

ZIMMER INDIA PVT LTD (ZIMMER BIOMET) TERMS AND CONDITIONS OF SALE

1. Definitions

- 1.1 **Consigned Inventory** has the meaning set out in clause 7.
- 1.2 **Contract** means a contract for the sale and purchase of Goods as set out in clause 2.
- 1.3 **Delivery** means delivery of the Goods to the delivery point stipulated in the Order and agreed to by Zimmer Biomet.
- 1.4 **Goods** mean the goods and/or services agreed to be supplied by Zimmer Biomet to the Purchaser pursuant to the Contract.
- 1.5 **GST** means goods and sales tax or any other similar tax in India.
- 1.6 **Intellectual Property** means any and all intellectual property and information relating to the Goods and/or Instruments, including, but not limited, to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, confidential information, other documentation, trade secrets, trademarks and copyright.
- 1.7 **Instruments** has the meaning set out in clause 7.2.
- 1.8 **Purchaser** means the person or company whose name appears on the Order.
- 1.9 **Order** means the Purchaser's request to Zimmer Biomet for supply of Goods and includes a written purchase order.
- 1.10 **Return of Goods and Instruments Policy** means the policy on return of Goods and Instruments to Zimmer Biomet set out in clauses 9.2 to 9.4.
- 1.11 **Terms** means these standard terms and conditions of sale and any amendments agreed in writing by Zimmer Biomet.

2. Contract

- 2.1. An Order may be accepted or rejected by Zimmer Biomet at its sole discretion.
- 2.2. A Contract is formed on Zimmer Biomet's acceptance of an Order from the Purchaser, each governed by these Terms.
- 2.3. These Terms will prevail over any terms and conditions stated in or attached to the Order, request for quotation or other documentation or printed form supplied by the Purchaser, except where there is an existing written quotation or distribution agreement in place between Zimmer Biomet and Purchaser governing the Contract in which case the terms of that written quotation or distribution agreement will prevail.

3. Prices

- 3.1. Prices for Goods supplied by Zimmer Biomet will comply with the order of National Pharmaceutical Pricing Authority dated 16 August 2017, 13 August 2018 and 13 August 2019 along with connected office memorandums (collectively, **NPPA Orders**) on the price of certain orthopaedic prostheses for Knee replacement system and related products. The Purchaser will also comply with the NPPA Orders and will be liable for its own non-compliance.
- 3.2. Prices, unless otherwise expressly stated in a written quotation, distribution agreement or otherwise notified by Zimmer Biomet, do not include any costs and charges for assembly, installation or additional goods and services, costs and charges of third party suppliers, insurance, GST or any statutory, sales tax, or other taxes, duties or imposts, all of which shall be payable by Purchaser.
- 3.3. Prices as set out in an invoice may be subject to additional discounts, rebates, credits, or other pricing concessions.

4. Payment

- 4.1. Payment of the price and any other amounts payable in relation to a Contract must be made in full within the time period stipulated by Zimmer Biomet in the Contract and if no time period is stipulated, then payments be made in advance before shipment of the Goods.
- 4.2. Zimmer Biomet, at its sole discretion or as indicated in the Contract, may require satisfactory security or bank guarantee in advance of supply of Goods.
- 4.3. The Purchaser on Zimmer Biomet's demand shall pay interest on due and unpaid amounts at the rate stipulated by Zimmer Biomet in the Contract or if not stipulated, at the rate of 18% per annum from the due date until date of payment.
- 4.4. Purchaser may not set off payment against any amounts owed by the Purchaser to Zimmer Biomet or any money owing or alleged to be owed by Zimmer Biomet.

5. Delivery

- 5.1. All delivery dates quoted are estimates only and Zimmer Biomet is not liable for failure to deliver, or for delay in Delivery,

howsoever arising.

