

## GENERAL TERMS AND CONDITIONS OF SALE

### 1 DEFINITIONS

1.1 In these General Terms and Conditions of Sale, unless expressly stated to the contrary, the following terms shall have the following meanings;

Term	Definition
DIETZ REHAB LIMITED	DIETZ REHAB LIMITED (registered in England and Wales no. 13146557 whose registered office is at 25, Brambleside, Stourbridge, West Midlands DY8 5XL);
Dealer/Distributor	the party with which DIETZ REHAB LIMITED enters into a Contract for the (re)sale of Products, on the basis of a Dealer/Distribution agreement or otherwise;
Customer	the party which purchases Products (direct) from DIETZ REHAB LIMITED and to that end enters into a Contract with DIETZ REHAB LIMITED;
User	the party by whom the Products are intended to be used;
Dealer/Distribution agreement	a Contract between DIETZ REHAB LIMITED and a Dealer/Distributor for the (re)sale of the Products;
Contract	any contract concluded between DIETZ REHAB LIMITED and a Dealer or Distributor - on the basis of a Dealer/Distribution agreement or otherwise - with respect to the sale of a Product, any modification or addition thereto, as well as all (legal) transactions for the purpose of preparing and executing the contract;
Quotation	any DIETZ REHAB LIMITED quotation for the Product setting out details of the items to be provided, prices and any other agreed terms;
Order	any order by the Customer or any acceptance by the Customer of an offer to enter into a Contract with DIETZ REHAB LIMITED;
Product	Powered wheelchair or spare parts or equipment which DIETZ REHAB LIMITED sells on the basis of a Contract.

## **2 APPLICABILITY**

- 2.1 These terms and conditions shall apply to all (subsequent) Contracts which DIETZ REHAB LIMITED concludes with other parties for the supply and purchase of Products. Merely by placing the Order and/or accepting the Products supplied the Customer accepts these conditions and will be deemed to have tacitly agreed to any further Orders, irrespective of a written confirmation by DIETZ REHAB LIMITED.
- 2.2 In the event that these terms and conditions are - or in the event of subsequent Contracts, will be - unacceptable to the Customer, the Customer must specify expressly in writing, by separate letter exclusively addressing this subject, the proposed variations from these terms and conditions, in which case a written confirmation by DIETZ REHAB LIMITED shall be required to effectuate the variation proposed by the Customer.
- 2.3 DIETZ REHAB LIMITED shall reserve the right to alter or add to these terms and conditions, which alterations or additions will not, however, apply to Contracts concluded or Orders made prior to the alteration or addition.
- 2.4 The alterations referred to in paragraph 2.3 shall be binding as from the fifteenth day after DIETZ REHAB LIMITED has notified the Customer of the alterations.
- 2.5 In so far as relevant to the rights and obligations of the User, the applicability of these terms and conditions shall entail that the Dealer/Distributor commits himself to reselling the Product to third parties only on the relevant conditions – as contained in these terms and conditions. The warranty terms and conditions (Section 9) must in any event form an integral part of the contracts of sale to be concluded between the Dealer/Distributor and third parties. In addition, the Dealer/Distributor shall limit his liability to third parties with due observance of the provisions of Section 10.
- 2.6 Where applicable, a Customer granting the use of the Products to Users must incorporate the provisions referred to in paragraph 2.5 of these terms and conditions into a (user) agreement between Customer and User.
- 2.7 Prior to entering into a user agreement or contract of sale with User or third parties for the sale or grant of the right of use of a Product, the Customer shall furthermore provide the User with comprehensive information regarding the appropriate use of the Product, to which end the Customer shall in any event supply a copy of the user's manual.
- 2.8 References to regulations, statutes or other statutory provisions shall be construed to include references to those regulations, statutes or provisions as amended, re-enacted, or modified from time to time and shall include any subordinate legislation under the relevant statute or statutory provision.
- 2.9 The headings in these terms and conditions are for ease of reference only and shall not in any way affect their construction or interpretation.
- 2.10 Words denoting the singular include the plural and vice versa; words denoting any one gender include all genders and vice versa, and reference to a person shall include an individual, partnership, body corporate and unincorporated association.
- 2.11 References to any party shall include its lawful successor in title and permitted, assigns;
- 2.12 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

