) shall in such case be deemed to apply as if references to Consigned Products were to those Products or Ancillary Items.

### 12. CUSTOMER OBLIGATIONS

#### 12.1 Management of Products

##### (a) Records

The Customer shall continuously keep a record of use of the Products and maintain an accurate inventory of the Products and Ancillary Items.

##### (b) Management

The Customer shall manage and care for all Products, Sets and Ancillary Items with reasonable care and skill, shall ensure that all Products, Sets and Ancillary Items, are kept in a complete, clean and tidy condition. Where any Products have a shelf life, then the Customer shall ensure that the Products with the shortest shelf life remaining are used first, and shall co-operate with Medartis in the management of any Product shelf life.

##### (c) Replenishment

The Customer shall monitor all use of the Products and shall order Products to replenish any Sets or other stores of Products that are used. The Customer shall promptly place any replacements or replenishments for any Products in any store or Products or Set following delivery to it by the Customer. Medartis shall not be responsible for monitoring or managing any Sets or other stores of Products or for keeping them replenished.

##### (d) Customer Stock Take

The Customer shall within 2 Business Days of request from Medartis undertake a stock take of the Products and Ancillary Items and provide a list of those Products and Ancillary Items to Medartis.

##### (e) Supplier Inspection and Stock Take

The Customer shall procure that Medartis is able to inspect and carry out physical inspections and stock takes of the Products and Ancillary Items on request, at any place where they are located.

#### 12.2 Loaned and Consigned Products

The Customer agrees to comply with the following terms with respect to the Loaned Products, Consigned Products and Ancillary Items:

##### (a) Location and Possession

The Customer agrees to keep those Products and Ancillary Items safely and securely at the Storage Location. The Customer shall at all times retain possession and control of those Products and Ancillary Items. The Customer shall not lend, give, sell, offer for sale, or under let those Products or Ancillary Items to any other person without the prior approval in writing of Medartis. The Customer shall ensure that no mortgage, charge, lien or other security interest shall be created in or exercised over those Products and Ancillary Items. The Customer shall not and shall procure that nothing is done in relation to those Products and Ancillary Items which will or may jeopardise the right, title and/or interest of Medartis in those Products and Ancillary Items. The Customer shall inform Medartis immediately on request where all those Products and Ancillary Items are.

##### (b) Notification of adverse events

The Customer shall notify Medartis as soon as practicably possible of any circumstances that may adversely affect the Products or Ancillary Items.

##### (c) Notices of Ownership

The Customer shall not remove any notice of Medartis's ownership affixed to those Products and Ancillary Items and shall ensure that those Products and Ancillary Items are clearly identified as the property of Medartis.

##### (d) Security

The Customer shall store those Products and Ancillary Items in a secure area to which access is limited to staff of the Customer and its Affiliates, and shall confirm the precise details of where those Products and Ancillary Items are stored and the security measures to protect those Products and Ancillary Items when in storage, immediately on request from Medartis.

##### (e) Replacement

The Customer agrees that Medartis shall at any time be entitled to replace those Products and Ancillary Items with equivalent replacements at any time and for any reason. Any replaced Products shall be returned to Medartis at the time of replacement, and the replacements shall be considered to be Consigned Products, Loaned Products or Ancillary Items, as applicable.

##### (f) Care

The Customer shall take reasonable care of those Products and Ancillary Items, and keep them in stored in a suitable environment. The Customer shall keep those Products and Ancillary Items in the condition in which they were received, subject to any normal deterioration, and in the case of Loaned Products, subject to fair wear and tear.

##### (g) Loss and damage

If any of those Products or Ancillary Items is lost, stolen, damaged or destroyed after delivery to the Customer, or ceases to be useable (other than due to fair wear and tear), or is not able to be located within 3 Business Days of request from Medartis, however caused (except where caused any negligence of Medartis or any Defect), then the Customer shall on demand pay to Medartis the full new List Purchase Price for those Products and Ancillary Items and Medartis may deem that the Customer has purchased those Products and Ancillary Items, in which case Clauses 8.3(b) to 8.3(d) shall in such case be deemed to apply as if references to Consigned Products were to those Products or Ancillary Items.

##### (h) Return

The Customer shall return those Products and Ancillary Items on expiry or termination of this Agreement, in accordance with the terms of Clause 11.

