

LIFEONICS TERMS AND CONDITIONS OF SALE

1. We, Lifeonics Limited will supply you, the Customer, with goods on these terms only unless Lifeonics have agreed in writing to different terms. Lifeonics is not bound by any terms and conditions contained in any document issued by the Customer or by anyone other than Lifeonics. Lifeonics' invoice, acceptance note and these terms and conditions constitute the entire agreement between Lifeonics and the Customer for each order. Any representations, statements, promises or descriptions made by Lifeonics or anyone else other than those expressly stated in the invoice are excluded and the Customer acknowledges that it has relied solely upon its own inspection, skill and judgement.
2. The supply of goods is subject to acceptance by Lifeonics. Lifeonics has the right to refuse any order within seven days after the order is received. Once Lifeonics has accepted an order it cannot be cancelled by the Customer without Lifeonics' written consent. The supply of goods is subject to availability. Lifeonics reserves the right to suspend or discontinue the supply of goods to the Customer. If Lifeonics is unable to supply all of the Customer's order, these terms and conditions continue to apply to any part of the order supplied. Lifeonics reserves the right to refuse any order within seven days after the order is received and at any time to refuse to accept or proceed with any order if the Customer's trade reference is unsatisfactory to the Company. Lifeonics accepts no responsibility whatsoever for errors in dimensions, quantities, specifications or otherwise where orders for any goods are placed on Lifeonics by the Customer other than in writing
3. The price of the goods:
 - 3.1 Will be Lifeonics' current prices at the date of delivery unless Lifeonics has quoted a firm price;
 - 3.2 Always exclude GST and freight costs; and
 - 3.3 May be increased if Lifeonics incurs higher freight, insurance or import charges or higher foreign exchange costs after the order is placed or if Lifeonics incurs extra costs because the Customer did not provide Lifeonics with information or licences by the time required.
4. When Lifeonics has quoted a firm price and no period of effectiveness is given, then the price will only apply for 30 days from the date of the quote.
5. The Customer must pay Lifeonics by the date set out in the invoice or if no other payment dates are stated by the 20th of the month following the date of the invoice. If the Customer does not, Lifeonics will be entitled to:
 - 5.1 Defer supplying the Customer with any more goods;
 - 5.2 Charge the Customer interest on the amount owing to Lifeonics at the rate of 5% above its banker's commercial overdraft interest rate applying at the time payment was due;
 - 5.3 Treat the contract as having been cancelled by the Customer.
6. Goods are at the Customer's risk as soon as they have been dispatched from Lifeonics premises to the Customer;
7. Lifeonics remains the owner of the goods supplied to the Customer until the Customer has paid in full all amounts owed to Lifeonics for all the goods Lifeonics has supplied to the Customer;
8. While Lifeonics is the owner of the goods,
 - 8.1 the Customer will always keep the goods clearly identified as Lifeonics' property;
 - 8.2 Lifeonics will still own the goods even if the Customer repackages them;
 - 8.3 if the Customer mixes the goods with other material, Lifeonics will own a share of the mixture that equals the proportion that the cost of our goods bears to the total cost of materials comprising the mixture;
 - 8.4 the Customer may sell the goods only if the Customer keeps enough of the sale proceeds to pay Lifeonics for the goods in a separate bank account in trust for Lifeonics;
 - 8.5 the Customer licences us to enter any of the Customer's premises during normal business hours to repossess the goods while the Customer owes Lifeonics money. The Customer cannot revoke this licence.
 - 8.6 The fact that Lifeonics owns the goods will not affect its right to sue the Customer for the price the Customer does not pay on time. Lifeonics has no obligation to accept returned goods instead of being paid for them. Lifeonics has no obligation to do anything to limit any loss Lifeonics might suffer if the Customer does not pay on time.
9. If the Customer has specified a delivery date, Lifeonics will try and deliver the goods to the Customer by that date. However;
 - 9.1 Lifeonics will be entitled to deliver the goods to the Customer after the agreed delivery date or cancel the contract without being liable to the Customer in any way;
 - 9.2 Lifeonics may deliver the goods to the Customer by instalments in any quantities and each delivery will be a separate contract independent from the other deliveries.