## **3 QUOTATIONS, ORDERS AND CONTRACTS**

- 3.1 No binding Contract shall exist to supply the Products unless and until the Customer's order for such Products has been received and accepted by DIETZ REHAB LIMITED.
- 3.2 Oral Orders shall only be binding if laid down and confirmed in writing by DIETZ REHAB LIMITED. Unless within one working day (during regular working hours, Monday to Friday inclusive) after receipt of this confirmation the Customer lodges a written protest for deviations for his Order, the Customer shall be bound by the Contract as confirmed.
- 3.3 All oral and written offers and Quotations shall be non-binding and serve only as invitations to submit Orders.
- 3.4 Acceptance of an Order shall only take place on the earlier of (i) the Customer confirming (by signature, or other written or oral approval) that a Quotation is agreed, (ii) DIETZ REHAB LIMITED commencing production of all or part of the Products or (iii) DIETZ REHAB LIMITED despatching, or having ready for collection, all, or part of the Products.
- 3.5 Quotations are subject to withdrawal and alteration at any time before acceptance of the Customer's order. All relevant information as requested by DIETZ REHAB LIMITED in respect of a Quotation must be provided to DIETZ REHAB LIMITED, otherwise quotation prices may be varied after acceptance.
- 3.6 The Contract shall comprise these terms and conditions, the Quotation, and any other additional terms agreed in writing as applicable. DIETZ REHAB LIMITED shall sell, and the Customer shall purchase, the Products in accordance with the Contract, and the terms of the Contract shall apply to the exclusion of any other terms and conditions of the Customer or any terms in the Customer's order.
- 3.7 In the event of an inconsistency between the terms set out in a Quotation or any other specially agreed document and these terms and conditions, the terms and conditions of the Quotation or other specially agreed document shall prevail.

- 3.8 No variation of these terms and conditions or any Contract shall be effective unless it is made in writing and signed by duly authorised representatives of both parties. For the purposes of this clause, the expression “variation” includes any supplement, deletion or replacement however effected.
- 3.9 Any advice or recommendation given by DIETZ REHAB LIMITED or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products, which is not confirmed in writing by DIETZ REHAB LIMITED, shall be followed or acted upon entirely at the Customer’s own risk, and accordingly DIETZ REHAB LIMITED shall not be liable for any such advice or recommendation which is not so confirmed.
- 3.10 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 DIETZ REHAB LIMITED shall be subject to correction without any liability on the part of DIETZ REHAB LIMITED.

#### **4 PRICE**

- 4.1 The price of the Products shall be stated in the Contract. All amounts payable will be expressed in sterling unless agreed otherwise in the Contract.
- 4.2 Unless expressly agreed otherwise, the prices quoted by DIETZ REHAB LIMITED shall be for the delivery of the Products ex works or ex warehouse, exclusive of applicable value added tax (VAT) and of all other duties, imposts, and levies.
- 4.3 If the delivery date stated by DIETZ REHAB LIMITED has passed without delivery having been effected and the delay can be attributed to causes as referred to in paragraph 13.1, after three months of delay (after the stated date) an increase of the pricing factors may be charged on to the Customer.
- 4.4 Payment of the price increase as referred to in paragraph 4.3 shall be simultaneous with payment of the principal sum or – if a repayment arrangement has been agreed – payment of the final instalment.
- 4.5 Prices exclude packaging, insurance, freight/transport charges and other costs of carriage and delivery (“delivery charges”). Where DIETZ REHAB LIMITED has undertaken to provide or arrange for carriage to the Customer delivery address, delivery charges shall be levied in addition to the price unless otherwise expressly agreed by DIETZ REHAB LIMITED in the Contract.
- 4.6 DIETZ REHAB LIMITED reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to DIETZ REHAB LIMITED which is due to any factor beyond the control of DIETZ REHAB LIMITED including, without limitation, any foreign exchange fluctuation, change in the delivery dates, quantities or specifications for the Products which is requested by the Customer, and accepted by DIETZ REHAB LIMITED in its unrestricted discretion, or any delay caused by any instructions of the Customer or failure of the Customer to give DIETZ REHAB LIMITED adequate information, facilities, instructions or responses.