#### 12.3 All Products

##### (a) Who may use the Products?

The Products are only supplied for use by the Customer or its Affiliates in surgical procedures being carried out by the Customer or its Affiliates. The Products shall not be given to or used by any other legal entity, and any other use of the Products shall be at the sole risk of the Customer. Where the Customer allows any Affiliate or third party possession of or use of any Products, then the Customer shall ensure that they comply with the Customer's obligations in this Agreement, and shall be answerable for everything that they may do or omit to do with such Products, and such use shall be at the sole risk of the Customer.

##### (b) Where may the Products be used?

The Products are only supplied for use in surgical procedures being carried out within the Territory, and any use in surgical procedures carried out outside the Territory shall be at the sole risk of the Customer or any third party using the Products. The Loaned Products and Consigned Products are only supplied for use at the Usage Location, shall not be used elsewhere, and any use at any other premises shall be at the sole risk of the Customer.

##### (c) What may the Products be used for?

Where the Products form part of a Set, then the Set may only be used for the types of surgical procedure it is designed for, including as stated in the Specifications or the Agreement Specific Terms, and not for any other use, and any use for any other type of surgical procedure shall be at the sole risk of the Customer. Where any individual Product is designed for a specific purpose (including as may be stated in the Specifications or the Agreement Specific Terms), then it shall only be used for such purpose, and not for any other purpose, and any use for any other type of surgical procedure, or adapting the Products to fit a situation the Products were not designed for, shall be at the sole risk of the Customer. The Products are only designed for use with other Products from Medartis, and use with any other products shall be at the sole risk of the Customer.

##### (d) Compliance with Law

The Customer shall comply in all respects with applicable UK, EU and Territory laws and regulations relating to the storage, handling, tracing and use of the Products, including laws relating to medical devices.

##### (e) Guidelines and Usage

The Customer agrees to procure that all Products are sterilized, treated, handled and used in accordance with such guidelines as Medartis may issue from time to time, and in accordance with any training given by Medartis, and any use outside those guidelines and such training shall be at the Customer's sole risk. The Customer agrees to procure that the Products are only used by trained competent staff. The Customer shall procure that steps are taken as may be necessary to ensure, so far as is reasonably practicable, that the Products are at all times safe and without risk to health



when being set, used, cleaned or stored. The Customer shall not return any Products to a Set or store of the Products, or place the Products in any Ancillary Items, where they have been used, unless they have first been decontaminated.

**(f) Design Limits and Patient Advice**

The Customer agrees to procure that the Products are only used for the purposes for which and in the manner which Medartis has designed them to be used. The Customer shall inform all patients of the design limits of the Products as published by Medartis in its Specifications, so that patients are clear what usage the Products will or will not support

**(g) Incident Handling**

The Customer shall promptly report to Medartis (giving such details as Medartis may require) any actual or suspected Defects with the Products, any problems or issues experienced in using the Products, and any death or personal injury to any person in respect of whom the Products are used or into whom the Products have been fitted. The Customer shall enable Medartis to carry out its own investigation in relation to the same, and give such information and co-operation to Medartis to enable this to be carried out. The Customer shall support Medartis in making any reports which Medartis has to make to any governmental or regulatory authorities concerning such events, and in any investigations which they may wish to undertake.

**(h) Changes and Repairs**

The Customer shall not make any changes or repairs to any of the Products, and any changes and repairs shall only be made by Medartis.

**(i) Twist Drills**

To avoid the risk of the transmission of diseases (e.g. Creutzfeldt-Jakob) or infections, Medartis strongly recommends the single-use of all twist drills and any other drill bits. Any use by the Customer of any twist drills or other drill bits more than once shall be at the risk of the Customer.

**(j) Use with other equipment**

The Customer agrees that Medartis shall not be liable for, and that Products are not held out to be capable of use with, any equipment, materials or components of third parties.

**12.4 Parking and access**

Where Medartis, its staff, or any Delivery Agent, are to deliver or collect any Products or Ancillary Items to or from any premises, or at to inspect any Products or Ancillary Items at any premises, including any premises of the Customer or any Affiliate, then the Customer shall procure and arrange for suitable parking for their cars and transportation vehicles at such premises, and shall provide suitable access to the Products and Ancillary Items at such premises, and shall provide reasonable co-operation and assistance.

