

FERNO (UK) LIMITED STANDARD TERMS & CONDITIONS OF SALE

1. INTERPRETATION

In these Conditions, the following definitions and rules apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document.

Contract: the contract between Ferno and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Ferno.

Ferno: Ferno (UK) Limited (registered in England and Wales with company number 1007475).

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's written order for the Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is supplied by the Customer to Ferno, or produced by Ferno and agreed in writing by the Customer.

a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a reference to a party includes its personal representatives, successors or permitted assigns;

a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

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; and

a reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Ferno issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Ferno which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Ferno and any descriptions or illustrations contained in Ferno's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between Ferno and the Customer for the sale of the Goods.

2.5 A quotation for the Goods given by Ferno shall not constitute an offer. A quotation shall only be valid for a period of 90 days from its date of issue.

3. DELIVERY

3.1 Ferno shall ensure that each delivery of the Goods is accompanied by a despatch note which shows the date of the Order, all relevant Customer and Ferno reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.2 Ferno shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

3.5 If Ferno fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Ferno shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Ferno with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.6 The Customer shall not be entitled to reject the Goods if Ferno delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

3.7 Ferno may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. QUALITY AND DEFECTIVE GOODS

4.1 The terms and conditions of the Ferno standard product warranty (**Warranty**) shall apply to the Contract. Subject to Condition 4.2, if:

4.1.1 the Customer gives notice in writing to Ferno during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the Warranty; and

4.1.2 Ferno is given a reasonable opportunity of examining such Goods; and

4.1.3 the Customer (if asked to do so by Ferno) returns such Goods to Ferno's place of business at Ferno's cost,

Ferno shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.2 Ferno shall not be liable for Goods' failure to comply with the Warranty to the extent that:

4.2.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 4.1; or

4.2.2 the defect arises because the Customer failed to follow Ferno's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or

4.2.3 the defect arises as a result of the use of the Goods with a non-Ferno locking device coupled with a Ferno stretchers trolley, or vice versa; or

4.2.4 the defect arises as a result of Ferno following any technical information, recommendation, drawing, design or specification supplied by the Customer; or

4.2.5 the Customer adjusts, alters or repairs such Goods without the written consent of Ferno; or

4.2.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

4.2.7 any other exclusion or limitation set out in the Warranty applies,

and in such circumstances the Customer shall be liable to pay to Ferno a handling charge equal to 20% (twenty per cent) of the gross invoice value of the Goods.

4.3 Except as provided in this Condition 4, Ferno shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 4.1.

4.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.5 These Conditions shall apply to any repaired or replacement Goods supplied by Ferno.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until Ferno has received payment in full (in cash or cleared funds) for the Goods and all other sums which are or which become due to Ferno for sales of the Goods or any other products to the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

5.3.1 hold the Goods on a fiduciary basis as Ferno's bailee;

5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Ferno's property;

5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

5.3.5 notify Ferno immediately if it becomes subject to any of the events listed in Condition 7.2; and

5.3.6 give Ferno such information relating to the Goods as Ferno may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 7.2, or Ferno reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Ferno may have, Ferno may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Ferno's published price list in force as at the date of delivery.

6.2 Ferno may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

6.2.1 any factor beyond Ferno's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Ferno adequate or accurate information or instructions.

6.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

6.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Ferno, pay to Ferno such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

6.5 Ferno may invoice the Customer for the Goods on or at any time after the completion of delivery.

6.6 Unless otherwise agreed by Ferno the Customer shall pay the invoice in full and in cleared funds by the 20th of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Ferno. Time of payment is of the essence.

6.7 If the Customer fails to make any payment due to Ferno under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above The Royal Bank of Scotland's base 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 Customer shall pay the interest together with the overdue amount.

6.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Ferno in order to justify withholding payment of any such amount in whole or in part. Ferno may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Ferno to the Customer.

7. CUSTOMER'S INSOLVENCY OR INCAPACITY

7.1 If the Customer becomes subject to any of the events listed in Condition 7.2, or Ferno reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Ferno, Ferno may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Ferno without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

7.2 For the purposes of Condition 7.1, the relevant events are:

7.2.1 (being an individual) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or

7.2.2 (being a body corporate) the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer, or the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or the Buyer encumbers or in any way charges any of the Goods; or

7.2.3 Any event analogous to any of the events referred to in Conditions 7.2.1 and 7.2.2 occurs in respect of the Customer in any other jurisdiction; or

7.2.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

7.2.5 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude Ferno's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; or any other matter in respect of which it would be unlawful for Ferno to exclude or restrict liability.

8.2 Subject to Condition 8.1:

8.2.1 Ferno shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and

8.2.2 Ferno's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods.

9. FORCE MAJEURE

Neither party shall 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. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, 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, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. NOTICES

10.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or email.

10.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 10.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one business day after transmission.

10.3 The provisions of this Condition shall not apply to the services of any proceedings or other documents in any legal action.

11. GENERAL

11.1 Ferno 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 Customer 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 Ferno.

11.3 If any court or competent authority finds that any provision of the Contract (or part of any provision) 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.

11.4 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.5 A 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. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.7 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 the Customer.

11.8 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.

Signature:

Date:

Position:

Co name:

Account no:

Ferno (UK) Limited

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