



## **STANDARD TERMS AND CONDITIONS OF SALE** of Gerald Simonds Healthcare Ltd.

### **Definitions**

“the Company”	means Gerald Simonds Healthcare Limited
“the Customer”	means any person, Company or other organisation to whom the Company supplies the Product
“the Product”	means the products and/or services to be supplied to the Customer by the Company
“Contract Price”	means the price payable by the Customer for the Product including any delivery charges, insurance, and any additional charges that may become payable
“Code of Practice”	means the Code of Practice for the Healthcare and Assistive Technology Products and Service Industry implemented on 1 July 2006, and as subsequently amended, for all members of the British Healthcare Trades Association.

### **1. Whole Agreement**

- 1.1 All agreements made between the Company and the Customer shall be on the basis of these Terms and Conditions. No addition or amendment to these Terms and Conditions shall be agreed and binding unless made in writing and signed by a Director of the Company.
- 1.2 **The rights and obligations set out in these Terms and Conditions are given in addition to and are not designed to replace any rights which may apply and to which the Customer may be entitled under or by virtue of relevant legislation.**

### **2. The Sale and Products**

- 2.1 The Company will use its best endeavours to confirm in writing the Customer’s order as soon as possible after receipt of the order from the Customer. The Company will supply the Product in conformity with its written order confirmation contained in its Customer Order Acknowledgement letter.
- 2.2 The written order confirmation is intended to reflect the genuine need of the Customer bearing in mind, where relevant, the vulnerable nature of the Customer. It is therefore essential for the ongoing relationship between the Company and the Customer that the Customer carefully checks the order confirmation to ensure it is accurate. If the Company thinks it advisable it may advise the Customer to seek the assistance of a third party to check the order confirmation and/ or to assist or advise the Customer when discussing with the Company the order itself.
- 2.3 The Company reserves the right to make any changes in the specification of the Product which are required to conform with any applicable statutory or EC requirements

## STANDARD TERMS AND CONDITIONS OF SALE

provided any such changes do not materially affect the Product's quality or performance.

- 2.4.1 A Cooling Off Period may be agreed with the Customer or may be required by law. In either case the Customer needs to understand that the Company will not process an Order for Custom Product until the Cooling Off period has ended. Provisions relating to the Cooling Off Period are set out in a separate document which will be provided to the Customer.
- 2.4.2 In the case of an order for Custom Product a Cooling Off Period of not less than seven days from the date of placing the order will be provided automatically when a sale has been made in the Customer's own private residence.
- 2.4.3 In the case of an order for Standard (non-Custom) Product a Cooling Off Period of fourteen calendar days from the date of the Customer's receipt of the goods will be provided when a sale has been made in the Customer's own residence, or by mail or telephone order or by online order.
- 2.5 **No order which has been accepted and confirmed by the Company may be cancelled by the Customer (after any Cooling Off Period has ended) except with the agreement of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs and other expenses incurred by the Company as a result of cancellation; provided that the Company shall in any event be entitled to charge a minimum administration fee of £250.00 plus VAT.**
- 2.6 Any request by the Customer (received by the Company after the Cooling Off period has ended) to modify or alter in any way an order which has been accepted and confirmed by the Company (whether before or after delivery of the Product) may be on such terms as the Company in its absolute discretion may require, provided that the Company shall in any event be entitled to charge a minimum administration fee of £250.00 plus VAT.
- 2.7 If the Customer cancels the order during a Cooling Off Period, then:
- 2.7.1 any payment whether by way of deposit, part payment or full settlement taken by the Company will be returned to the Customer;
- 2.7.2 in any event the payment whether by way of deposit, part payment or full settlement taken by the Company in respect of a sale of Custom Product shall until confirmation of order or the ending of any cooling off period be kept in a separate deposit account to enable any repayment to be made as quickly as possible.