**13. INTELLECTUAL PROPERTY**

The Customer acknowledges and agrees that all Intellectual Property Rights in and to the Products and any Ancillary Items are and shall remain the sole and absolute property of Medartis and its Affiliates, and that no ownership, interest, right or licence in relation to any Intellectual Property Rights in relation to the Products or Ancillary Items, is transferred to or granted to the Customer or its Affiliates under this Agreement or otherwise howsoever. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or protection in any part of the world.

**14. CONFIDENTIALITY**

**14.1 Information**

For the purposes of this Clause 14, the "Information" of a party is any information which that party discloses to the other party, makes available to the other party, or makes accessible to the other party, under or in connection with this Agreement. In the case of Medartis, Information of Medartis shall include the Products, Ancillary Items, Specifications, Product Catalogues, List Purchase Prices and Charges. In the case of the Customer, Information of the Customer includes any information supplied for the purposes of Clause 12.3(g)(Incident Handling).

**14.2 Excluded Information**

This Clause shall not apply to, and no duty of confidentiality shall apply to: (a) any Information which is in the public domain otherwise than as a result of a breach by a party of this Clause 14 or any other duty of confidentiality; (b) any Information which is subsequently separately provided to the other party by a third party who is not prohibited from making a non-confidential disclosure of the same; (c) any Information which was already in the possession of the other party at the time the disclosing party first made a disclosure of it, is not held under any other duty of confidence, and was not originally received from the disclosing party.

**14.3 Undertaking**

Each party agrees to maintain confidential all Information of the other party.

**14.4 Non-Disclosure**

Each party agrees not to disclose the Information of the other party to any third party, except that a party may disclose the Information of the other party as follows: (a) in confidence, to its Affiliates and to the officers, employees and advisors of it and its Affiliates, on a need to know basis; (b) in confidence to any Delivery Agent or other sub-contractor, where it needs to know the same for the purposes of carrying out their assigned duties; and (c) to any third party where disclosure to such third party is required by law, which shall again be in confidence unless non-confidential disclosure is required by such law.

**14.5 Secrecy**

Each party shall take reasonable measures to keep the Information of the other secure.

**15. DATA PROTECTION**

**15.1 As Processor**

Where a party (the "Processor") is to process any personal data of which the other party is data controller (the "Controller"), in the performance of this Agreement, then: (a) the Controller will comply with any requirements of the Data Protection Act 1998 necessary to permit such processing by the Processor; (b) the Processor shall process such personal data in accordance with the instructions of the

Controller; (c) the Processor shall take appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data; and (d) the Processor will take reasonable steps to ensure the reliability of its employees who have access to the personal data.

**15.2 As Controller**

Where a party is provided with any personal data by the other party for processing in its own right as a data controller and not as data processor, then: (a) the receiving party shall comply with the Data Protection Act 1998 as data controller; (b) the providing party will also remain data controller in its own right, and shall comply with any requirements of the Data Protection Act 1998 necessary to permit disclosure of such personal data to the receiving party for the purposes envisaged by such provision. Words and expressions defined in the Data Protection Act 1998 shall have the same meanings in this Clause 15.

**16. LIABILITY, LIMITATION AND EXCLUSION**

**16.1 Scope**

This Clause 16 sets out limitations and exclusions on the liability of Medartis. References in this Agreement to any liability of Medartis to the Customer are to the following: (a) any liability under or imposed by any term of or indemnity under this Agreement; (b) any liability for or arising out of any Defect; (b) any liability for or arising out of any breach of this Agreement (including contractual negligence); (c) any liability (including vicarious) for or arising out of any tort (including tortious negligence), breach of statutory duty or law, or negligent misstatement, committed by Medartis in the course of performance of this Agreement, or otherwise committed in relation to this Agreement, the Products or Ancillary Items; (d) any liability whatsoever (including vicarious liability, negligence, and under statute or common law) arising in connection with this Agreement, the performance of this Agreement, the Products or Ancillary Items, which is not already listed above.

