

Zimmer Biomet Pty Ltd – Purchase Order Terms and Conditions

- GENERAL:** These terms and conditions (**Terms**) shall be applicable to any purchase order received by you (**Supplier**) from Zimmer Biomet Pty Ltd (**Purchaser**) for goods and/or services required by the Purchaser (**Goods and Services**). All specifications and other data submitted to Supplier relating to the purchase order are included in the purchase order along with these Terms (collectively, the **Purchase Order**). Additional terms, conditions, specifications, drawings, data, or instructions specified by Purchaser in the Purchase Order are incorporated into these Terms by reference and in the event of a conflict shall take precedence over these Terms.
- ACCEPTANCE:** Acceptance of any Purchase Order issued by Purchaser is expressly limited to these Terms and the applicable Purchase Order. Purchaser shall not be bound by any additional or different terms of the Supplier unless expressly agreed in writing. Supplier's shipment of Goods or commencement of work in response to Purchaser's Order shall constitute acceptance of these Terms, and any additional, different, or inconsistent terms of the Supplier shall not be binding on Purchaser and shall be considered waived.
- MODIFICATIONS OR AMENDMENTS: (a) Purchase Order:** No modification or variation of a Purchase Order (including these Terms) shall be valid or binding on Purchaser unless agreed in writing by the Purchaser. An executed agreement between the Supplier and Purchaser in relation to the Goods or Services shall take precedence over these Terms.
(b) Scope of Purchase Order by Purchaser: Purchaser shall have the right by written Purchase Order issued at any time prior to delivery of the Goods or performance of the Services to make changes in the Purchase Order. If such changes cause an increase or decrease in the amount due under the Purchase Order or in the time required for its performance, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Nothing contained in this clause shall relieve Supplier from proceeding without delay in the performance of the Purchase Order as changed.
- PRICE:** Supplier shall invoice Purchaser at the prices set out in the Purchase Order. If no price is stated on the Purchase Order, Goods and Services must not be furnished at a price higher than the last price paid by Purchaser to Supplier for comparable Goods and Services (unless there is written agreement by the Purchaser of the increased price). Purchaser shall have the right to off-set any payment owed by Purchaser to Supplier, in whole or in part, against any payment or other obligation owed by Supplier to Purchaser.
- TAX:** Purchase price is exclusive of GST. GST shall be added to the purchase price by Supplier as required by applicable laws.
- Seller REPRESENTATIONS:** Seller shall (i) provide to Purchaser the Goods and Services ordered in accordance with the terms stipulated in the Purchase Order; (ii) keep Purchaser advised of the status of the Purchase Order; (iii) permit duly authorised representatives of Purchaser reasonable access to Seller's facilities from time to time upon reasonable notice to inspect the Goods and Services and review and observe the manufacture and processing of Goods and Services and/or examine all records related thereto; (iv) provide Purchaser with such reports as are appropriate to the nature of the Goods and Services ordered and as may be reasonably requested by Purchaser from time to time; (v) retain records and other documentation regarding the manufacture process; and (vi) keep, for orders requiring payment based on hours worked, cost of materials used and/or expenses incurred, records of hours worked, cost of materials used, and reasonable out-of-pocket expenses incurred in filling the Purchase Order, which records Purchaser's duly authorised representatives may examine from time to time upon reasonable notice. Further, if the Purchase Order includes Services, Supplier represents and warrants that (i) such Services will be performed or provided by qualified individuals skilled and trained in the performance of such Services; (ii) its providing of the Services will not violate or breach any obligation of Seller to a third party; and (iii) providing or performing the Services will not violate any third party patents, copyrights, trade secret, trademark or intellectual property rights. The above warranties are in addition to any other express, implied or statutory warranties of Seller and shall survive acceptance and use of the Goods or performance of the Services.