#### **5 TERMS OF PAYMENT**

- 5.1 Unless otherwise agreed in writing, payment of the Products supplied must be effected by the Customer no later than 30 days after the invoice date or as otherwise agreed in writing between DIETZ REHAB LIMITED and the Customer in the Contract.
- 5.2 Unless otherwise agreed in writing, all amounts billed shall be paid in full without any discount, rebate, or deduction.
- 5.3 If a fixed discount percentage on net price for the purchase of Products has been agreed (in writing) with the Customer, such percentage will be discounted in the invoices concerned. If a variable discount percentage for various Products has been agreed (in writing), a quarterly set-off will be effected against accounts receivable, immediately payable, or otherwise.
- 5.4 DIETZ REHAB LIMITED may issue its invoice(s) in respect of the Products in accordance with the Contract, or if no invoicing terms are specified in the Contract upon each Delivery of the Products.
- 5.5 Unless otherwise agreed in writing with the Customer, DIETZ REHAB LIMITED is entitled to allocate payments received to settle (in full or in part) any sums due from the Customer, whether under the Contract or any other Contract, in any order or manner DIETZ REHAB LIMITED determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.
- 5.6 Notwithstanding clause 5.1 or any other arrangements for provision of credit which DIETZ REHAB LIMITED may have agreed with the Customer in respect of the Contract, the whole price of all Products bought or agreed to be bought by the Customer shall be immediately payable without demand upon the occurrence of an Insolvency Event.
- 5.7 If the Customer fails to make any payment when due, without affecting any other rights which it may have, DIETZ REHAB LIMITED shall be entitled to exercise all or any of the following rights:
- 5.7.1 suspend production and/or deliveries of Products until paid;
  - 5.7.2 deduct outstanding sums from any sums owed by DIETZ REHAB LIMITED to the Customer under the Contract or otherwise;
  - 5.7.3 require the Customer to pay any costs of storage (or a reasonable charge for storage) of undelivered Products;

- 5.7.4 be paid compensation and charge interest on the overdue amount at a rate of 8% above the sterling base rate from time to time of the Bank of England which shall accrue from day to day (both before and after any judgment) from the due date until payment in full is received by DIETZ REHAB LIMITED and shall be compounded monthly;
  - 5.7.5 resell any Products not yet delivered to the Customer;
  - 5.7.6 retain any sums paid as deposit for the Products;
  - 5.7.7 demand the return of the Products in accordance with the provisions of clause 8.4;
  - 5.7.8 appropriate any payment made by the Customer to such of the Products as DIETZ REHAB LIMITED may think fit (notwithstanding any purported appropriation by the Customer).
- 5.8 DIETZ REHAB LIMITED shall be entitled at all times to demand security from the Customer for the payment of all present and future accounts receivable.
- 5.9 Pending the issue of security DIETZ REHAB LIMITED shall be entitled immediately to suspend performance of its obligations.