10. The Customer may not refuse to accept delivery of goods except where Lifeonics has agreed in writing.
11. Lifeonics will only be liable to the Customer for shortfalls, losses, damage or failure to meet specifications where the Customer have notified Lifeonics of those matters within 7 days of taking delivery.
12. Goods which do meet the Customer order may not be returned to Lifeonics unless:
 - 12.1 Lifeonics has agreed in writing that they may be returned; and
 - 12.2 The Customer has not had the goods for more than 14 days; and
 - 12.3 The goods' containers have not been opened nor have their packaging been damaged in any way; and
 - 12.4 The Customer will pay for the cost of returning the goods; and
 - 12.5 The Customer will pay Lifeonics' handling fee.
13. Lifeonics will freight the goods to the Customer "ex-works" (as that term is defined in the latest "INCOTERMS") unless Lifeonics agrees otherwise in writing. In the event that Lifeonics agrees to freight the goods to the Customer other than ex-works, the provisions of the INCOTERMS shall apply to the freighting of the goods, subject always to these Terms and Conditions.
14. The Customer will comply with all health and safety laws and with all of Lifeonics' instructions in regard to the storage, handling and use of the goods and to bring all warnings supplied by Lifeonics to the attention of all persons who might be at risk from the goods and will indemnify Lifeonics for all costs in respect of claims made against Lifeonics except where those claims are directly caused by Lifeonics' gross negligence or wilful default.
15. All Lifeonics trademarks or other intellectual property rights in respect of the goods remain Lifeonics' property and the Customer may not use, remove, interfere with or alter them in any way.
16. The Customer will notify Lifeonics immediately if it receives a claim from a person alleging that it is the owner of any intellectual property rights relating to the goods and if Lifeonics considers itself to be affected, Lifeonics shall be entitled to completely control the defence or settlement of the claim.
17. To the extent permitted by law, Lifeonics excludes or contracts out of all statutory conditions, guarantees and warranties and these terms and conditions exclude all other conditions, warranties, liabilities or representations in relation to the goods whether express or implied;
18. Lifeonics gives all technical advice or assistance entirely at the Customer's risk.
19. All descriptions of the goods are only to enable their identification and do not mean that the sale of the goods is a sale by description.
20. Where legislation implies in these terms and conditions any condition or warranty that cannot be excluded or modified, the liability of Lifeonics for a breach of any such condition or warranty is limited at Lifeonics' option to any one or more of the following: (i) the supply of equivalent goods; (ii) payment of the cost of replacing the goods by credit to the Customer's account, in cash or by cheque at Lifeonics' discretion; or (iii) repayment of any part of the purchase price of the goods which has been paid by the Customer, by credit to the Customer's account, in cash or by cheque at Lifeonics' discretion. Furthermore Lifeonics shall not be liable in respect of any item after it has been used more than 35 times.
21. Subject to clause 20, Lifeonics is not liable for any loss or damage of any kind whatsoever and howsoever arising (including but not limited to loss arising by reason of delay, non-delivery, defective materials or workmanship) out of or in connection with the supply of goods or services, including (without limitation) any indirect or consequential loss (including without limitation loss of profit, loss of revenue, loss of contract, loss of use of goods, loss on resale, loss of goodwill or increased cost of workings), even if due to the negligence of Lifeonics or any of its employees or agents
22. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
23. If the Customer is acquiring the goods for the purposes of the business, then to the extent permitted by law, all the guarantees and remedies in the Consumer Guarantees Act 1993 (or its replacement) are excluded.
24. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these terms and conditions remain in force.
25. The Seller may amend or vary these terms and conditions by notifying the Customer in writing of the amendment or variation.

26. Any agreement incorporating these terms and conditions can not be assigned or transferred by Customer to another party without the approval of Lifeonics, which approval will not be unreasonably withheld.
27. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortage, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labour conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.
28. The Customer acknowledges that the goods and any related software technology, including technical information supplied by Lifeonics or contained in the documents (collectively "Items"), is subject to applicable export controls. The Customer shall comply with all applicable laws, regulations, treaties, and agreements relating to the export, re-export and import of any Item. The Customer shall not, without first obtaining the required license to do so from the appropriate government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the New Zealand government. The Customer shall cooperate fully with Lifeonics in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Lifeonics harmless from, or in connection with, any violation of this Section by the Customer or its employee, consultants, agents or customers.
29. These conditions shall be interpreted and governed by the law of New Zealand. The parties irrevocably submit to the jurisdiction of the appropriate court convenient to Lifeonics in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.
30. Lifeonics may refer any disputes between the parties to an arbitrator who shall be a person appointed by the President of the New Zealand Chamber of Commerce.