- CANCELLATION: (1) Convenience:** Purchaser shall have the right upon written notice to Supplier to cancel the Purchase Order on any unfulfilled portion, and Purchaser's liability shall be limited to Supplier's non-cancellable cost for materials and services and labour incurred for such undelivered Goods and Services up to the date of cancellation of the Purchase Order. **(2) For late delivery:** Purchaser shall have no liability for any cancellation of a Purchase Order for Goods and Services that have not been delivered within thirty (30) days after the delivery date. **(3) For default/bankruptcy:** Purchaser may cancel the Purchase Order in whole or in part at any time by written notice if Supplier defaults in performance of its obligations hereunder or fails to make progress in the work so as to endanger its performance, in the event of any proceedings, voluntary or involuntary, in bankruptcy or solvency, by or against Supplier, or in the event of the appointment with or without Supplier's consent of an assignee for the benefit of creditors or of a receiver. Upon any such cancellation, Purchaser shall have no liability under the Purchase Order and may recover its costs relating to the cancellation from the Supplier.
- WORK ON PREMISES:** If Supplier's obligations under the Purchase Order involve operations by Supplier on Purchaser's premises, Supplier agrees to comply with, and require its employees and contractors performing such Services to comply with all the Purchaser's occupational health and safety rules and regulations, as well as all other laws and safety regulations whilst on Purchaser's premises.
- PACKAGING:** Supplier shall be responsible for safe packing, which must conform to the requirements of carrier's tariffs. Supplier shall separately number all cases, packages, etc. showing the corresponding numbers on the invoices. All itemised packing slips, bearing the Purchase Order number, must be placed in each container. No extra charge shall be made for packaging materials unless authorised by Purchaser in the Purchase Order.
- DELIVERY:** Shipments or deliveries shall be strictly in accordance with the quantities and the schedule specified in the Purchase Order. Supplier shall promptly notify Purchaser in writing of the delay or potential delay of delivery, and the estimated duration of the delay. This notification shall not relieve Supplier of its obligations. Supplier shall be responsible for cover and for any incidental or consequential damages of Purchaser due to delayed or potential delayed delivery.
- SHIPPING:** Unless otherwise directed in writing by Purchaser, FCA (Free Carrier), Supplier site, INCOTERMS 2010, shall apply to all shipments of Goods under the Purchase Order, except to the extent that specific terms of the Purchase Order contradict the relevant INCOTERMS 2010, then the Purchase Order controls. Supplier shall utilise the Purchaser-specified carrier if required by Purchaser. Title to Goods shall not pass until they are delivered to the delivery point and are accepted.
- IMPORT/CUSTOMS:** Supplier agrees to comply with all applicable export control laws and regulations in Australia and countries in which they do business. Supplier shall immediately notify Purchaser if the Supplier is, or becomes, listed on any Denied Parties List or if the Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part, by any government or agency thereof.
- INSPECTIONS:** All Goods delivered shall be subject to inspection, test, and audit by Purchaser or its agent(s) at reasonable times and places. Neither the inspection, testing, nor audit of the Goods, nor the failure to do so shall constitute acceptance of the Goods or relieve Supplier from its responsibility for furnishing Goods in strict compliance with the Purchase Order. Acceptance of all or part of the Goods, use thereof and/or payment therefore or failure to notify Supplier promptly shall not waive Purchaser's right to reject, cancel, or return all or part of the Goods, to recover damages or to recover upon Supplier's warranties or agreements of indemnity. Purchaser may reject any Goods that do not strictly comply with this Purchase Order, including any applicable specifications. Payment for or acceptance of any part of a shipment shall not bind Purchaser to accept future shipments of nonconforming Goods or negate Purchaser's right to return nonconforming Goods already accepted. All Goods rejected by Purchaser shall be returned at Supplier's expense for both delivery and return transportation. No replacement or substitution of the rejected Goods or any part thereof shall be made without Purchaser's prior written authorisation.
- INVOICES AND PAYMENT TERMS/DISCOUNTS: 1) Invoices:** A separate invoice shall be issued for each shipment. Unless otherwise specified in the Purchase Order, no invoice shall be issued prior to the shipment of the Goods or provision of Services and no payment will be due prior to receipt of Goods and/or Services and applicable invoice. Only undisputed amounts due will be payable by the due date. **2) Payment terms/Discounts:** Unless otherwise stated in the Purchase Order, Purchaser will pay for the Goods and Services within thirty (30) days of receipt of the invoice.