## **6 DELIVERY**

- 6.1 Agreed dates and times for delivery shall be estimates only and time shall not be of the essence in respect of these and DIETZ REHAB LIMITED shall not be liable for any loss, damage, cost, or expense caused directly or indirectly by any delays in delivery. The Customer may not terminate the Contract by reason of any delay in delivery and/or any short delivery. DIETZ REHAB LIMITED may deliver early.
- 6.2 The period of delivery shall commence when all technical details of the specifications as required by the Customer in respect of the Product to be delivered have reached DIETZ REHAB LIMITED.
- 6.3 If the Customer presents different product specifications once the Contract has been concluded, DIETZ REHAB LIMITED shall be allowed a reasonable period of time to process these new specifications and the Customer shall be obliged to compensate any additional costs incurred as a consequence thereof.
- 6.4 Unless expressly agreed otherwise in writing, all Products sold by DIETZ REHAB LIMITED shall be delivered to the Customer ex works in accordance with the Incoterms 2000; the risk in the good shall pass to the Customer the moment when DIETZ REHAB LIMITED places a Product at the disposal of the Customer by actually handing the product to the Customer or to a carrier engaged by him.
- 6.5 As a departure from the provisions of the preceding paragraph, the parties shall be free to agree in writing that DIETZ REHAB LIMITED is charged with the responsibility of shipment. The risk incidental to storage, loading, carriage and unloading shall even in that case lie with the Customer (as from the date of notification as referred to in paragraph 6.6). The Customer shall be free to take out insurance against these risks.
- 6.6 DIETZ REHAB LIMITED shall notify the Customer in writing that a Product is ready for delivery in its warehouse. Subsequently, the Customer shall be required (to instruct another party) to take receipt of the Product to be delivered within fourteen (14) days after the said written notification.
- 6.7 The Customer who has reasonable grounds to expect to be unable to take receipt of the Product(s) within the term set forth in the previous paragraph shall forthwith notify DIETZ REHAB LIMITED thereof in writing. If delivered Products are kept in storage by DIETZ REHAB LIMITED for more than two (2) weeks, the Customer shall be liable to pay storage costs. If he has no such reasonable grounds, the Customer shall be required to pay storage costs immediately upon expiry of the term referred to in paragraph 6.6.
- 6.8 If the Customer does not take receipt of the Products within the agreed period of time, he shall be in default without notice being required. In that case, DIETZ REHAB LIMITED will be entitled to store the Products for the account and at the risk of the Customer or to sell the Products to a third party. The Customer shall remain liable to pay the purchase price, increased by interest and extrajudicial costs, however, less the net proceeds from the sale to the third party if that should be the case.
- 6.9 The Customer shall inspect the Products immediately on delivery and shall no later than three (3) Business Days after delivery notify DIETZ REHAB LIMITED in writing of any shortage in delivery, damage or any other non-conformity with the Contract that ought reasonably to have been apparent on a reasonable inspection of the Products.

## **7 PACKAGING**

- 7.1 DIETZ REHAB LIMITED shall package Products in accordance with the nature and the use of the Product sold.
- 7.2 If the Customer has special wishes in terms of packaging, DIETZ REHAB LIMITED shall satisfy such wishes to the best of its ability, to which end DIETZ REHAB LIMITED may charge a fee.

## **8 RISK AND RETENTION OF TITLE**

- 8.1 Risk of loss or damage to the Product shall pass to the Customer at the time of delivery of the Product.

- 8.2 Title in the Product shall pass from DIETZ REHAB LIMITED to the Customer only on receipt by DIETZ REHAB LIMITED in full of:
- 8.2.1 the price (and VAT) for those Products under the Contract; and
  - 8.2.2 all other sums then due from the Customer under the Contract; and
  - 8.2.3 all sums then due from the Customer under any other contracts between the Customer and DIETZ REHAB LIMITED,
- provided that the title in the Product shall pass from DIETZ REHAB LIMITED upon such title passing to the Customer's User only in the manner permitted by clause 8.3.
- 8.3 Until such time as the title in the Product has passed to the Customer under clause 8.2 the Customer shall:
- 8.3.1 hold such Equipment on a fiduciary basis as DIETZ REHAB LIMITED's bailee and shall insure them as DIETZ REHAB LIMITED's property and shall store and mark them in such a way that they are readily identifiable as DIETZ REHAB LIMITED's property;
  - 8.3.2 not pledge or allow any encumbrance, lien, charge, or other interest to arise or be created over the Product; and
  - 8.3.3 not dispose of or deal with the Product or any documents of title relating to them or any interest in them; except that the Customer may on its own account use and sell the Product to its User in the ordinary course of its trade, provided that the Customer's right to use or sell the Product shall automatically cease upon the occurrence of an Insolvency Event.
- 8.4 If:
- 8.4.1 payment becomes overdue;
  - 8.4.2 the Customer is in breach of any of its obligations under the Contract or any other contract between DIETZ REHAB LIMITED and the Customer;
  - 8.4.3 DIETZ REHAB LIMITED exercises any right to terminate the Contract or any other contract between DIETZ REHAB LIMITED and the Customer; or
  - 8.4.4 an Insolvency Event (any event referred to in clause 12.2.2 occurs or DIETZ REHAB LIMITED reasonably expects that an Insolvency Event is about to occur,
- DIETZ REHAB LIMITED may by written notice terminate the Customer's right (if still subsisting) to use or sell the Product and/or DIETZ REHAB LIMITED shall be entitled upon demand to the immediate return of all the Products which remain in the ownership of DIETZ REHAB LIMITED, and the Customer irrevocably authorises DIETZ REHAB LIMITED to recover such Products and any documentation relating to them and for that purpose, to enter any place. The Customer shall take all reasonable steps to help DIETZ REHAB LIMITED recover them. Recovery by DIETZ REHAB LIMITED of the Product shall not of itself cancel the Customer's liability to pay the whole or balance of the price for the Product or any other rights of DIETZ REHAB LIMITED under the Contract.
- 8.5 If and as long as DIETZ REHAB LIMITED still owns the Products, the Customer shall immediately notify DIETZ REHAB LIMITED of any (imminent) seizure of the Products or other claim made with respect to the Products. The Customer shall likewise – in the event that he is in a position in which he has ceased to make payment – notify Users, if any, of the retention of title made by DIETZ REHAB LIMITED.
- 8.6 Upon request, the Customer shall inform DIETZ REHAB LIMITED where the Products the title to which is still held by DIETZ REHAB LIMITED are located.
- 8.7 If attachment or garnishment is levied, a suspension of payments is granted or a court order for (in)voluntary winding-up is made, the Customer shall immediately inform the attaching bailiff, the administrator, or the liquidator, respectively, of the title(s) held by DIETZ REHAB LIMITED. The Customer shall guarantee that any attachment or garnishment levied on Products owned by DIETZ REHAB LIMITED. will be lifted.

