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CONDITIONS OF PURCHASE

GENERAL

- 1.1 In these conditions 'Company' shall mean Lombard Medical and 'Supplier' shall mean the person, firm or company to whom the Company's order is issued and 'Products' shall mean all products and services and associated documentation covered by the Company's order. 'Writing' includes telex, cable, facsimile transmission, electronic data transfer and comparable means of communication.
- 1.2 These conditions shall apply to and be incorporated in the contract between the Supplier and the Company for the supply of the Products and shall be in substitution for any ongoing arrangement made between the Supplier and the Company and shall prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation or acceptance of order or correspondence or elsewhere or implied by trade custom or practice or course of dealing and no addition to or variation of or exclusion or attempted exclusion of the order and/or these conditions or any of them shall be binding upon the Company unless specifically agreed to in Writing and signed by a duly authorised representative of the Company.
- 1.3 All the provisions of the contract between the Company and the Supplier are contained in or referred to in the order and in these conditions. The Supplier's execution or commencement of work or any delivery pursuant to the order or acceptance of any progress payment constitutes acceptance of the order on the terms hereof by the Supplier. Acceptance of the order constitutes acceptance by the Supplier of these conditions. In no circumstances will any conditions of sale submitted at any time by the Supplier be applied to this or any other contract and any failure by the Company to challenge any such conditions of sale does not imply acceptance of those conditions of sale.
- 1.4 Specific terms contained in the Company's order shall stand in addition to these conditions and in the event of a conflict the specific terms of the Company which come latest in time shall prevail. The Company's standard purchase conditions current from time to time shall apply to all future contracts for the supply of products by the Supplier to the Company.

ELECTRONIC TRADING

- 2.1 If the Company and the Supplier use electronic trading between them as the basis for order processing and invoicing then the Standard Interchange Agreement (3rd Edition December 1993 as amended or revised from time to time) of the Electronic Commerce Association (or any successor body or association) shall apply. If and to the extent of any conflict or inconsistency between these conditions and the Standard Interchange Agreement, the former shall prevail.
- 2.2 Electronic orders shall be valid if all the information agreed between the Supplier and the Company as being required is properly set out in the agreed format and the order is transmitted by the Company to the Supplier by reference to the correct identification code and is received by the Supplier when collecting its electronic mail from the relevant system.
- 2.3 Each valid electronic order will be deemed accepted by the Supplier unless the Supplier communicates rejection of the order to the Company by electronic or other means (including telephone) within 24 hours of receipt. Acceptance of an order shall constitute a

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contract for sale and purchase to which these conditions and the Standard Interchange Agreement shall apply.

DELIVERY

- 3.1 The date or period for delivery of the Products shall be that specified in the Company's order and shall be of the essence of the contract. Consignment or part deliveries may be rejected unless the Company has agreed to accept such deliveries.
- 3.2 If delivery of Products is not made in the quantities and/or at the time(s) specified, the Company reserves the right, without liability, to cancel the order or balance by notice effective when delivered to the Company; to Purchase elsewhere as nearly as practicable to the same specifications and conditions as circumstances shall permit and recover from the Supplier any additional expenses thereby incurred together with the purchase price and any other charges, if previously paid.
- 3.3 The Company will have no liability for payment of Products delivered to the Company in excess of quantities specified in this contract or prior to the delivery schedule specified. Such Products may be subject to rejection and returned at Supplier's expense, including transportation charges both ways. The Company will not be liable for any material or production costs incurred in excess of the amount or in advance of the time necessary to meet the Company's delivery schedules.
- 3.4 Supplier shall package the Products in a manner that will prevent damage during shipping and ship the Products in accordance with the Company's instructions. Supplier shall be liable for any loss or damage incurred as a result of improper packaging, crating and/or routing, including additional transportation costs due to improper routing.
- 3.5 The Supplier shall provide such programmes and progress reports of manufacture and delivery as the Company may reasonably request and the Supplier shall give notice to the Company forthwith if such programmes are likely to be delayed. Without prejudice to any other rights accruing to the Company any substitute delivery date or period agreed shall also be of the essence of the contract.
- 3.6 The Company's order number shall be printed or written legibly by the Supplier on all Products delivered by package or parcel and on all related despatch notes and invoices. Each shipment of Products shall include separate packing slips showing: (a) Company's purchase order number; (b) Company's part number and revision level for each Product shipped, if applicable; (c) a description of the Products; (d) individual serial numbers of the Products, if applicable; (e) the total quantity of Products shipped; (f) date of despatch; (g) batch number; (h) date of despatch; and (i) delivery point.
- 3.7 Supplier's invoices shall, at a minimum, include: (a) Company's purchase order number, against which the Products were shipped; (b) the date of shipment; (c) Company's part number and revision level for each Product shipped, if applicable; (d) a description of the Products; (e) the total quantity of Products shipped; (f) the per unit price of the Products shipped; and (g) the total invoice price.
- 3.8 All Products must be delivered at the delivery point specified in the Company's order or if no delivery point is specified, at the Company's premises, and at times either specified or agreed by the Company. Delivery shall be completed only when the Products have been unloaded and the delivery has been accepted by a duly authorised representative of the Company as provided in clause 4.

