

KARL STORZ Endoscopy Australia Limited

Terms and Conditions of Sale

1. DEFINITIONS

In these conditions:

'Company'	means KARL STORZ Endoscopy Australia Pty Limited ACN 125 927 826 located at Suite 1 68 Waterloo Road Macquarie Park, Australia 2113.
'Parent Company'	means KARL STORZ SE & Co KG.
'Customer'	means the person, company or organisation to which the Company supplies goods or services.
'Goods'	means all instruments, equipment, spare parts, consumable items, tools and all other items supplied by the Company to the Customer.
'Services'	means all repairs, maintenance, maintenance contracts, installation, commissioning, servicing, hire, training, carriage, decontamination, supplied by the Company to the Customer.

2. GENERAL

- 2.1 These conditions apply, even if not expressly referenced, to all supplies of goods and services by the Company to all Customers. They replace any other terms and conditions of the Customers which shall have no effect and shall not form part of any contract. Any variation of the Terms and Conditions will be binding only if confirmed in writing by a duly authorised employee of the Company. By placing an order for goods or services from the Company the Customer agrees to be bound by these Terms and Conditions

3. QUOTATIONS & ORDERS

- 3.1 When requested by the Customer, written quotations will be supplied. These quotations remain valid for a period of 90-days from date of issue. Where a Customer places an order after the 90-day validity period the Company reserves the right to apply prices then in force.
- 3.2 Subject to the 90-day validity period for quotations, the Company may vary prices at any time. Prices for orders already received will however be kept unchanged.
- 3.3 Orders are accepted by the Company subject to carrying out appropriate credit checks, and subject to continuing availability of goods. The Company does not issue order acknowledgements.
- 3.4 All prices quoted are exclusive of GST which will be applied at rates and in accordance with legislation in force at the time of sale.

4. DELIVERY AND PASSING OF RISK

- 4.1 The Company will arrange delivery of goods and services to the Customer's premises in accordance with the instructions given in the Customer's Purchase Order. The Company will use all reasonable commercial endeavours to deliver goods and services within a

reasonable period, but it shall not be liable for any direct or incidental damages, costs or charges howsoever incurred or suffered by the Customer as a result of delay in delivery or non-delivery which is due to any cause which is beyond the Company's control. Time of delivery is not of the essence. The company may make partial shipments.

4.2 Risk in the goods passes to the Customer on delivery to the address specified by the Customer.

4.3 Discrepancies in goods (type and/or quantity) or damages to goods must be notified in writing to the Company within five (5) working days of delivery. It is the Customer's responsibility to check the goods promptly upon delivery.

5. PAYMENT

5.1 For approved credit accounts, payment of the invoiced amount including delivery charges and GST shall be made within 28 days of the date of invoice. In the case of partial shipments of an order each delivery and invoice shall be payable according to these terms. For customers without an approved credit account, payment will be required in advance of delivery or with order.

5.2 Delivery of orders with a value under \$300 will be subject to a packing and handling fee of \$50.

6. WARRANTY AND SPECIFICATION

6.1 The Company continuously reviews the quality and performance of its products and reserves the right to amend specifications and functionality at any time. Product literature and catalogues are therefore not binding on the Company.

6.2 The Company's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You (the Customer) are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You (the Customer) are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

6.3 Any warranties given are in addition to other rights and remedies provided for under the Australian Consumer Law and the Fair Trading Acts of each State or Territory.

6.4 The warranty is provided by the Company. The Company warrants that the goods conform to the specifications for those goods at the time of delivery to the customer. Details of those specifications are available from us on request.

6.5 If the defect is due to the Company's fault, the Company is entitled to choose between removal of the defect and substitute delivery. In this situation, the Company will bear the expense in claiming the warranty.

6.6 The Company's liability under its warranty is limited to the following which the Company may select at its discretion.

- (a) Replacement of the goods
- (b) Supply of equivalent goods, or
- (c) Repair of the goods within a certain time period.