## 9 WARRANTY

- 9.1 Save in so far as the following provisions stipulate otherwise, DIETZ REHAB LIMITED warrants to the Customer or User of the Product that the Product is sound and fit for the purpose for which the Product is intended to be used – as set forth in the user's manual of the Product. DIETZ REHAB LIMITED furthermore warrants the quality of the material used to manufacture the Product as well as the quality of the manufacturing process.
- 9.2 DIETZ REHAB LIMITED shall replace parts of the Product which are defective due to faulty materials or manufacturing defects on free of cost basis, provided that such defects arise within one (1) year after the date of delivery of the Product to the Customer. Consequently, the following shall be excluded from the scope of free replacement as meant in the preceding sentence:
- a. replacement of parts of the Product required on account of defects arisen more than one (1) year after the date of delivery of the Product to the Customer;
  - b. replacement of parts of the Product required on account of defects resulting due to improper or careless use of the Product or resulting due to using the Product for a purpose other than the intended purpose; if a Dealer/Distributor is a Customer, this Customer shall save DIETZ REHAB LIMITED harmless from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product;

- c. parts subject to wear and tear, and the repair/replacement of these parts is the result of normal wear and tear;
- d. without prejudice to the provisions of paragraph 9.2, the warranty with respect to the battery of the electric wheelchair and the electric scooter only covers instances of malfunctioning or non-functioning which are evidently the direct result of material defects or manufacturing defects. The warranty as set out in these provisions does not cover a battery which is malfunctioning or non-functioning due to normal wear and tear or due to improper or incompetent use of the Product or the battery forming part of the Product, including the improper charging of the battery and the failure to perform timely and proper maintenance; the Customer shall save DIETZ REHAB LIMITED harmless from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product or the battery forming part thereof. This includes damage resulting due to the leakage of battery acid when performing maintenance to (wet) batteries.