**16.2 Liability not excluded or limited**

Nothing in this Agreement shall limit or exclude the following liability of Medartis to the Customer: (a) for death or personal injury, either resulting from its negligence, or caused by any Defect in a Product, where the Product is used in accordance with this Agreement; (b) for fraud or fraudulent misrepresentation; or (c) to refund all or any part of the Charges.

**16.3 Types of loss excluded entirely**

Without prejudice to Clause 16.2, Medartis shall not be liable to the Customer or its Affiliates for: (a) any loss of profit, loss of goodwill, loss of business, or loss of business opportunity, including where it is direct or foreseeable loss; (b) the cost incurred by the Customer in obtaining substitutes for the Products, including where it is direct or foreseeable loss; (c) any wasted, additional or reliance costs and expenses, including any wasted costs of surgery, and costs having to re-perform or rectify any surgery, including where it is direct or foreseeable loss; (d) any liability of the Customer to third parties, or liability for fines payable by the Customer, including where it is direct or foreseeable loss; and (e) any special, indirect or consequential loss or damage, and any damage or loss which was not reasonably foreseeable.

**16.4 General Liability Cap**

Without prejudice to Clause 16.2 or Clause 16.3, and except for the type of loss or liability covered by Clauses 16.2 and 16.5, Medartis's liability to the Customer for each cause of action shall be limited to the amount as ascertained in this Clause 16.4. In this Clause 16.4, the "Total Charges" means the total of (i) the Purchase Prices for all Purchased Products under this Agreement as at the Agreement Date, (ii) the Loan Charges for all Loaned Products under this Agreement as at the Agreement Date, and (iii) the Delivery Charges for all Products supplied under this Agreement as at the Agreement Date. Medartis's total liability to the Customer for any cause of action shall be limited to: (i) £1000, if the Total Charges are less than or equal to £1000; or (ii) £5000, if the Total Charges are more than £1000 or the Total Charges cannot be ascertained. Medartis total liability to the Customer in aggregate for all causes of action shall be limited to £10,000. If any of the previous limitations on liability in this Clause 16.4 are void or unenforceable with respect to any cause of action, then Medartis total liability to the Customer for that cause of action shall be limited to £10,000.

**16.5 Property cap**

Without prejudice to Clause 16.2 or Clause 16.3, Medartis's liability to the Customer for any diminution in the value of, or for cost of replacing or repairing any tangible property lost, stolen, damaged or destroyed, shall be limited to £100,000 for all causes of action in aggregate occurring within any calendar year.

**16.6 Misrepresentation**

Except for fraudulent misrepresentation, Medartis excludes all liability to the Customer for and the Customer shall have no remedy for or right to rescind this Agreement for misrepresentation, but this shall be without prejudice to any claim in contract for breach of any representation which has been made an Agreement Term.

**16.7 Non-Contractual Duty of Care**

Medartis excludes any duty of care (other than one stated in the Agreement Terms) between Medartis and the Customer or any Affiliate of the Customer in relation to this Agreement or the Products.

**16.8 Force Majeure**

Medartis shall not be liable to the Customer or any Affiliate for, and shall not be in breach of this Agreement for, defective performance, non-performance or late performance of this Agreement directly or indirectly caused by or resulting from any Force Majeure Event that affects Medartis, any Affiliate of Medartis, or any Delivery Agent or sub-contractor. Where a Force Majeure Event has the effect of meaning that Medartis does not have sufficient stocks of the Products, or is not able to procure sufficient Products, to meet all of its contractual obligations under this Agreement and any other agreement with the Customer or a third party to which Medartis is a party, then Medartis shall be entitled to determine in its sole discretion, which contracts to perform and in what order as any when it has or is able to procure any Products.

**16.9 Use at own risk**

Where this Agreement states that any particular use of the Products is at the risk of the Customer: (a) Medartis shall have no liability to the Customer for any loss, damage, or liability suffered or incurred by the Customer, or its Affiliates or any other third party, as a result or arising in the course of such use, even if caused by a Defect in the Products; and (n) the Customer shall defend, indemnify and hold harmless Medartis from and against any claims from and liability to any Affiliate or any other third party for any loss, damage, death, injury, or liability arising out of or

in the course of such use, even if caused by a Defect in the Products.