- 5.2. Purchaser acknowledges that the Goods may be delivered by instalments and interim invoices may be issued to the Purchaser.
 - 5.3. If the Purchaser refuses or is unable to accept Delivery in accordance with the Terms of the Contract, the Purchaser will, in addition to being liable to pay for the Goods, be liable for freight, storage, insurance, interest and extra costs of handling that may be incurred as a result of such refusal or inability to accept Delivery.
 - 5.4. Unless otherwise agreed in writing, any unloading or loading of Goods will be the Purchaser's responsibility.
- ### 6. Risk and title to Goods
- 6.1. Risk in the Goods passes to the Purchaser at the time of Delivery.
 - 6.2. Subject to clause 7.1, title to the Goods remains with Zimmer Biomet until full payment for the Goods is received by Zimmer Biomet, and until such time Purchaser holds the Goods as a bailee. If the Purchaser fails to pay for the Goods in accordance with these Terms or any Contract, Zimmer Biomet or its nominee may without notice and without prejudice to any of their other rights and remedies recover and/or resell the Goods, and may enter any premises where the Goods are held to seize the Goods for that purpose.
- ### 7. Consigned Inventory and Instrument Loans
- 7.1. Zimmer Biomet may agree to supply Goods to the Purchaser on a consignment basis (**Consigned Inventory**). For the avoidance of doubt, risk in Consigned Inventory passes to the Purchaser in accordance with clause 6.1, and title passes at the time of use.
 - 7.2. Zimmer Biomet may agree to the loan of surgical instruments and surgical equipment (**Instruments**) to the Purchaser at no charge for use with the Goods. Zimmer Biomet retains all right and title in and to Instruments, and Purchaser shall hold them as a bailee only. Risk in Instruments passes to the Purchaser on delivery. The Purchaser must return the Instruments to Zimmer Biomet following use with the Goods or on demand.
 - 7.3. The Purchaser accepts all risk of loss and full responsibility for the condition of, any shortages in and payment for, all Consigned Inventory and Instruments which are lost, damaged or modified as from the date of their delivery to the Purchaser (with fair wear and tear excepted in the case of Instruments). The Purchaser also accepts all risk of loss and full responsibility for the condition of, any shortages in and the payment for all Consigned Inventory which is withdrawn, opened or used. The Purchaser agrees to use its best efforts to (i) identify all Consigned Inventory and Instruments as being the property of Zimmer Biomet, and (ii) store Consigned Inventory and Instruments separately from the Purchaser's other property at the Purchaser's premises.
 - 7.4. The Purchaser is responsible for:
 - (a) maintaining Consigned Inventory and Instruments in good condition and for using reasonable care in their handling and storage, which shall be in a clean and secure environment;
 - (b) storing Consigned Inventory and Instruments in accordance with the labelling and other manufacturer conditions supplied;
 - (c) the proper sterilisation of Instruments in accordance with applicable laws and standards prior to their use for any surgical procedure and also prior to return of the Instruments to Zimmer Biomet; and
 - (d) ensuring all applicable laws, regulations and requirements are observed in relation to the storage, handling, sale and use of the Consigned Inventory and Instruments.
 - 7.5. The Purchaser agrees to notify Zimmer Biomet within 48 hours of use of the Consigned Inventory and at the same time shall provide Zimmer Biomet with an Order to facilitate invoicing. If notice or Order is not sent to Zimmer Biomet, but other circumstances indicate that the Purchaser has withdrawn, opened or used Consigned Inventory, such withdrawal will constitute a purchase of that Consigned Inventory. Consigned Inventory must be withdrawn for use by the Purchaser on a first expired/first out basis.
 - 7.6. Consigned Inventory that is used, opened, lost, or damaged will be charged in accordance with Zimmer Biomet's price list then in effect unless otherwise agreed.
 - 7.7. Subject to reasonable notice, Purchaser grants Zimmer Biomet an irrevocable license and authority to enter Purchaser's premises to access Consigned Inventory and Instruments to undertake a stocktake.

8. Cancellation

- 8.1. The Purchaser may not cancel or amend a Contract without Zimmer Biomet's written consent and if such consent is provided, Purchaser indemnifies Zimmer Biomet against all loss, costs and charges.
- 8.2. Zimmer Biomet reserves the right to make changes or modifications to the design of any of the Goods and Instruments without obligation to provide or install such changes or modifications to Goods already sold or Instruments supplied to Purchaser.

9. Return of Goods and Instruments Policy

- 9.1. For any Goods and Instruments to be returned by the Purchaser to Zimmer Biomet, the Purchaser must comply with the terms of this clause 9.
- 9.2. Subject to these Terms and the Contract, the following Goods and Instruments may be accepted by Zimmer Biomet for return:
 - (a) Goods and Instruments that are defective or fail to perform in accordance with their instructions for use; or
 - (b) Goods that do not conform to the correct type or quantity specified in an Order.
- 9.3. To return Goods, the Purchaser must contact Zimmer Biomet within 10 days of Delivery and provide such information as may be requested by Zimmer Biomet and obtain authorization for their return. Zimmer Biomet reserves the right to request the Goods be made available for inspection by Zimmer Biomet's representatives prior to their return. If a return is approved, then Zimmer Biomet will arrange for the collection of the returned Goods.
- 9.4. In the case of Goods returned pursuant to clause 9.2(b), the Goods must be in their original packaging and condition with no stickers or markings on either the Goods or packaging.

