

Vygon (UK) Limited Conditions of Sale for Goods

1. Definitions

- 1.1 The definitions in this Clause apply in these terms.
"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
"Buyer" means the party purchasing Goods from Vygon, as identified in the applicable Order;
"Contract" means the contract between Vygon and the Buyer in respect of the Goods, formed by the relevant Order and these terms;
"Goods" means the Goods set out in an Order;
"Insolvency Event" means any of the following in respect of the Buyer: (a) passing a resolution for its winding up or a court making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver or an encumbrancer taking possession of or selling the whole or part of the entity's undertaking, assets, rights or revenue; (c) the entity entering into any arrangements, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court for protection from its creditors; (d) the entity ceases, or threatens to cease, trading; (e) the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (f) any procedure equivalent to any of the preceding matters occurs in any other jurisdiction with respect to the Buyer;
"Order" means an order for Goods submitted by Buyer in accordance with Clause 2;
"Quotation" means any quotation for the Goods provided by Vygon; and
"Vygon" means Vygon (UK) Limited, a company incorporated in England with registered number 01131530.

- 1.2 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. General

- 2.1 All Quotations are given and all Orders are accepted on these terms which shall apply to the Contract instead of any other terms that the Buyer seeks to impose or which are implied by trade, custom, practice or course of dealing. The Contract is the entire agreement between the parties. Buyer acknowledges that it has not relied on, and shall have no remedy in relation to, any statement, promise or representation provided by or on behalf of Vygon which is not set out in the Contract.
- 2.2 The Buyer may send an Order to Vygon using the Buyer's purchase order form. The Order is an offer by the Buyer to buy the Goods on these terms. The Buyer must ensure that the Order and any applicable description of the Goods ordered are complete and accurate.
- 2.3 The Order shall only be accepted when Vygon either issues a written acceptance of the Order or takes steps to deliver the Goods, at which point the Contract shall come into effect.
- 2.4 If the Goods are not in stock then Vygon shall contact the Buyer confirming that the Goods are unavailable and either not accept the Order or accept the Order and agree a revised timescale for delivery of the Goods.
- 2.5 While reasonable efforts will be made to meet the Buyer's individual requirements, amendment or cancellation of a Contract or any part thereof can only be made with the written consent of Vygon which if given shall be deemed to be on the express condition that the Buyer indemnify and keep indemnified Vygon against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses, calculated on a full indemnity basis) (together, the **"Losses"**) suffered or incurred by Vygon in connection with such amendment or cancellation.
- 2.6 Where the Goods are to be collated/assembled in accordance with a specification supplied by the Buyer, the Buyer shall indemnify and keep indemnified Vygon against all Losses suffered or incurred by Vygon in connection with any claim made against Vygon for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Vygon's use of the specification. This shall survive termination of the relevant Contract.

3. Prices and Payment

- 3.1 All quoted and printed prices are ex works and where Vygon has undertaken to arrange carriage from its location to the specified place of delivery such carriage shall be charged in addition.
- 3.2 The price of the Goods shall be as specified on Vygon's then current price list (as updated from time to time) unless otherwise specified on any acceptance by Vygon of an Order.
- 3.3 Vygon reserves the right to invoice Goods at the prices prevailing on its price list as at the date of despatch, provided Vygon shall notify Buyer if such price differs from the price in Buyer's Order.
- 3.4 Unless otherwise agreed by the parties, the price of the Goods excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.
- 3.5 The price of the Goods is exclusive of VAT unless otherwise stated. The Buyer shall, on receipt of a valid VAT invoice from Vygon, pay to Vygon such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 3.6 Prices are net and no discounts are permitted unless specifically agreed by Vygon. Vygon may invoice the Buyer for the Goods on or at any time after delivery. Unless otherwise agreed in writing all invoices must be paid in full and in cleared funds within thirty (30) days of the date of the relevant invoice.
- 3.7 If the Buyer fails to make any payment due to Vygon under the Contract by the due date for payment (**"Due Date"**), then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's minimum lending rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 3.8 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to any credit, set-off or counterclaim against Vygon. Vygon may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by Vygon to the Buyer.
- ### 4. Quotations and Invoices
- 4.1 Quotations are subject to confirmation by Vygon following receipt of an Order or other acceptance from Buyer and Vygon reserves the right to correct any errors and/or omissions on Quotations or invoices. Where under Vygon's direct control prices provided on Quotations will be held firm if an Order is received within thirty (30) days from the date of the Quotation. The Quotation must be accepted by Buyer in writing before Vygon will accept an Order in accordance with Clause 2.3.
- 4.2 Where prices are quoted for specified orders or tenders if the final Order is for a lesser quantity than specified or tendered Vygon reserves the right to invoice at a higher price than that quoted or tendered not exceeding its price shown in its then current price list for the time being. Where prices are quoted for specific volumes Vygon reserves the right to withdraw the offer if these volumes are lower than stated.
- ### 5. Risk, Damage and Loss in Transit
- 5.1 Risk in the Goods will pass to the Buyer at the time of despatch from Vygon's premises. No responsibility is taken for breakage or loss in transit by Vygon and the Buyer should keep the Goods insured against all risks for their full price from the date of despatch.
- 5.2 The Buyer shall inspect the Goods on receipt. In the event of any breakages/defects Vygon must be advised in writing within seven (7) days after receipt of the Goods.
- 5.3 In the event of non-delivery of the Goods, the carriers concerned, their agents and/or subcontractors and Vygon must be notified within fourteen (14) days after receipt by the Buyer of the relevant invoice.
- 5.4 Title to the Goods shall not pass to the Buyer until Vygon has received payment in full (in cash or cleared funds) for the Goods in question.
- 5.5 Until title to the Goods passes, the Buyer shall:
- 5.5.1 hold the Goods on a fiduciary basis on behalf of Vygon;
- 5.5.2 store the Goods separately from all other Goods (to the extent practicable) held by the Buyer or at least ensure they are readily identifiable as Vygon's property (until title passes);
- 5.5.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.5.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of despatch;