- 9.3 The warranties as explained in the preceding provisions shall in any event cease to be effective if:
- a. the Product maintenance guidelines drawn up by DIETZ REHAB LIMITED have been observed not at all or to an insufficient extent;
  - b. repair/replacement of parts results from neglecting, damaging, or overburdening the Product or using the Product for purposes other than its intended purpose;
  - c. parts of the Product have been replaced by parts not of the same origin as those used by DIETZ REHAB LIMITED and/or parts of the Product have been replaced without authorisation by DIETZ REHAB LIMITED
- 9.4 The warranties as set forth in paragraphs 9.1 up to and including 9.3 above shall become null and void if the Product is reused by a new User within the warranty period and that reuse necessitated modifications, of whatever kind, to the Product, which modifications were not authorised or performed by and/or on the instructions of DIETZ REHAB LIMITED
- 9.5 The above warranty shall also become null and void if through the agency of the Customer, in instances other than those mentioned in paragraph 9.4, our Products have been altered in such way as to cause our Products to malfunction.
- 9.6 In the event of damage or other calamities the User or the Customer must contact DIETZ REHAB LIMITED as soon as possible and provide the most extensive information possible if they wish to retain their rights under the warranty set out above. The possibility to lodge a claim under the above warranties shall lapse upon expiry of a period of twenty (20) days after the damage or calamity occasioning the claim arose.
- 9.7 The replacement of a Part or the repair or reconditioning of the Product during a warranty period shall not extend the warranty period.
- 9.8 Any repair to or reconditioning of the Product not authorised or performed by and/or on the instructions of DIETZ REHAB LIMITED shall not be covered by the scope of this warranty. If a User has authorised or performed and/or instructed the repair or reconditioning of a Product, the Customer shall save DIETZ REHAB LIMITED harmless from and against any claims by third parties following – in the widest sense – from such repair or reconditioning.
- 9.9 In consideration of the matters considered in the preceding paragraphs of this Article 9, the following parts subject to wear and tear or breakage risk shall in any event be excluded from the scope of free repair/replacement unless the breakage and/or wear and tear has been caused by faulty materials and/or manufacturing defects:
- a. foot plates and/or foot rests
  - b. carbon brushes;
  - c. seating system;
  - d. frame covers, rain covers and other covers, apron, winter cover, immobilisation waistcoats, cross straps, sitter's pants, and other similar accessories;
  - e. tubes;
  - f. damage to breakable materials such as lamps and other parts qualifying as vulnerable.
- 9.10 In the event that a User lodges a claim under a warranty with a Customer or that a Customer lodges such claim, DIETZ REHAB LIMITED shall be notified immediately.
- 9.11 If DIETZ REHAB LIMITED has determined a claim under the warranty to be justified, the costs of transport to DIETZ REHAB LIMITED will be borne by the Customer, the costs of transport to the Customer will be borne by DIETZ REHAB LIMITED

## **10 LIABILITY**

- 10.1 Subject to the following provisions, DIETZ REHAB LIMITED only assumes liability for damage arising out of death or bodily injury due to a defect in the Product for which DIETZ REHAB LIMITED is liable and for damage to another good owned by the User of the Product in a private capacity, provided that such damage is the direct result of a defect in the Product.

- 10.2 DIETZ REHAB LIMITED shall indemnify for damage as referred to in paragraph 10.1 up to the sum covered by its statutory liability insurance taken out with its insurance company.
- 10.3 DIETZ REHAB LIMITED shall not assume any other or additional liability than the liability set out in paragraph 10.1. DIETZ REHAB LIMITED shall not assume any liability for consequential damage in whatever form.
- 10.4 In so far as DIETZ REHAB LIMITED – notwithstanding the provision of paragraph 10.3 – is ordered by a court of England and Wales or in any other forum for the settlement of disputes to pay damages other than referred to in paragraph 10.1, DIETZ REHAB LIMITED shall make indemnification in accordance with the provisions of paragraph 10.2.
- 10.5 DIETZ REHAB LIMITED shall not assume liability for damage resulting due to repair or replacement required to remedy defects caused by improper or careless use of the Product or caused by modifications made by the Customer or User which were not authorised or performed by and/or on the instructions of DIETZ REHAB LIMITED.
- 10.6 The Customer shall save DIETZ REHAB LIMITED harmless from and against any claims by Users under the warranty provisions referred to in Article 9 or claims for liability under mandatory law if the Customer or third parties have made modifications which are not in accordance with the supplied instructions and/or which have been made using the wrong materials, unless this failure to observe the instructions or use the right materials is based on an error in the technical manual or other instructions imparted by DIETZ REHAB LIMITED
- 10.7 The Customers shall likewise save DIETZ REHAB LIMITED harmless from any liability resulting due to representations made by the Customer with regard to the Product which are incompatible with the quality or the normal use of the Product.