#### 16.10 Delays not caused by Medartis

Time for delivery of the Products shall be extended by any delay in or error in delivery of the Products, and Medartis shall have no liability to the Customer for or be in breach of this Agreement for any delay or non-delivery of the Products, caused by: (a) any Delivery Agent, including where the Delivery Agent is according to its contract with Medartis not liable for any delay in delivery, and including where the Delivery Agent fails to pick up and deliver the correct Products; (b) any Force Majeure affecting the Customer, any of its Affiliates, or any Delivery Agent; (c) the Customer's failure to comply with its obligations under this Agreement; and (d) any breach of contract by, or act or omission of, any Delivery Agent. In any event, if any delay or error in delivery is caused by Delivery Agent, Medartis liability to the Customer shall be limited to liability of the Delivery Agent to Medartis, but without prejudice to any other limits and exclusions on liability in this Agreement.

#### 16.11 Affiliates and other third parties

The Customer agrees to indemnify, defend and hold harmless Medartis from and against any liability of Medartis to any Affiliate of the Customer and to any other third party, except for any liability which would not be limited or excluded by this Clause 16.4 were this Clause 16.4 to apply and be fully enforceable as between Medartis and such Affiliate or other third party as if references to the Customer in this Clause 16.4 were to such Affiliate or other third party.

#### 16.12 General provisions relating to limits and exclusions of liability

The explicit figures stated in Clause 16.4 and 16.5 are stated as at 1<sup>st</sup> August 2015. The actual figures that shall apply to this Agreement shall be those explicit figures increased by the percentage increase (if any) of the UK Retail Prices Index (All Items) (or its nearest replacement) published for the month prior to the Agreement Date over such index as published for the month of July 2015. Where an aggregate cap on liability is stated, whenever Medartis pays any amount to the Customer on account of any liability covered by such aggregate cap, such aggregate cap shall be reduced by such amount, and such reduced aggregate cap shall apply to any other liability of Medartis to the Customer. References to any cause of action mean any cause of action giving rise to liability of Medartis to the Customer, and include all causes of action based on the same or some of the same facts or under which the same or some of the same loss may be claimed. This Clause 16 shall take precedence over all other Agreement Terms in the event of conflict.

### 17. GENERAL

#### 17.1 Entire Agreement

The Agreement Terms constitute the entire agreement of the parties relating to the subject matter of this Agreement.

#### 17.2 Implied Terms

All terms implied by law into this Agreement in favour of the Customer are hereby excluded to the fullest extent permitted by law, including the implied terms under, Sections 13, 14 and 15 of the Sale of Goods Act 1979, and Sections 3, 4, 5, 8, 9 and 10 of the Supply of Goods and Services Act 1982, or any other similar implied terms implied under any other law.

#### 17.3 Previous Agreements

This Agreement replaces any previous agreement between the parties concerning the subject matter of this Agreement.

#### 17.4 Sub-Contracting

Medartis shall be entitled to sub-contract the performance of this Agreement, but no sub-contracting will release Medartis from any liability under this Agreement.

#### 17.5 No Assignment

##### (a) General prohibition

Neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party which may be granted or withheld in that party's sole discretion, except as provided below.

##### (b) Permitted assignment by Medartis

Medartis shall be entitled to assign this Agreement to any Affiliate without the prior written consent of the Customer. Medartis shall be entitled to assign this Agreement to any entity that is acquiring substantially all of the business and assets of Medartis as part of the same transaction. Medartis shall be entitled to assign, charge or declare a trust over any obligation of the Customer to pay any Charges or other amounts to Medartis under this Agreement.

##### (c) Permitted assignment by Customer

The Customer shall be entitled to assign this Agreement to any entity that is acquiring substantially all of the business and assets of the Customer as part of the same transaction.

##### (d) Conditions of assignment

In relation to any assignment of this Agreement (but not any amounts payable under this Agreement): (i) the assignor or assignee must give notice of such assignment to the remaining party within 14 Business Days of it occurring; and (ii) the assignee shall, and the assignor shall procure that the assignee shall, enter into an agreement with the remaining party within 14 Business Days of notice to either the assignor or the assignee, under which the assignee agrees with the remaining party to assume all the obligations and liabilities of the assignor under this Agreement.