- WARRANTY:** Seller represents and warrants that the Goods furnished and the Services provided will (a) be of merchantable quality and fit for the purposes intended; (b) be free from defects in material, workmanship and fabrication; (c) fully conform with the Order, Purchaser's quality requirements and any standards or specifications furnished or specified by Purchaser; (d) be of quality, quantity, size, description and dimension specified by Purchaser; (e) be delivered clear of any liens or encumbrances of any kind and (f) be delivered and/or performed in a safe, proper and workmanlike manner in compliance with all applicable laws and regulations by duly trained and qualified employees or contractors. These warranties shall survive acceptance and payment. In addition, our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with Services, Purchaser is entitled (i) to cancel its Services contract with Supplier; and (ii) to a refund for the unused portion, or to compensation for its reduced value. Purchaser is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or Service does not amount to a major failure, Purchaser is entitled to have the failure rectified in a reasonable time. If this is not done, Purchaser is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. Purchaser is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.
- QUALITY MATTERS: 1) Audits:** Purchaser may, at reasonable intervals, audit Supplier's quality program for conformance to the applicable requirements of ISO 9000 Quality Management System Standards (ANSI/ASQ Q9000) or the Purchaser's quality assurance specifications for suppliers. Supplier shall fully cooperate with Purchaser in handling third party complaints arising from the Goods and Services. Supplier shall permit representatives of Purchaser to access Supplier's facilities from time to time upon reasonable notice to inspect the Goods and Services and review and observe the manufacture and processing of Goods and Services and/or examine all records related thereto. **2) Complaints:** Supplier shall provide, in a timely manner, such assistance and information as Purchaser reasonably requests to fulfill its reporting obligations for the Goods and Services and each product into which the Goods and Services may be incorporated. Supplier's quality management procedures, device history records and all batch and validation records related to the Goods and Services shall be maintained by Supplier in accordance with the requirements of applicable laws and shall be made available for inspection by Purchaser, its representatives and/or any relevant regulatory authorities. **3) Recall of Goods and Services:** Supplier shall assume responsibility and costs for implementing and complying with any recall of Goods according to applicable laws and regulations, including costs arising from the return and/or replacement of such Goods and Services, to the extent that the Goods and Services do not conform to Purchaser specifications or contain latent defects that resulted in the recall. Supplier shall credit or reimburse Purchaser for the costs of recalled Goods and Services and any costs or losses incurred by Purchaser as a result of the recall.
- PATENTS AND INTELLECTUAL PROPERTY:** Supplier represents and warrants that the Goods sold hereunder, and the use of such Goods where a representation of suitability for such use, express or implied, has been made, do not and will not infringe any patent, trademark, copyright, trade secret or any other form of intellectual property. Supplier acknowledges that any patents, trademarks, copyrights, trade secrets or any other form of intellectual property (collectively, **Intellectual Property**) that Purchaser provides to Supplier is Purchaser's exclusive property and Supplier disclaims all rights in same. All drawings, art work, special products, materials, information or data furnished by Purchaser and all Intellectual Property resulting from the Purchase Order are Purchaser's exclusive property, shall be used by Supplier only for Purchaser's work, shall be kept confidential by Supplier and shall be returned to Purchaser at Purchaser's request.
- INDEMNIFICATION:** Supplier agrees to defend, indemnify and hold harmless Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees, agents, distributors, sales representatives, customers and end users of the Goods and Services, from and against any and all claims, suits, actions, demands, judgments, settlements, losses, liabilities, damages, costs and expenses directly or indirectly arising from or related to: (a) Supplier's breach of any provision of these Terms or the Purchase Order; (b) the negligent or more culpable act or omission of Supplier or its employees, consultants or subcontractors; (c) the production, manufacture or delivery of, or any defect in, the Goods and Services; (d) Supplier's failure to comply with applicable laws in the performance of its obligations under the Purchase Order; (e) actual or alleged infringement of any patent, copyright, trademark, trade dress, trade secret or other intellectual property right of any third party arising from Purchaser's purchase, use or sale of Goods and Services; (f) the assessment by any third party of liquidated damages or proven actual damages assessed related to the failure of Supplier to timely deliver the Goods and/or provide the Services; and (g) actions and proceedings brought by any foreign, federal, state or local government or any agency or instrumentality thereof related to the Goods. All such obligations of Supplier will survive acceptance and use of, and payment for, the Goods and Services, and completion, termination or cancellation of the Purchase Order.
