

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

- “**Buyer**” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
 - “**Goods**” means the goods (including any installment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions;
 - “**Seller**” means RainTree Medical Sdn. Bhd. (Company no. [566402-P]), a company incorporated in Malaysia under the Companies Act 1965 with its registered address at Third Floor, No.79 (Room A), Jalan SS 21/60, Damansara Utama, 47400 Petaling Jaya, Selangor;
 - “**Conditions**” means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
 - “**Contract**” means the contract for the purchase and sale of the Goods;
 - “**Writing**” includes telex, cable, facsimile transmission and comparable means of communication.
- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject always in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller.
- 2.3. The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed by the Seller.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyers own risk, and accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller, shall be subject to correction without any liability on the part of the Seller at any time and from time to time.

3. Orders and specifications

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorized representative.
- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use or application of the Buyer's specification.
- 3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the Goods are to be supplied to the Seller's specification, changes which do not materially affect the quality or performance of the Goods.
- 3.6. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

- 4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from Malaysia, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties or taxes, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on the basis that the Goods are to be delivered within Malaysia.

5. Terms of payment

- 5.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. The Buyer shall pay the price of the Goods (without any deduction or set-off whatsoever within thirty (30) days of the date of the Seller's invoice, and the Seller shall be entitled to receive payment, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- terminate any Contract or suspend any further deliveries to the Buyer;

- appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit; and
- charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of ten per cent (10%) per annum, until payment in full is received.

6. Delivery

- 6.1. For destinations within Malaysia, delivery of the Goods shall be effected by the Seller delivering the Goods to the agreed place. Where the Goods are supplied for export from Malaysia, the provisions of clause 10 shall apply.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Contract or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4. If the Seller fails to deliver the Goods or any part thereof for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods quoted by the Seller to the Buyer.
- 6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
- in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. Warranties and limitation of liability

- 8.1. Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Consumer Protection Act 1999) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing:
- no condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to the Seller;
 - any description given of the Goods is given by way of identification only and the use of such description shall not constitute a sale by description;
 - notwithstanding that a sample of the Goods has been exhibited to and inspected by the Buyer, it is hereby declared that such sample was not so exhibited and inspected as to constitute a sale by sample under the Contract;
 - the Seller binds itself only to deliver Goods in accordance with the general description under which they were sold, whether or not any special or particular description shall have been given or shall be implied by law. Any such special or particular description shall be taken only as the expression of the Seller's opinion in that behalf. The Seller does not give any warranty as to the quality state condition or fitness of the Goods.
- 8.2. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their non-conformity to the Contract shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.3. Without prejudice to the generality of clause 8.5 below, Goods alleged by the Buyer to be defective or to have failed to conform with the Contract shall not form the subject of any claim by the Buyer for any loss, damage or expense whatsoever arising directly or indirectly from such defects; but such Goods (or the part in question), if returned to the Seller following notification to the Seller in accordance with these Conditions, and accepted by the Seller as defective or non-conforming, will if practicable be replaced free of charge as originally ordered. In lieu of such replacement, the Seller may, at its sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price). Upon such replacement or refund, the Buyer shall have no further claim against the Seller.
- 8.4. Defects in quality, condition or dimension of any of the Goods or non-conformity thereof with the Contract shall not be a ground for cancellation of the remainder of the order or the Contract.
- 8.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever, (and whether caused by the negligence of the Seller, its employees or agents or otherwise), which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

- 8.6. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be deemed to be causes beyond the Seller's reasonable control:

- Act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- difficulties in obtaining raw materials, labor, fuel, parts of machinery;
- power failure or breakdown in machinery; and
- delays in transportation, delay or detention of vessels, inability to obtain transportation facilities.

- 8.7. Upon the occurrence of any event excusing performance by the Seller as provided in clause 8.6 above, the Seller shall be entitled at any time, on notice to the Buyer, to make partial deliveries only or to delay delivery or to determine the Contract, without prejudice in any case to rights accrued in respect of deliveries already made.

9. Insolvency of buyer

- 9.1. In the event of any of the following:

- the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- a receiver is appointed over any of the property or assets of the Buyer; or
- the Buyer ceases, or threatens to cease, to carry on business; or
- the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly,

then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid, the price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

10. Export terms

- 10.1. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract and these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2. Where the Goods are supplied for export from Malaysia, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 10.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 10.4. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered [i.e.o.b. the air or sea port of shipments and the Seller shall be under no obligation to give notice under section 39(3) of the Sale of Goods Act 1957.
- 10.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11. General

- 11.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. Nor shall failure or delay on the part of the Seller in exercising any power or right hereunder or the single or partial exercise thereof preclude any other or further exercise of any right or power herein.
- 11.3. Each provision of these Conditions as well as of any Contract is distinct and severable from the others so that if any such condition or provision is held to be invalid, void, illegal or unenforceable under any applicable law or by any order of any court of competent jurisdiction, the remaining conditions and provisions shall not be impaired or affected by such invalidity illegality or unenforceability and shall remain in full force and effect.
- 11.4. Where the Buyer is a partnership, each individual partner thereof shall be jointly and severally liable for all sums due (whether as a debt or as damages or otherwise) under or in connection with the Contract.
- 11.5. The Contract and these Conditions shall be governed by and construed in accordance with the laws of Malaysia, and the parties hereby submit to the non-exclusive jurisdiction of the courts in Malaysia.