10. Intellectual Property & Personal Information

- 10.1. The Purchaser acknowledges that all Intellectual Property in the Goods and Instruments is the sole property of or licensed by Zimmer Biomet and the Purchaser will gain no rights, title or interest in the Intellectual Property other than as set out in clause 10.2.
- 10.2. The Purchaser may use the Intellectual Property only for the purposes contemplated by these clauses and must not allow any third party to use the Intellectual Property unless prior written consent has been obtained from Zimmer Biomet.
- 10.3. The Purchaser must not, nor permit any person under its control, nor procure any person, to modify, copy, clone or reverse engineer the Goods, Instruments or copy, modify or decompile any of Zimmer Biomet's documentation relating to the Goods or Instruments.
- 10.4. If the Purchaser provides personal information of the Purchaser, its personnel, officers, agents, patients or any other third party to Zimmer Biomet, the Purchaser agrees to Zimmer Biomet collecting, using and disclosing that information for purposes related to carrying out Zimmer Biomet's obligations under these Terms and any Contract and in accordance with Zimmer Biomet's privacy policy, available via Zimmer Biomet's website at <https://www.zimmerbiomet.in/privacy-policy.html>. Purchaser warrants that it has obtained all relevant consents and such use by Zimmer Biomet will not violate any applicable laws or regulations or infringe on any third party rights.

11. Warranty

- 11.1. Zimmer Biomet warrants the Goods and Instruments against any manufacturing defects or defective parts in accordance with the warranty form then in effect for each type of item and under the conditions specified in such warranty.
- 11.2. To the extent permitted by law, Zimmer Biomet's liability under these Terms and each Contract, including for breach of the above warranty or any other condition or warranty implied by any law, is limited to either (i) replacement of the Goods or Instruments (as may be applicable), or the supply of equivalent Goods or Instruments (at Zimmer Biomet's discretion); or (ii) payment of the cost of replacing the Goods or Instruments (as applicable), or of acquiring equivalent Goods or Instruments.
- 11.3. Any warranty claims must be submitted in writing. Purchaser will be deemed to have waived its right to make any warranty claim if not made within 30 days of the time Purchaser first knew, or should have known, of the warranty non-conformance.
- 11.4. Other than as specifically set out above, all warranties and

representations on the part of Zimmer Biomet, whether express or implied, statutory or otherwise, are excluded to the full extent permitted by law. In no instance will Zimmer Biomet be responsible for any direct, indirect or consequential damages, loss of profits, loss of business or any special or exemplary damages.

12. Default

- 12.1. If the Purchaser defaults in any payment due to Zimmer Biomet or breaches any other term of the Contract or these Terms or is unable to satisfy any debts as they become due or if bankruptcy or insolvency proceedings are instituted by or against the Purchaser or the Purchaser makes or proposes to make any arrangement with its creditors, then Zimmer Biomet may, without prejudice to any other rights under the Contract, immediately terminate the Contract. Payment for Goods will become due immediately upon the Purchaser committing any act of bankruptcy, or the Purchaser (being a company) committing any act which entitles any person to apply to wind up the Purchaser, or a receiver of the Purchaser or any of its assets is appointed.

13. Force majeure

- 13.1. Zimmer Biomet will not be liable to the Purchaser in respect of any delay or failure to perform that results from any event or cause that is beyond the reasonable control of Zimmer Biomet.

14. Compliance

- 14.1. Zimmer Biomet and Purchaser each represent and warrant that neither of them nor any of their employees, agents or affiliates, will violate any applicable anti-corruption laws, regulations or provisions including the applicable laws of the United States of America, the United Kingdom, or any country which is or will become a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials, in relation to the performance of any obligation under this Agreement.
- 14.2. Other than for Purchasers appointed by Zimmer Biomet under a written distribution agreement, the Purchaser agrees that it will not re-sell the Goods (including Consigned Inventory) and Instruments to any unrelated third party not being the end user.

15. Choice of law and jurisdiction

- 15.1. The validity, interpretation and construction of these Terms and the Contract will be determined by the laws of India.
- 15.2. Any claim or dispute arising out of or relating to these Terms or any Contract made thereunder, if not finally settled by mutual agreement of the parties within 30 days of the notification of the claim or dispute by one party to the other, may be referred by either party to and, if so referred, finally resolved by arbitration in New Delhi wherein Zimmer Biomet will appoint an independent sole arbitrator. Arbitration to be held in accordance with Arbitration & Conciliation Act 1996 (or any replacement law) and language to be English.
- 15.3. The parties agree that any arbitral award will be considered final and will be enforceable in any appropriate judicial court.
- 15.4. Nothing in this clause 15 will prejudice the right of either party to apply to a court at any stage for urgent injunctive or declaratory relief.

16. General

- 16.1. Purchaser acknowledges and accepts that any term or part of this Contract that relates to Goods manufactured by Zimmer Biomet may not apply to the purchase of third party products.
- 16.2. If a clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms, but the rest of these Terms are not affected.
- 16.3. Any notices under the Contract must be in writing and must be sent by post, email to the address, fax or email of the other party.
- 16.4. For any issue/query details, Purchaser may contact Customercare.India@zimmerbiomet.com
- 16.5. Where there is more than one Purchaser under the Contract, then the liability of each Purchaser will be joint and several. The Contract cannot be assigned or transferred by the Purchaser without the prior written consent of Zimmer Biomet.