- 6.7 The period of limitation for warranty claims is twelve months (unless stated otherwise) beginning from the passing of risk.
- 6.8 In order for the Customer to claim a defect in the goods against the warranty or make a claim against the expense incurred in making a Warranty claim, please call the Company and advise them of the defect. The Company can be contacted on (02) 9490 6700 or by email - ksorders@karlstorz.com.au.
- 6.9 The Company's warranty will be void if the goods have been:
- (a) Modified or altered in any way
 - (b) Subject to abuse, misuse or neglect
 - (c) Installed or repaired by unqualified personnel
 - (d) Not been used in accordance with the instructions and specifications supplied by the Company
 - (e) Used by personnel who have not been trained in their use and are not qualified to use the goods
 - (f) Repaired by an unauthorised repairer

7. RESPONSIBILITIES OF THE CUSTOMER

- 7.1 The Customer shall use and maintain the goods in accordance with the published instructions and recommendations of the Company and Parent Company, good industry practice and appropriate health and safety rules and codes of practice statutory or otherwise.
- 7.2 Where the Customer requests the Company to carry out work on the Customer's premises (e.g. commissioning or repairs) the Customer shall provide the Company's employees with a suitable and safe working environment and make available any additional equipment and/or personnel to enable the work to be carried out in a prompt efficient manner.
- 7.3 Goods returned to the Company for repair, servicing or under warranty claim are at the sole cost and risk of the Customer. This also applies where the Company arranges collection at the request of the Customer. The Customer must also provide a Decontamination Certificate and, where no certificate is provided the Company shall arrange decontamination and the cost of this shall be paid by the Customer whether other services are carried out on the goods or not.

8. SERVICE

- 8.1 Where a Customer requests information about the proper application and use of goods this will be given by phone in normal circumstances. If the Company considers it necessary one of its technicians will be sent to the Customer's premises for diagnostic or training purposes. The Company will advise the Customer in advance if the service will be charged for.
- 8.2 Site visits to Customers by technicians will be charged at the Company's published rates. The Customer will also be liable for all reasonable travel, subsistence, and other out-of-pocket expenses.

8.3 Any parts removed from repaired or serviced goods shall become the Company's property.

8.4 The Company may supply equipment on loan while goods are being repaired or investigated but is not obliged to do so. Where loan equipment is supplied the Customer undertakes to use the equipment in accordance with Clause 7.1 above, and furthermore accepts liability for any loss or damage of the equipment while in the Customer's care.

9. RETURNS AND REFUNDS

9.1 Subject to agreement by the Company, goods may be returned for credit or exchange within 4 weeks of delivery provided they are unused and in original unmarked packaging. Goods will only be considered "unused" if they have not been used on a patient, sterilised, marked in any way or damaged.

9.2 Written authorisation must be obtained from our Customer Service Department before returning any goods. The Company will issue a Returned Goods Advice (RGA). The Company reserves the right to refuse any goods returned without the Company's prior authorisation.

9.3 Returns must be shipped pre-paid to the Company unless otherwise authorised in writing.

9.4 Returned goods must be accompanied by the RGA, the original invoice and order number to ensure the prompt issue of a credit.

9.5 Goods returned for credit may be subject to a 20% restocking fee at the Company's discretion.

9.6 The following goods may not be returned for credit:

- (a) Goods ordered incorrectly
- (b) Goods ordered specifically for the Customer
- (c) Etched or engraved goods
- (d) Goods which have been used, are not in their original packaging, are damaged or are not complete as shipped by the Company

9.7 Goods sent to the Company must be sent at the Customer's expense and be insured by the Customer.

9.8 All goods are to be returned to the Company at:

Karl Storz Endoscopy Australia Pty Limited
Warehouse A
68 Waterloo Road
Macquarie Park NSW 2113

10. RETENTION OF TITLE

10.1 Ownership of and title to the goods shall remain with the Company until payment has been made to the Company of the invoiced price for all goods in the Customer's possession at the time of payment.

10.2 The Customer agrees they will treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.

11. PERSONAL PROPERTY SECURITIES ACT

11.1 Definitions

In this clause:

PPSA means the Personal Property Securities Act 2009 (Cth) as amended from time to time:

A term used in this clause 9 has the same meaning as in the PPSA

The Seller is Karl Storz Endoscopy Australia Pty Limited ABN 34 125 927 826

11.2 Consideration

In consideration of the Seller supplying the goods to the customer, at the request of the customer, the customer, by signing or otherwise providing consent that they agree with these Conditions of Sale;

- (a) Grants to the Seller, at the Seller's discretion, a security interest or purchase money security interest (PMSI) in the goods;
- (b) Agrees that any of the goods or proceeds of the sale in the goods coming into existence after the date of these Conditions of Sale will come into existence subject to:
 - (i) The security interest or PMSI granted in these Conditions of Sale; and
 - (ii) The terms of these Conditions of Sale;
- (c) Without the need for any further action or agreement by any party;
- (d) Agrees that the security interest or PMSI has attached or will attach to all goods supplied now or in the future to the customer when the customer takes possession of the goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Conditions of Sale.