- LIMITATION OF LIABILITY:** In the event of breach by Purchaser, Purchaser will be liable to Supplier only for actual direct monetary damages. OTHER THAN FOR CLAIMS FOR PERSONAL INJURY OR DEATH, IN NO EVENT SHALL (A) THE LIABILITY OF PURCHASER ON ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE OR BREACH OF THE PURCHASE ORDER EXCEED THE GREATER OF (A) THE TOTAL COMPENSATION PAID BY PURCHASER TO SUPPLIER UNDER THE PURCHASE ORDER OR (B) THE PRICE ALLOCABLE TO THE AFFECTED GOODS AND SERVICES. IN NO EVENT SHALL PURCHASER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES.
- COMPLIANCE WITH LAWS:** In providing Goods and Services under the Purchase Order, Supplier agrees that it shall comply and has complied with all applicable foreign, federal, state, and local laws, rules and regulations, including without limitation all anti-corruption/anti-bribery laws (including, without limitation, the U.S. Foreign Corrupt Practices Act), all anti-slavery and anti-human trafficking laws, and all environmental laws as applicable. Supplier shall inform Purchaser promptly of any adverse events and/or any allegations or findings of violations of applicable laws or regulations that have the potential of affecting the quality of the goods and/or services to be delivered. Supplier will hold Purchaser harmless from all liability resulting from any failure by it to comply with this provision.
- FORCE MAJEURE:** Strikes, riots, wars, insurrection, embargoes, acts of terrorism, fires, floods or other casualties, government actions, acts of God, or other events beyond Purchaser's reasonable control which shall effect Purchaser's ability to receive and/or use the Goods and Services ordered hereunder shall constitute valid grounds for suspension by Purchaser of shipment of Goods and performance of Services covered hereby without penalty or liability, upon written notification to Seller, except that, upon cancellation for such causes, Purchaser may pay Seller its direct expenditures incurred for labor and materials prior to Seller's receipt of such notice of cancellation made upon the authority of the Purchase Order.
- NO WAIVER:** No waiver of any provision contained in these Terms shall be valid unless made in writing and executed by the waiving party. The failure of either party to take action to enforce any of the provisions of the Terms shall constitute neither a waiver of a particular breach or any subsequent breach nor a waiver of either party's right to enforce any or all provisions of the Terms through any remedy granted by law or the Terms. Failure of Purchaser to insist upon strict performance shall not constitute a waiver of any of the provisions of the Terms or waiver of any other default.
- CONFIDENTIALITY/PUBLICITY/DATA PRIVACY:** Seller agrees to treat as strictly secret and confidential all data and information supplied by Purchaser (**Purchaser's Information**) in connection with the Purchase Order as confidential. Seller shall not use or disclose same to any third party except to the extent necessary to perform the terms of the Purchase Order or other Purchase Orders for Purchaser. Seller shall return all Purchaser's Information to Purchaser on Purchaser's request. Seller shall not, without Purchaser's prior written consent, issue or release any public announcement, or other media release regarding the Purchase Order or these Terms. To the extent Seller receives any personal data including personal health information (including, but not limited to, any patient medical records) pertaining or relating to any patient or customer (**Personal Data**), Seller represents and warrants that it will comply with any and all applicable laws, rules and regulations and will keep the Personal Data confidential and will not disclose such information to any third party without the express written consent of Purchaser. In the event Seller discloses such information without the express written consent of Purchaser, it agrees to immediately notify Purchaser of such disclosure.
- GOVERNING LAW/JURISDICTION:** All contracts and all claims or actions under this contract will be determined in accordance with the laws of and applicable in the state of New South Wales and each party irrevocably agree to submit to the courts having jurisdiction in that State.
- ASSIGNMENT:** Supplier's rights, duties and obligations under this Purchase Order shall not be assignable, transferable or delegable by Supplier without the prior written consent of Purchaser, which consent may be withheld in its sole discretion. Purchaser may assign its rights and obligations hereunder.
- NOTICES:** All communications and notices between the parties relating to this Purchase Order and these terms and conditions shall be in writing and addressed to the receiving party at the address provided on this Purchase Order or as otherwise provided by the party. All such notices and communications shall include the Purchase Order Number.
- CODE OF SUPPLIER CONDUCT:** Supplier represents and warrants that Supplier has read and will abide by the Purchaser's Code of Supplier Conduct located at www.zimmerbiomet.com.au/sourcing as amended from time to time by Purchaser for so long as Supplier provides Goods or Services to the Purchaser.