

## **Smith & Nephew Consignment Terms and Conditions**

We write with reference to the products (the “Products”) and the capital equipment (the “Equipment”) Smith & Nephew Healthcare Sdn Bhd and its affiliates (“S&N”) have consigned or will consign to you from time to time (together the “Consigned Goods”). These terms shall automatically apply to any delivery of Consigned Goods and by accepting delivery of the Consigned Goods you agree to the terms below:

### **Products**

1. Title and Risk. All rights, title and interest in the Products remain with S&N until the Product is consumed by you. You will keep the Products free of charges or any security interests and will not pledge or grant a security interest of any kind in any Products to anyone. Upon delivery of Products, risk of loss of Products passes to you. You will store the Products in a specifically designated storage area of your facility separate from other products. You will maintain an adequate climate-controlled environment in the storage area for safe keeping and the Products will be handled only by properly trained personnel.
2. Product Consumption. As needed, you will withdraw and use Products on a first-in, first-out basis, ensuring the Product is suitable for use. Products that are either (i) opened and used or (ii) opened and not usable for a subsequent procedure or patient will be deemed consumed by you. You shall promptly (no later than two days after Product consumption) provide a purchase order to us for each Product consumed to facilitate invoicing for and replenishment of such Product. Your purchase order will reflect your then-current pricing from S&N, or if no such agreement is in effect, the purchase will be invoiced at S&N’s then current published list price and S&N’s Standard Terms and Conditions will apply to the purchase of the Product(s). S&N’s Standard Terms and conditions can be found at S&N’s website at [www.sntandc.com](http://www.sntandc.com).
3. Replenishment. We will jointly review the levels and composition of consigned Product on a regular basis (no less than bi-annually).

### **Equipment**

4. Ownership and Use. The Equipment shall remain the property of S&N at all times, title does not pass to you and you will not have any ownership interest in the Equipment. In no event will you be entitled to transfer or sell the Equipment. You will keep the Equipment in a safe and secure environment and free from all encumbrances and will provide such reasonably requested documents to S&N that it deems necessary to maintain its interest in the Equipment. You shall comply with all laws, ordinances, and regulations with respect to the maintenance and operation of the Equipment. You shall not make any modifications, alterations or additions to the Equipment. At any time upon reasonable request and during normal hours of operation, you grant S&N or its authorized representative full access to the Equipment for inspection, serial or lot number verification or testing.
5. Transfer of Equipment. S&N may at any time require you to transfer the Equipment to any third party. You shall ensure that the Equipment is not issued or transferred to any third party unless instructed or authorized in writing by S&N.
6. Return of Equipment. You shall return all Equipment in good working order to S&N upon request. You will be invoiced for any repair costs to restore non-working Equipment to good working order and you will be invoiced for the fair value of the Equipment if it is not received by S&N within 15 days of the date of request from S&N.
7. Repair and Service. All repairs must be performed by S&N and you shall be billed for services on a time and materials basis for such work.

## General Terms

8. Insurance. You will maintain in full force and effect insurances in respect of the Consigned Goods in form and substance reasonably satisfactory to S&N, subject to such exclusions as are usual and customary in the worldwide insurance marketplace.
9. Termination. Either party may terminate this consignment arrangement by giving thirty (30) days' prior written notice to the other party. You will have fourteen (14) days from the effective date of termination to return Consigned Goods to S&N, and you shall be invoiced for such Consigned Goods at the prices and on the terms and conditions specified in paragraphs 2 and 6 above if you fail to return them.
10. Inspection and Records. S&N will have the right to remove all or some of the Consigned Goods without notice in the event that you breach these terms and conditions or any other agreement between the parties. All of the records and reports maintained pursuant to these terms and conditions will, at all times, be maintained at your facility and will be subject to inspection upon reasonable notice during normal business hours. You will provide S&N employees and authorized representatives with access to your facility for inventory audits upon reasonable notice during normal business hours.
11. Compliance. S&N's provision of Consigned Goods will not be construed to constitute a promotion or approval by S&N of uses that are other than, or contrary to, those indications (commonly called "off-label" uses). S&N will not be responsible for damages or losses of any kind arising out of "off-label" uses. All transactions with S&N in connection with the Consigned Goods are made in good faith on the basis of arms' length negotiation. You will comply with all applicable laws in connection with these terms and conditions and the use of the Consigned Goods and all applicable related regulations. The consignment of Consigned Goods at your facility is not a discount or kick back and is made in accordance with market practice in the medical devices industry and Smith & Nephew policies and procedures. You agree that you will also comply with the Smith & Nephew Code of Conduct which can be found at: <http://compliance.smith-nephew.com> and such policies and procedures as we may notify to you from time to time.
12. Limitation of Liability; No Implied Warranty. Under no circumstances will S&N be liable for any incidental, consequential or special damages, losses or expenses (including, without limitation, lost profits and opportunity costs, damage to goodwill, or loss of use or loss of information of any kind, however caused) arising from these terms and conditions or the Consigned Goods. Your sole remedy will be the repair or replacement by S&N of Consigned Goods that are determined to be materially defective in material or workmanship. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
13. These terms and conditions will be construed in accordance with the laws of Malaysia, without regard to or application of conflict of law principles. Any dispute, controversy or claim arising out of or relating to these terms shall be finally settled by binding arbitration in Kuala Lumpur in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules"). The arbitration shall be conducted in the English language by a sole arbitrator appointed in accordance with the KLRCA Rules.