### 3. Contract Price

- 3.1 The Contract Price is the price payable by the Customer in respect of any one or more deliveries or shipments made or to be made by the Company.

## STANDARD TERMS AND CONDITIONS OF SALE

- 3.2 The Contract Price is quoted as exclusive of VAT. VAT at the current rate will be added to the Contract Price, as appropriate.
- 3.3 Certain Products to be supplied by the Company may be supplied on credit terms. The full details of credit terms available will be explained to the Customer if required or requested by the Customer.

### 4. Delivery

- 4.1 If the Company provides an estimate of time for the delivery of the Product, that estimate is to be taken as a guide only. The Company will use its best reasonable endeavours to comply with any time estimate provided but the Company shall not be held responsible in any manner whatsoever for any delay in delivery of the Products howsoever caused, and whether caused by events beyond the Company's control or not and whether caused by the Company's own default or not.
- 4.2 Notwithstanding the provisions of paragraph 4.1 above if the Company becomes aware that there is likely to be a significant delay in delivery the Company will, as soon as reasonably practicable, notify the Customer of the delay, its reasons and provide if possible a new anticipated delivery date.
- 4.3 Delivery shall be made to the delivery address as set out on the Company's confirmation of order, or if none is specified then the Customer's home address (if an individual) or principal place of business (if a Company) or otherwise at the Company's discretion.

### 5. Responsibility and Compliance

- 5.1 The risk in the Product will pass to the Customer upon delivery by the Company but the legal and equitable property and title to the Product shall remain vested in the Company until payment in full has been received. From the date of delivery until payment in full has been received by the Company,
- (a) the Customer shall stand possessed of the Product as bailee and shall not deal with them by way of resale or otherwise except with the prior written consent of the Company and shall return them to the Company whenever requested;
  - (b) the Customer shall be responsible for the maintenance and care of the Product and for any storage costs in respect thereof;
  - (c) the Customer shall insure and keep fully insured the Product against all and every risk;
  - (d) the Customer shall hold on trust for the Company the proceeds of any insurance relating to the Product and the proceeds of sale of the Product whether sold with or without the Company's consent;
  - (e) the Company shall have the right if it so elects to enter upon the premises upon which the Product is located and take possession of and remove the same and the Company

## STANDARD TERMS AND CONDITIONS OF SALE

retain any prior payments made on account of the purchase price as compensation for use of the Product, but without prejudice to its rights generally under these Terms and Conditions.

- 5.2 The Customer shall be fully responsible for all Product delivered to the Customer's premises, or in accordance with the Customer's instructions, or if the Customer refuses to accept delivery. The Customer shall indemnify the Company against all loss or damage to the Product howsoever that damage is caused.
- 5.3 The Company shall not be responsible for any loss or damage to the Product whilst in transit unless any such loss or damage is notified to the Company as soon as reasonably practicable, and in any event within 5 days after delivery to the Customer's premises, or in accordance with the Customer's instructions, time being of the essence in this clause.
- 5.4 The Company shall not be responsible for any defect in the Product or any failure to comply either with the Company's written confirmation or otherwise with the Customer's instructions in relation to the Product unless such defect or failure is notified to the Company within 30 days after delivery to the Customer.
- 5.5 The Company operates a Complaints Procedure which is designed to be responsive and friendly and to comply with the requirements of the BHTA Code of Practice. Details of the Complaints Procedure are available on request.