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- 3.9 The Supplier must keep the Products insured until risk passes and shall hold the insurance and any proceeds thereof and its rights against any carrier of the Products on trust for the Company until the Supplier has satisfied all its obligations to the Company in relation to the Products.
- 3.10 Unless specifically agreed to the contrary all trade terms shall be interpreted in accordance with current INCOTERMS.
- 3.11 For Products purchased from outside the UK, unless otherwise stated in the Company's order the Supplier is responsible for obtaining all necessary documentation for export of the Products to the UK and for the import of the Products into the UK including export and import licences and the Supplier shall be responsible for delays and charges incurred due to export and/or import licences not being available when required.
- 3.12 The Supplier agrees on request to supply the Company with such declarations and documents as may be reasonably required to establish the origin of the Products and the manner in which they qualify for EC EEA or EFTA preferences or duty exemptions.
- 3.13 In the event of any strike lock out fire explosion or accident or other matter or occurrence which for any reason prevents or hinders the use of any Products delivery of such Products and/or payment therefore may be suspended or postponed at the Company's option until the circumstances preventing or hindering the use of Products have ceased.

ACCEPTANCE

- 4.1 Acceptance of the Products will only be effective if communicated in Writing, thus Payment for any Products under this contract shall not constitute acceptance and the Company's acknowledgement of delivery on a delivery note or similar document shall not constitute acceptance and the Company retains the right to reject any Products until it is fully inspected.
- 4.2 Should the Products delivered by the Supplier fail to conform to the contract for whatever reason the Company may without prejudice to its other rights:
 - 4.2.1 Reject all or any of the Products within a reasonable time of their inspection by the Company notwithstanding that the Company may have effected payment therefore; and
 - 4.2.2 Purchase elsewhere as nearly as practicable to the same specifications and conditions as circumstances shall permit and recover from the Supplier any additional expenses thereby incurred together with the purchase price and any other charges, if previously paid.

TITLE AND RISK

- 5 Without prejudice to any right of rejection which may accrue to the Company and unless otherwise stated in the Company's order title to the Products shall pass to the Company upon the earlier of delivery or any payment being made therefore and risk shall pass upon delivery and acceptance of the Products. The Supplier shall be responsible for transport and unloading costs and for insurance of the Products to their full replacement value against all risks of damage or loss prior to completion of delivery and acceptance. In addition, the Supplier shall be liable for the full replacement value of any of the Company's assets damaged during the course of delivery and unloading of the Products.

PRICE AND PAYMENT

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- 6.1 Unless otherwise stated in the Company's order all prices are fixed fully inclusive of all duties and delivery charges and are not subject to escalation or additions and payment shall be made at the end of the second month after the month of invoice and the Supplier may invoice only after delivery of all Products the subject of the order has been accepted by the Company. Unless otherwise stipulated by the Company in Writing, prices are payable in Sterling or if the Sterling currency shall cease to exist when the contract is made, shall be payable in such currency as replaces the Sterling currency.
- 6.2 No payment of or on account of the price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.
- 6.3 Packages and containers will be non-returnable and no charge therefore shall be made unless otherwise agreed.

VARIATIONS

- 7 The Company has the right to amend quantities specifications and scheduled times or deliveries by issuing an amendment in Writing to the Supplier with which the Supplier shall comply. Any other amendments to the contract must be made by agreement in Writing. The Supplier shall advise the Company forthwith if any proposed amendments either prevent the specified time for delivery being met or have any other material implication in regard to the Supplier's obligations to the Company and if appropriate the Company shall allow a reasonable adjustment to the price and/or time for delivery.

PATENT ETC INDEMNITY

- 8 The Supplier will indemnify the Company against any claims for infringement of any patent registered design right trade mark copyright confidentiality and any other intellectual property rights arising by reason of the use or sale of the Products, against all claims for royalties payable in respect of the Products and against all losses costs damages expenses fines and claims which the Company may suffer or incur or for which the Company may become liable as a result of such claims for infringement or royalties including without limitation the cost of obtaining non-infringing replacements for the Products.