## **11 CUSTOMER RESPONSIBILITIES**

- 11.1 The Customer shall be responsible to DIETZ REHAB LIMITED for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving DIETZ REHAB LIMITED any necessary information, facilities, instructions, and responses relating to the Product reasonably within a sufficient time to enable DIETZ REHAB LIMITED to perform the Contract in accordance with its terms.
- 11.2 The Customer is responsible for obtaining all necessary consents, licences and permits relating to its use of the Product and for the accuracy and legality of all information including drawings, designs and specifications supplied by or on behalf of it (“Customer Information”).
- 11.3 The Customer shall indemnify DIETZ REHAB LIMITED at all times against all claims, demands, costs (including legal costs on a full indemnity basis), expenses, losses and liabilities incurred by DIETZ REHAB LIMITED as a result of any claim that Customer Information infringes any rights of any third parties, including any Intellectual Property Rights.
- 11.4 The Customer is responsible for using the Product in accordance with instructions supplied by DIETZ REHAB LIMITED and/or the manufacturer of the Product and DIETZ REHAB LIMITED shall not be responsible for any damage, loss or claims arising from any failure to comply with such instructions.
- 11.5 Without prejudice to any duty of the Customer at common law, DIETZ REHAB LIMITED shall be entitled to require the Customer to take such steps as DIETZ REHAB LIMITED may reasonably require to mitigate or reduce any losses or claims that may arise in relation to the Contract.

## **12 TERMINATION**

- 12.1 Once a Contract exists between DIETZ REHAB LIMITED and the Customer it cannot be cancelled or amended by the Customer except with DIETZ REHAB LIMITED’s consent and on terms which will indemnify DIETZ REHAB LIMITED against all loss arising from such amendment or cancellation.
- 12.2 Without affecting any other rights and remedies it might have, DIETZ REHAB LIMITED shall be entitled to terminate the Contract and/or suspend its performance at any time without liability to the Customer by giving written notice to the Customer at any time if the Customer:
- 12.2.1 is in breach of any provision of, or purports to cancel, the Contract;
- 12.2.2 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three (3) Business Days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business;
- and in any other circumstances provided for in these terms and conditions and/or the Contract.
- 12.3 Any termination however caused shall not affect:
- 12.3.1 any right or liabilities which have accrued prior to the time of termination;

12.3.2 the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination.

12.4 Upon termination however caused:

12.4.1 the Customer shall immediately return any information or materials in its possession or under its control which belong to or were supplied by DIETZ REHAB LIMITED; and

12.4.2 DIETZ REHAB LIMITED may dispose of any Equipment not collected by the Customer.

## **13 FORCE MAJEURE**

13.1 If as a result of an event of force majeure DIETZ REHAB LIMITED is prevented in whole or in part from delivering a Product under a Contract, DIETZ REHAB LIMITED will be authorised to suspend performance of its obligations arising from the Contract for the duration of the event.

13.2 Only if the period during which DIETZ REHAB LIMITED as a result of an event of force majeure is prevented from fulfilling its obligations arising from the Contract has continued for longer than three (3) months shall the Customer be entitled to cancel the Contract.

However, if it is established that the event of force majeure is permanent, each party shall be entitled to cancel the Contract with immediate effect by written notice sent by registered post.

13.3 DIETZ REHAB LIMITED shall not be liable towards the Customer or the User for direct or indirect damage/loss suffered by the Customer or the User as a consequence of DIETZ REHAB LIMITED's breach of contract on account of force majeure, unless this force majeure was caused by intent or gross negligence on the part of DIETZ REHAB LIMITED

13.4 If as a result of an event of force majeure DIETZ REHAB LIMITED is prevented from performing its obligations arising from the Contract, DIETZ REHAB LIMITED will notify the Customer without delay and furthermore keep the Customer informed of developments with regard thereto.

13.5 The term "force majeure" as referred to in this Article shall be understood to include any circumstance beyond the control of DIETZ REHAB LIMITED which prevents DIETZ REHAB LIMITED from fulfilling all or any of the obligations under the Contract temporarily or permanently or by reason of which DIETZ REHAB LIMITED cannot reasonably be required to fulfil its obligations, regardless of whether such event was foreseeable at the time when the Contract was made. Such circumstances in any event include but are not limited to: (civil) war, imminent war, insurrection, strikes, shortage of labour, fire, epidemics, restrictive measures imposed by any government authority or a malfunctioning component of the assembly line or the electrical equipment.