## 6. Returns

- 6.1 Unless Product is defective, the Company will not accept Product returned without either the prior written consent of the Company or quotation of a valid Returns Authorisation Number (R.A.N). A returns note quoting the Company's despatch note and invoice number and R.A.N must accompany any Product approved for return.
- 6.2 The Company reserves the right to make a handling charge of twenty per cent of the value of Product returned by the Customer if either no longer required or incorrectly ordered.
- 6.3 Carriage costs for returned items are at the Customer's expense except in the case of errors made by the Company.
- 6.4 The Customer is advised of the following which is binding both upon the Customer and upon any and all subsequent third parties in respect of Health & Safety risks to the Company's employees, sub-contractors, visitors and Customers:-

Any and all Product returned to the Company, for any reason whatsoever, must be clean and free of any contamination. The Company hereby reserves the right to determine that any contaminated returned Product may be destroyed without any redress of any kind; that no claim whatsoever may be considered under warranty, nor any compensation of any kind made. It is a legal responsibility on the Customer and on any and all subsequent third parties to ensure that any and all returned Product does not

## STANDARD TERMS AND CONDITIONS OF SALE

constitute either a health risk or a safety risk to the Company's employees, sub-contractors, visitors and Customers.

### 7. Product Warranty and Maintenance

- 7.1 Any Product provided by the Company may be covered by the Company's Product Warranty the terms of which are set out in a Product Warranty Document which will be provided by the Company on or before delivery of the Product.
- 7.2 Individual Products supplied new by the Company have their own warranty terms provided by the product manufacturer. The Company will bring such terms to the attention of the Customer. However, in the event of any conflict between the manufacturer's warranty and the provisions of these Terms and Conditions and the Product Warranty Document, then the manufacturer's warranty terms shall apply.
- 7.3 In respect of any repair work carried out to the Product by the Company there will be a Product Warranty period of three months which will cover labour and parts.
- 7.4 No claim under any Product Warranty offered by The Company will be met by the Company unless made in accordance with the procedure set out in the Product Warranty Document, or if the Product has been abused in any way or if it has been damaged by neglect improper use or failure to maintain in accordance with the Company's or manufacturer's recommendations or if it has been damaged in an accident. Abnormal wear and tear will also be relevant when the Company considers any claim under a Product Warranty.
- 7.5 In addition to the above Warranty the Company offers a Maintenance Agreement the terms of which are set out in a separate document which will be signed by the Customer when relevant or required by the Customer.

### 8. Force Majeure

The Company shall not be liable to the Customer if performance of any of its obligations is prevented for any reasons or factors beyond its control including but not being limited to strikes, lockouts, civil strife such as riots or wars, storms, tempest or other incidents beyond the Company's reasonable control or other events of force majeure.

### 9. Liability of the Company

- 9.1 The Company's liability in respect of the Products supplied or any services rendered or for any loss or damage or injury (other than death or personal injury resulting from the Company's negligence) attributable to any defect or failure of such Product or services shall be limited (at the Company's option) to the replacement, repair of any defective Product or the refund of all or part of the Purchase Price provided that
- (a) full payment has been received by the Company by the date due for payment, and

## STANDARD TERMS AND CONDITIONS OF SALE

- (b) any damage to the Products is not caused by events beyond the Company's control.

This clause shall not apply in respect of any Customer's property whilst in the Company's possession.

- 9.2 The Company's liability in respect of any death or personal injury caused by the negligence or wilful default or other act of default of the Company shall be limited to the sum of one million pounds (£1,000,000.00)

- 9.3 The rights given under this clause are in substitution of any statutory rights that the Customer may have save for such rights as are specifically stated by statute to be incapable of exclusion from contract and the Customer agrees that in all circumstance of this contract the liability accepted by the Company is reasonable and that it should be the limit of the Company's liability to the Customer for every form of direct or indirect loss or damage suffered including loss of profit or any loss damage or expense that may be suffered by the Customer whether through any negligence, and misrepresentation, breach of condition or warranty (express or implied) or negligence by the Company, its servants or agents.