SAFETY AND ENVIRONMENTAL

- 9.1 The Supplier warrants that in the design manufacture supply and installation of the Products and the provision of information relating thereto it will comply and will facilitate the Company's compliance with the duties imposed by any applicable environmental and health and safety laws and with all other relevant statutory provisions rules and regulations so far as they are applicable to the Products and that the Products will be supplied with all safety guards devices, product data sheets, details of any appropriate risk assessment, and markings sufficient to comply with all applicable legal requirements.
- 9.2 Where the Company expressly agrees in the contract that the Products are to be supplied without the usual or compulsory guards or safety devices then the Supplier must specify in writing at or before delivery what guards and safety devices (if any) will be required to be purchased by the Company to conform with all relevant laws.
- 9.3 The Supplier warrants that all Products supplied to the Company together with all necessary instructions information and warnings supplied therewith will be designed manufactured and produced in such a manner as to ensure that the Products are not defective within the meaning of Part 1 of the Consumer Protection Act 1987 and the

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Supplier shall indemnify the Company against all losses costs expenses fines and damages that the Company may suffer or incur in connection with the Products being defective within the meaning of Part 1 of the said Act.

- 9.4 In the event that the Supplier becomes aware at any time of any incidents events or discoveries that are in any way relevant to the safe operation of Products supplied or to be supplied then the Supplier shall forthwith issue written notice thereof to the Company.
- 9.5 In the event that in connection with the contract the Supplier or its sub-contractors enter upon any land or premises occupied by the Company the Supplier shall indemnify the Company against all losses costs expenses and damages suffered or incurred by the Company as a result of any loss damage or injury to persons or property of any kind arising out of any act or omission negligent or otherwise of the Supplier or its sub-contractors.

ASSIGNMENT AND SUB-CONTRACTORS

- 10.1 The Supplier shall not without the written consent of the Company sub-contract or assign all or any part of the benefit or burden of the contract.
- 10.2 Any authority given by the Company for the Supplier to sub- contract shall not impose any duty on the Company to enquire as to the competency of any authorised sub-contractor and the Supplier shall not be excused full and proper performance of the contract.
- 10.3 The Company shall be entitled to assign any and all of its rights and benefits under the contract without notice to the Supplier.

PROGRESS INSPECTION AND TESTING

- 11.1 The Products shall be subject to all specified and usual tests and checks by the Supplier and to any other tests, which the Company may reasonably require.
- 11.2 The Company's representatives and appropriate official authorities (where relevant) shall have the right to progress and inspect all Products and attend tests thereon at the Supplier's works and at the works of sub- contractors at all reasonable times and the Supplier shall give reasonable prior notice to allow such attendance at any tests.
- 11.3 Any attendance inspection approval or acceptance given by or on behalf of the Company shall not relieve the Supplier of any obligation under the contract.

RIGHTS IN DESIGNS ETC

- 12.1 Full title including design right copyright and all other intellectual property rights in all specifications plans drawings pattern or designs supplied by the Company to the Supplier in connection with the contract or prepared or made by the Supplier its employees agents or sub- contractors for the purpose of fulfilling the contract shall vest in and belong to the Company absolutely and any information derived there from or otherwise communicated to the Supplier in connection with the contract shall be regarded by the Supplier as confidential and shall not without the written consent of the Company be published or disclosed to any third party or made use of by the Supplier except for the purpose of performing the contract.
- 12.2 The Supplier hereby agrees to execute and procure execution of any assignment deed or other document reasonably required by the Company to transfer and vest in the

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Company ownership of anything, which is to belong to the Company in terms of clause 12.1.

- 12.3 Any drawings circuit diagrams, operating and maintenance instructions or like documentation supplied by the Supplier and not covered by clause 12.1 may be freely used by the Company for any reasonable purpose including the production by the Company or procurement from any third party for its use of any parts for the Products.

INFORMATION

- 13.1 The Supplier shall neither publish information about the contract or any correspondence concerned with it to any third party nor use the name of the Company for advertisement or publicity purposes without the Company's prior written consent.
- 13.2 The Supplier shall submit to the Company as soon as practicable after receipt of the Company's order such drawings design details and operational and maintenance manuals which are required by the Company or which it is usual in the trade to provide in respect of products of the same kind as the Products.
- 13.3 The Supplier shall be responsible for all errors and omissions in drawings calculations packing details or other particulars supplied by it and approval or acceptance thereof by the Company shall not relieve the Supplier of any obligation under the contract.

FREE-ISSUE MATERIALS AND TOOLS

- 14.1 Where the Company issues materials to the Supplier for use in connection with the contract such materials shall be and remain the property of the Company.
- 14.2 The Supplier shall maintain such materials in good order and condition and at its risk (and shall maintain appropriate insurance cover in this regard as the Company reasonably deems to be adequate) subject in the case of tooling patterns and the like to fair wear and tear and shall use the same only in connection with the contract.
- 14.3 Any surplus materials shall be disposed of in accordance with the Company's directions and any materials wasted as a result of the Supplier's bad workmanship or negligence shall be replaced at the Supplier's expense.
- 14.4 The Supplier shall at any time forthwith upon the Company's request deliver up to the Company all materials issued by the Company.
- 14.5 Any tools (such as jigs, dies, etc), which the Supplier may construct or acquire specifically in connection with the Products and for which the Supplier makes any charges, shall be and remain the Company's sole property and the Company may at any time call for possession.