## **14 CONFIDENTIALITY**

14.1 Neither party shall without the prior written consent of the other party (during and after termination of the Contract) use (other than in the performance of the Contract) or disclose to any other person any Confidential Information of the other party, except that any obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange, or disclosure to a party's professional advisors, acting in their capacity as such.

14.2 The Customer shall not publicise or disclose the existence or content of any quotation issued by DIETZ REHAB LIMITED or the Contract, nor its relationship with DIETZ REHAB LIMITED, without the prior written agreement of DIETZ REHAB LIMITED.

## **15 INCOTERMS**

15.1 Where another part of the Contract specifies that certain "Incoterms" shall apply to the sale and purchase of the Product, the relevant "Incoterms" shall so apply.

15.2 In the event of an inconsistency between the relevant Incoterms and these terms and conditions, the relevant Incoterms shall prevail. The relevant Incoterms shall in no way affect the other provisions of the Contract, which shall continue to apply to the sale and purchase of the Product and shall remain in full force and effect.

## **16 GENERAL**

16.1 These terms, together with those set out in the Contract, and the other documents entered into pursuant to the Contract, constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in these terms and conditions and the Contract.



- 16.2 Each of DIETZ REHAB LIMITED and the Customer acknowledges and agrees that:
- 16.2.1 in entering into the Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Contract or not) which is not expressly set out in these terms and conditions and/or the Contract; and
- 16.2.2 the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Contract shall be for breach of contract under the terms and conditions of the Contract.
- 16.3 No provision of a Contract shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 16.4 DIETZ REHAB LIMITED shall not be liable in any way for loss, damage or expense arising directly or indirectly from any hindrance, failure or delay in performing any obligation under the Contract caused by the actions or omissions of the Customer, its employees, agents, contractors or other third parties providing goods or services to or acquiring them from the Customer or by any circumstance beyond DIETZ REHAB LIMITED's reasonable control, which shall include war (or other action of military forces), terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment, acts of God, fire, flood, severe weather conditions, extreme traffic congestion, strike, lock-out or other industrial disputes (whether or not involving employees of DIETZ REHAB LIMITED) or shortage of materials at the market rates existing when the relevant Contract is made, legislative or administrative interference or national crisis (each an "Event of Force Majeure"). If an Event of Force Majeure continues for more than a period of twenty (20) Business Days' DIETZ REHAB LIMITED shall be entitled at its discretion to perform, suspend performance of, and/or terminate the Contract.
- 16.5 DIETZ REHAB LIMITED may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder and may sub-contract any or all of its obligations under the Contract.
- 16.6 The Customer shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract, or purport to do so, or sub-contract any or all of its obligations under the Contract without the prior written consent of DIETZ REHAB LIMITED in its absolute discretion.
- 16.7 Any notice to be given shall be in writing and may either be delivered personally or sent by first class prepaid post or by email to the address of the recipient set out in the Contract or such other address as the recipient may designate by notice given pursuant to this clause. Each such notice shall be deemed to have been served, if by personal delivery, when delivered, if by post, 48 hours after posting, if by email upon delivery receipt.
- 16.8 Any failure to exercise or delay by a party in exercising a right or remedy arising in connection with the Contract shall not constitute a waiver of such right or remedy or of any other rights or remedies.
- 16.9 If any provision of these terms and conditions or the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions or the Contract and the remainder of the provision in question shall not be affected thereby. If the whole or any part of any clause(s) is invalid or unenforceable the parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the economic, legal, and commercial objectives of the invalid or unenforceable provision. Any such invalidity or enforceability shall not affect the validity or enforceability of any other provision.
- 16.10 Nothing in the Contract shall constitute a partnership, joint venture, representative or agency relationship between the parties hereto or be construed or have effect as constituting any relationship of employer and employee between the parties. Neither party shall have the authority to bind or pledge the credit of, or oblige, the other in any way without obtaining the other's prior written consent.

## **17 GOVERNING LAW AND JURISDICTION**

These terms and conditions and the Contract are governed by and shall be construed in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.