- 5.5.5 notify Vygon immediately if it becomes subject to any Insolvency Event; and
- 5.5.6 provide such information that Vygon may request in respect of the Goods prior to title passing.
- 5.6 If before title to the Goods passes to the Buyer, the Buyer becomes subject to an Insolvency Event, or Vygon reasonably believes that any such Insolvency Event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Vygon may have, Vygon may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter the Buyer's premises or those of any third party where the Goods are stored to recover them.
- 5.7 Unless otherwise agreed, the Buyer shall be responsible for disposing of any packaging and shall do so in compliance with any applicable law and accepted industry practice.
- 5.8 Vygon shall provide a delivery note with the Order showing the details of the delivery (quantity and type), if the delivery is in instalments and any outstanding payments to be made.
- 5.9 Deliveries shall be made on an ex works (Incoterms 2010) basis, unless Vygon agrees in writing to deliver to an address specified on the Buyer's Order. The Buyer shall be responsible for any additional costs, charges or delay if it subsequently requires delivery to an alternative location.
- 5.10 Unless otherwise agreed, delivery shall be completed when the Goods are made available for collection at Vygon's premises. Any dates quoted for delivery are approximate. Time of delivery is not of the essence. Vygon shall not be liable for any delay in delivery where caused by a Force Majeure Event or the Buyer's failure to supply adequate delivery instructions.
- 5.11 If Vygon fails to deliver the Goods, its liability shall be limited to the redelivery of the Goods in question.
- 5.12 If the Buyer fails to accept delivery on the date of delivery, then, except where such failure or delay is caused by a Force Majeure Event or Vygon's failure to comply with its obligations, Vygon reserves the right to either determine that delivery has taken place on the date of delivery or not deliver and store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance). If ten (10) Business Days after the day on which Vygon attempted to deliver the Goods the Buyer has not requested redelivery of them, Vygon may resell or otherwise dispose of part or all of the Goods and, after charging the reasonable storage and selling costs for the Goods, cancel any Order relating to the Goods placed by the Buyer.
- 5.13 Vygon may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.14 Vygon neither replaces nor accepts returned Goods unless Buyer has requested and received written authorisation from Vygon. Vygon will not consider such request unless: (i) the Goods are in unopened, complete boxes with a minimum of two thirds shelf-life; (ii) such request is received by Vygon within three (3) months of the delivery date of the relevant Goods and (iii) the Goods are returned in substantially the same condition in which they were delivered. If Buyer returns Goods without such authorisation, Vygon may return the Goods to Buyer at Buyer's cost. Vygon reserves the right to charge a handling charge. Temperature controlled or environmentally sensitive (i.e. light) Goods are not returnable and are excluded from the returns policy set out in this Clause.
- 6. Condition of Goods**
- 6.1 Vygon warrants that on delivery and for twelve (12) months ("Warranty Period") from the date of delivery the Goods will:
- 6.1.1 conform materially with their description; and
- 6.1.2 be free of any material defects in design, material or workmanship.
- 6.2 Subject to Clause 6.3 below if:
- 6.2.1 the Buyer gives notice in writing to Vygon in the Warranty Period that some or all of the Goods do not conform to Clause 6.1 above;
- 6.2.2 following authorisation under Clause 5.14, the Buyer returns (at its cost) the Goods to Vygon to inspect; and
- 6.2.3 a defect is found in the Goods, Vygon shall, at its sole option, repair or replace the Goods or provide a credit for the Buyer up to the amount charged for the relevant Goods.