SUPPLIER'S GUARANTEE

- 15.1 It is a condition of the contract that the Products: will conform with the specifications drawings and other details supplied or adopted by the Company; be new and fit and sufficient for the purposes for which they are intended; be of good quality design and workmanship and entirely free from defects; will satisfactorily fulfil the performance requirements supplied or adopted by the Company; and will conform with all appropriate British EC and other international standards and specifications applicable to the Products.

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- 15.2 The Supplier warrants its expertise and the accuracy of all statements and representations made in respect of the Products prior to the contract.
- 15.3 Nothing contained in these conditions shall in any way detract from Supplier's obligations and the Company's rights under common law or statute or any express or implied term condition or warranty.
- 15.4 Notwithstanding that the Company has accepted the Products or part thereof and/or title in the Products has passed to the Company, the breach by the Supplier of any express or implied term condition or warranty to be fulfilled by it may be treated as a ground for rejecting the Products and treating the contract as repudiated.
- 15.4.1 Without prejudice to the Company's rights to treat the contract as repudiated or its other rights the Supplier shall forthwith at the Company's request repair or (if the Company so requires) replace at the Supplier's expense all Products which fail or are or become defective within either the period of 12 months from putting into service or the period of 18 months from delivery (whichever shall be the first to expire) where such failure or defect occurs due to inadequate operational life faulty design, the Supplier's erroneous instructions faulty materials or workmanship or any other breach of the Supplier's obligations express or implied. The Supplier shall on demand reimburse to the Company any costs and expenses incurred by it in removal re-installation shutdown and other actions connected with the repair or replacement.
- 15.4.2 Repaired and replacement Products shall themselves be warranted in accordance with this clause 15 (in the case of clause 15.5.1 for a period of 12 months from the later of the date of delivery, re-installation or passing of tests) and the Company's request for or acceptance of a repair or replacement shall not preclude rejection of the repair or replacement and/or termination of the contract if it is not entirely to the Company's satisfaction.
- 15.5 The Supplier agrees to assign to the Company upon request the benefit of any warranty guarantee or like rights, which it has against any third party manufacturer or supplier of the Products, or any parts thereof.
- 15.6 The Supplier will provide all facilities assistance and advice required by the Company or the Company's insurers for the purpose of contesting or dealing with any action claim or matter arising out of the order or the Supplier's performance of the order.
- 15.7 The Supplier shall maintain public and product liability insurance to include (without limitation) cover in respect of all matters for which the Supplier may become liable to the Company pursuant to this contract, for such indemnity limits (but not less than £5 million in respect of any one occurrence) and cover as the Company reasonably deems to be adequate.

CANCELLATION

- 16 Without prejudice to any other lawful right available the Company shall have the right to cancel the contract (in whole or in part) without cause at any time by giving notice in Writing to the Supplier whereupon all work pursuant to the contract which is thereby cancelled shall be discontinued forthwith and the Company shall pay to the Supplier such proportion of the price as may be fair and reasonable having regard to the value of the Products which are then acceptable to the Company for delivery under the contract and on such payment no further sum or sums shall be due by way of damages loss of profits or otherwise from the Company to the Supplier by reason of such cancellation.

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TERMINATION

- 17.1 Without prejudice to any other rights or remedies of the Company it shall be entitled in any of the following circumstances to terminate (in whole or in part) this and any other contracts whenever made between the Company and the Supplier:
- 17.1.1 the Supplier makes or proposes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation;
 - 17.1.2 an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Supplier;
 - 17.1.3 the Supplier becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
 - 17.1.4 the Company reasonably believes or apprehends that any of the events mentioned above or any equivalent or similar events under any relevant laws to which the Supplier is subject has or may occur;
 - 17.1.5 the Supplier commits any breach of this or any other contract whenever made between the Supplier and the Company.

LAW AND JURISDICTION ETC

- 18.1 The contract shall be governed and interpreted exclusively according to the Laws of England. The parties hereby agree to submit to the exclusive jurisdiction of the English courts provided that the Company may at its option take proceedings in the courts of the state in which the Supplier is domiciled including action to obtain any remedy (including injunctive relief).
- 18.2 No waiver of or delay or failure by the Company to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 18.3 The Company may set off against the price or any claim by the Supplier under the contract any other liability or claim howsoever arising of the Company against the Supplier whether actual contingent primary collateral joint or several.
- 18.4 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provisions shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.