#### 17.6 Variations

Except for any unilateral right of variation of a party stated in an Agreement Term, no variation of this Agreement shall be valid unless it is in writing and signed by a duly authorised representative for and behalf of each party.

#### 17.7 Waiver

Any waiver of any right under this Agreement is only effective if it is in writing and shall apply only to the party to whom the waiver is addressed and to the circumstances for which it is given. No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy. No single or partial exercise of any right or remedy under this Agreement or at law shall prevent or restrict the further exercise

### END OF STANDARD TERMS OF SUPPLY

of that or any other right or remedy.

#### 17.8 Severance

If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### 17.9 Cumulative Rights

All rights and remedies of Medartis in this Agreement are cumulative and shall be without prejudice to and shall not exclude any other rights or remedies of Medartis under this Agreement or at law.

#### 17.10 No Third Party Rights

The Agreement shall not confer any benefit on or be enforceable by any person other than Medartis and the Customer, and the Contracts (Rights of Third Parties) Act 1999 shall not apply, except that Clauses 13, 14, 15 and 16 and shall apply for the benefit of each Affiliate of Medartis as if the Affiliate was referenced in that Clause instead of or as well as Medartis.

#### 17.11 Counterparts

This Agreement may be executed in two counterparts and by each party on a separate counterparts, and in such case: (a) this Agreement shall effect when each party has executed at least one counterpart and delivered it to the other party; (b) transmission of a copy of executed counterpart of this Agreement by fax or by e-mail (including in PDF, JPEG or TIFF format) shall be considered to be delivery of an executed counterpart of this Agreement; (c) each counterpart shall constitute an original but all the counterparts together shall constitute a single Agreement; and (d) each party shall provide the other with the original of its delivered counterpart within 7 days of notice requesting the same.

#### 17.12 Governing law

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation, including non-contractual disputes or claims, shall be governed by and construed in accordance with the law of England and Wales.

#### 17.13 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation, including non-contractual disputes or claims, EXCEPT THAT Medartis may also enforce this Agreement, its Intellectual Property Rights, and any judgements against the Customer in the courts in any other country or jurisdiction where the Customer has an address, is established, has any assets, or conducts any business.

### 18. NOTICES

#### 18.1 Application

The following terms apply to notices under this Agreement. No notice shall be considered to be served except where it complies with and is deemed to be served in accordance with the following terms.

#### 18.2 Writing

notices shall be in writing.

#### 18.3 Address

notices shall be sent to: (a) the address, fax number or e-mail address for notices of a party set out in this Agreement; (b) to such replacement physical address, fax number or email for notices, as a party may subsequently communicate to the other party by notice; or (c) to the registered office or any last known head office of a party.

#### 18.4 Method and Deemed Service

A notice shall only be sent by one of the following methods, and shall be deemed to have been received (if properly addressed) as follows:-

##### (a) In Person

By means of an employee or director to the address of the other party specified under Clause 18.3, in which case it shall be deemed to have been received when handed over to a person at that address.

##### (b) Courier

By means of a process server or courier to the address of the other party specified under Clause 18.3, in which case it shall be deemed to have been received when left at that address.

##### (c) Public Postal Service

By means of 1<sup>st</sup> class mail (or equivalent) of a public postal service (such as Royal Mail), to the address of the other party specified under Clause 18.3, in which case it shall be deemed to have been received two days after the date of posting (if to an address in the same country as the sender) or 7 days after the date of posting (if sent to an address in a different country to the sender).

##### (d) By Fax

By fax to the fax number (if any) stated for notices under or pursuant to Clause 18.3, in which case they shall be deemed to have been received when uninterrupted transmission in full has been completed.

##### (e) By Email

By email to the email address (if any) stated for notices under or pursuant to Clause 18.3, in which case it shall be deemed to have been received when successfully transmitted to the mail server of the intended recipient (whether or not subsequently placed into the correct mailbox or read).

#### 18.5 Other Communications

Any other requests, invoices and communications under or in connection with this Agreement may in writing or oral (unless writing is specified, in which case they shall be in writing), and shall be deemed to have been received in accordance with Clause 18.4, at the same time as a notice would be, if sent using the same methods in Clause 18.4 as are permitted for notices above, either using the address or number under Clause 18.4 above or any other address or number stated in this Agreement, or any other known address, email, or number of the other party.