- 6.3 Vygon shall not be liable for failure of the Goods to conform to the warranty in Clause 6.1 where:
- 6.3.1 the Buyer continues to use the Goods after notifying Vygon of the defect;
- 6.3.2 the defect arose due to the Buyer's failure to either follow the Goods manufacturer's or Vygon's instructions on storage/usage/maintenance of the Goods;
- 6.3.3 the defect arose due to the Buyer's specific requirements in respect of the specification of the Buyer;
- 6.3.4 the Buyer alters or repairs the Goods without the consent of Vygon; or
- 6.3.5 the defect arose from fair wear and tear, wilful damage, negligence or abnormal storage or operational conditions.
- 6.4 Except as provided in this Clause, Vygon shall have no liability to the Buyer with regard to the failure of the Goods to conform to Clause 6.1. Each party agrees that any implied terms, conditions and warranties are excluded to the fullest extent permitted at law. The terms set out in this Clause 6 shall equally apply to any replacement Goods supplied.
- 6.5 Catalogues and other illustrations and specifications are subject to alteration without notice. They are intended merely to present a general overview of the Goods and nothing contained in them shall form part of the Contract. Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer it is agreed that any sample was solely to enable the Buyer to assess the general quality of the Goods and not to constitute a sale by sample.
- 6.6 Trial orders are obtainable in quantities of one standard pack and are supplied once only on request at the lowest prices printed on Vygon's official price list for the time being.
- 7. Limitation of liability**
- 7.1 Nothing in any Contract shall limit or exclude either party's liability for:
- 7.1.1 death or personal injury caused by its (or its employees', agents' or sub-contractors') negligence;
- 7.1.2 fraud or fraudulent misrepresentation; and
- 7.1.3 any matter for which liability cannot be limited or excluded at law.
- 7.2 Vygon shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence) breach of statutory duty or otherwise for any loss of profit or any indirect or consequential loss arising under or in connection with any Contract.
- 7.3 Vygon's total liability arising under or in connection with any Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to 100% of the aggregate amount paid for the Goods under the Contract in question.
- 8. Force Majeure**
- 8.1 Vygon shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 8.2 A "Force Majeure Event" means any event beyond Vygon's reasonable control, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, import or export restrictions, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, default of suppliers or subcontractors or similar events to the foregoing.
- 9. Data Protection**
- 9.1 In this Clause 9, the following terms have the following meanings: "Controller", "Data Subject", "Personal Data", "Personal Data Breach", "Processor" and "processing" (and related terms) shall have the meanings given to them in applicable Data Protection Laws; "Data Protection Laws": as binding on a party: (i) the GDPR; (ii) the UK Data Protection Act 2018; (iii) any laws that implement, replace, extend, re-enact, consolidate or amend such laws; "GDPR": the General Data Protection Regulation (EU) 2016/679; "Protected Data": Personal Data received from or on behalf of the Buyer in connection with the performance of Vygon's obligations under the Contract; and "Sub-Processor": any agent, subcontractor or other third party (excluding its employees) Vygon engages for carrying out any processing activities on Protected Data on the Buyer's behalf.
- 9.2 The parties agree that the Buyer is a Controller and Vygon is a Processor for the purposes of processing Protected Data using the Goods pursuant to the Contract and related services provided by Vygon (including under any Goods guarantee or warranty).
- 9.3 Details of Processing of the Protected Data by Vygon under the Contract shall be as follows:

Subject-matter, nature and purpose of processing: Processing Protected Data pursuant to the Contract including: (i) in connection with the use of the Goods and the provision by Vygon of related services (including under any applicable guarantee or warranty); and (ii) to enable Vygon to investigate complaints and queries in relation to the Goods, on behalf of the Buyer.

Duration of processing: The Contract term or (if longer) any applicable warranty or service period, and in any event for no longer than is necessary for the purpose for which it was collected or is being processed (unless a statutory exception applies).

Type of Personal Data: Personal Data relating to users of Goods purchased or acquired by the Buyer (including special category data, in particular health data).

Categories of Data Subjects: users of Goods (including patients, research / clinical trial participants and carers).

- 9.4 The Buyer shall: (i) comply with all its obligations under Data Protection Laws in connection with the processing of Protected Data, and ensure all instructions given by it to Vygon in respect of Protected Data at all times comply with Data Protection Laws; (ii) ensure all Personal Data sourced by the Buyer for processing using the Goods or otherwise provided to Vygon in connection with the Contract complies in all respects with Data Protection Laws, including in its collection, storage, processing and transfer (which includes the Buyer providing all required information notices to, and obtaining all necessary consents from, Data Subjects); and (iii) provide Vygon with no more Personal Data (including special category data) than is strictly necessary and wherever possible use anonymised data or pseudonymised Personal Data.
- 9.5 The Buyer shall indemnify and keep indemnified Vygon against all Losses, claims, fines, sanctions, charges, compensation paid to Data Subjects and demands (in each case whether or not arising from any investigation by, or imposed by, a regulator) arising out of or in connection with any breach by the Buyer of its obligations under this Clause 9.
- 9.6 Vygon shall process Protected Data in compliance with its obligations under Data Protection Laws and the Contract.
- 9.7 Vygon shall: (i) only process (and shall ensure its personnel only process) the Protected Data in accordance with the Contract (or any alternative processing instructions agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Buyer of that legal requirement before processing, unless applicable law prevents it doing so); and (ii) without prejudice to Clause 9.7(i), if Vygon believes that any Buyer instruction infringes Data Protection Laws it shall promptly inform the Buyer and be entitled to cease to provide the relevant services until the parties have agreed appropriate alternative non-infringing instructions.
- 9.8 Taking into account the state of technical development and the nature of processing and associated risks, Vygon shall implement appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Vygon shall comply with its security obligations under the GDPR and shall notify the Buyer without undue delay after becoming aware of any Personal Data Breach involving Protected Data.
- 9.9 The Buyer authorises Vygon to appoint Sub-Processors in accordance with this Clause 9.9. The Buyer hereby authorises the appointment by Vygon of Vygon's Sub-Processors involved in the supply of the relevant Goods or data processing services to Vygon, a list of which is available on request by contacting: the Vygon Data Protection Officer (DPO). Vygon shall inform the Buyer of any intended changes concerning the addition or replacement of such Sub-Processors and if, within 10 Business Days of being informed of such intended changes, the Buyer objects (on reasonable grounds) to the proposed appointment Vygon shall not appoint the proposed Sub-Processor until reasonable steps have been taken to address the objections raised by the Buyer and the Buyer has been provided with a reasonable written explanation of the steps taken. Vygon shall: (i) appoint each Sub-Processor under a written contract containing materially the same obligations as under this Clause 9; (ii) remain fully liable to the Buyer under the Contract for the acts and omissions of each Sub-Processor as if they were its own; and (iii) ensure that all persons authorised by Vygon or any of its Sub-Processors to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 9.10 The Buyer consents to Vygon processing and/or transferring, or otherwise directly or indirectly disclosing, Protected Data in or to

countries outside the EEA, provided this is pursuant to approved transfer mechanisms under applicable Data Protection Laws.

- 9.11 Vygon shall (at the Buyer's cost) provide reasonable assistance to the Buyer: (i) in ensuring compliance with the Buyer's obligations pursuant to Articles 32 to 36 of the GDPR (and any equivalent obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Vygon; (ii) (by appropriate technical and organisational measures) with the Buyer's obligations to respond to requests in respect of Protected Data for exercising Data Subjects' rights under Chapter III of the GDPR (and any equivalent obligations under applicable Data Protection Laws); and (iii) in accordance with Data Protection Laws, in making available to the Buyer such information in its possession or control as is reasonably necessary to demonstrate Vygon's compliance with the obligations under this Clause 9 and under Article 28 of the GDPR (and under any equivalent provisions under Data Protection Laws), and shall allow for and contribute to audits, including inspections, by the Buyer (or their mandated auditor) for this purpose (subject to a maximum of one audit request in any twelve (12) month period).
- 9.12 At the end of the provision of any services relating to processing of Protected Data, at the Buyer's cost and option, Vygon shall either return all Protected Data to the Buyer or securely dispose of it (and promptly delete copies) except to the extent that any applicable law requires Vygon to store such Protected Data.
- 10. Medical Devices Regulation**
- 10.1 The Buyer shall: (i) promptly notify Vygon of any safety issue, risk or other non-compliance associated with the Goods; (ii) provide Vygon with reasonable assistance in relation to any recall of the Goods, including returning the Goods to Vygon; and (iii) cooperate with any investigation by a regulatory authority in relation to the Goods.
- 10.2 If the Buyer is not the user of any Goods, but re-sells, distributes or otherwise markets any Goods, the Buyer shall: (i) comply with all applicable laws, including the applicable provisions of the Medical Devices Regulation (EU) 2017/745 and any laws that implement, replace, extend, re-enact, consolidate or amend such regulation; and (ii) not use any misleading materials in relation to the Goods or fail to inform users of likely risks associated with the Goods.
- 11. General**
- 11.1 Vygon may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.2 The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Vygon.
- 11.3 Waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 11.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.5 Except as set out in these terms, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Vygon.
- 11.6 If any court or competent authority finds that any provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.7 The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.