## 10. Payment

- 10.1 Save as otherwise specifically stated the Company's terms of payment are net cash payment to be made in full upon presentation of invoice. No discount, allowance or set-off is permitted and payment shall be in the full amount of the invoice price.
- 10.2 In the event that payment is not made in accordance with 10.1 above the Company may charge interest at the rate of 5% above the Royal Bank of Scotland's base rate for the time being on all monies owing from the date when payment was due.
- 10.3 The Company shall be entitled to make a reasonable charge by way of administrative expenses which in any event shall not be less than the sum of £100.00 plus VAT in respect of each invoice unpaid in whole or in part.
- 10.4 In the event that the Customer fails to comply with any of the Company's terms of payment the Company may discontinue the supply to the Customer of any further Product or services, in addition to any other rights or remedies the Company may have.

## 11. Assignment

The Customer shall not assign or transfer or purport to assign or transfer any of its rights, title or interest under any agreement with the Company without the Company's express written consent.

## 12. Termination

The Company shall have the right forthwith to terminate any contract subsisting with the Customer (the Customer being for the purposes of this clause a Company, whether incorporated or not) by written notice if the Customer shall make default in or commit a

## STANDARD TERMS AND CONDITIONS OF SALE

breach of these Terms and Conditions or if any distress or execution shall be levied upon the Customer's property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or commit an act or bankruptcy or any petition or receiving order in bankruptcy be presented or made against it or if the Customer shall be a limited Company and any resolution or petition to wind up such Company's business other than for the purposes of amalgamation or reconstruction shall be passed or presented or if a receiver of such Company's undertaking, property or assets or any part thereof shall be appointed. Termination pursuant to the above shall be without prejudice to any antecedent rights or remedies which the Company may have.

### 13. Code of Practice

- 13.1 The Company is a member of the British Healthcare Trades Association and is governed by and will use its best endeavours to comply with the Code of Practice. A copy of the Code of Practice will be provided free of charge if requested by the Customer.
- 13.2 In the event of any conflict between the Code of Practice and these Terms and Conditions then the provisions of these Terms and Conditions shall apply.

### 14. Complaints: what to do if there is a problem

- 14.1 The Company endeavours to provide goods and services which conform with consumer rights, but in the event of a problem, the Customer should at the earliest opportunity notify the Company by telephone on 01296 380200 or by email to [admin@gerald-simonds.co.uk](mailto:admin@gerald-simonds.co.uk)
- 14.2 On receipt of the Customer's complaint the Company will (a) record the complaint; (b) investigate the complaint; (c) communicate to the Customer the outcome of the investigation and any appropriate remedial action.
- 14.3 If the Customer is unhappy with the outcome of a complaint and has exhausted the Company's complaints process, the Customer can approach the British Healthcare Trades Association (BHTA) for mediation (and ultimately arbitration) and, as a member, the Company will participate in this process. BHTA can be contacted at:

BHTA, New Loom House, Suite 4.06, 101 Back Church Lane, London E1 1LU Tel: 020 7702 2141 Email: [complaints@bhta.com](mailto:complaints@bhta.com) [Web: www.bhta.net/home/complain](http://www.bhta.net/home/complain)

- 14.4 Alternatively the Customer can:

14.4.1 Approach ADR Group (<http://www.adrgroup.co.uk>, Tel: 0203 600 5050) but in this instance the Company will not participate; or

14.4.2 Visit the EU's online platform for dispute resolution at:  
<http://ec.europa.eu/consumers/odr/>

## STANDARD TERMS AND CONDITIONS OF SALE

### 15. General

- 15.1 Any notice required or permitted to be given by either party to the other by these conditions shall be in writing and addressed to the other party at its residence registered office or principal place of business.
- 15.2 If any provision of these conditions is held by any Court or other competent authority to be invalid or unenforceable in whole or in part the validity of these other provisions of these conditions and the remainder of the provisions in question shall not be affected thereby.
- 15.3 The Company may choose not to enforce any right under this agreement but any delay or failure to enforce shall not be construed as a waiver of any such right and shall not prevent the Company from enforcing any right in the future.
- 15.4 These conditions and any contract following thereon shall be governed by and construed in accordance with English law, and any dispute shall be dealt with only in the courts of England.

Effective 1 February 2016