11.3 Customer to take all steps

The Seller may, by notice to the customer at any time, require the customer to take all steps that the Seller considers necessary or desirable to:

- (a) Ensure that these Conditions of Sale or any security interest or PMSI arising under them, are enforceable against the customer or any third party; and
- (b) Protect, perfect, record, or better secure the position of the Seller under these Conditions of Sale as a first ranking security.

11.4 Registration and Notices

- (a) The Seller reserves the right to register a financing statement in respect of any goods supplied by the seller to the customer under these terms and conditions of Sale.

- (b) The cost and expense of registering or financing statement or a financing change statement is to be paid by the Customer and where applicable, be debited against the Customer's credit account with the Seller.
- (c) The customer
 - (i) Waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Conditions of Sale, unless the notice or statement is required by law and cannot be excluded; and
 - (ii) Agrees to comply with any notice from the seller under this clause (9) at its cost and expense.
- (d) The customer agrees
 - (i) Not to allow any person to register a financing statement over any of the goods supplied by the Seller without prior written consent of the Seller; and
 - (ii) That it must immediately notify the Seller if it becomes aware of any person taking steps to register a financing statement in relation to the goods.
- (e) The customer agrees to perfect and maintain any security interest or PMSI that it may have in the goods under the PPSA.

11.5 No accessions or commingling of goods

The Customer must not allow the goods to become accessions or commingled with other goods unless the Seller has first perfected any security interest or PMSI that the Seller has in relation to the goods.

11.6 Perfection

- (a) The Customer agrees to do everything (including providing information, executing any security agreement or other document, and granting any other or substitute security interest) requested by the Company to perfect a security interest or PMSI in:
 - (i) Collateral supplied by it pursuant to this agreement; and
 - (ii) The proceeds of such collateral, so as to maintain an effective and first security interest or PMSI in favour of the Company.
- (b) If the Seller perfects any security interest or PMSI that the Seller has in relation to the goods, the customer must not do anything that could materially adversely affect:
 - (i) The Seller's business; or
 - (ii) In the opinion of the Seller, the Seller's security position under these Conditions of Sale.

11.7 Right of Entry

The Customer irrevocably grants to the Seller the right to enter on the Customer's property or premises, without notice, and without being in any way liable to the customer or to any third party, if the Seller has cause to exercise any of the Seller's rights under section 110 of the PPSA, and the customer indemnifies the Seller from any claims made by any third party as a result of the exercise.

11.8 Contracting out of enforcement provisions

If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these Conditions of Sale, the Seller and the customer agree that in accordance with section 115 of the PPSA, the following sections do not apply to the enforcement of that security interest; section 95, 121(4) and 130.

11.9 Payments made in respect of the goods

Despite any statement to the contrary by the customer, every payment to the Seller in respect of the goods must be taken as a payment:

- (a) First, of the amounts held by the customer in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
- (b) Secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
- (c) Thirdly, for any goods that the customer has sold but for which it has not received the proceeds; and
- (d) Fourthly, for whatever goods the customer has not sold as the Seller elects.

11.10 Confidentiality

The Seller and the Customer may not disclose any information of a kind referred to section 275(1) that is not in the public domain.

11.11 Insolvency

If the customer becomes insolvent, without prejudice to any other rights of the Seller:

- (a) The customer's right to sell the goods in the ordinary course of business in accordance with the PPSA and any other rights of the customer in respect of the goods immediately cease; and
- (b) The customer must immediately return to the Seller the goods in which title has not passed as provided for under clause.

11.12 Payments made in respect of the Goods

- (a) Despite any other term or condition of this agreement, the Company may unconditionally apply the whole or any part of any part of any amounts received by it in connection with this agreement, to satisfy or partly satisfy any obligations secured by a security interest or PMSI in any way it determines in its absolute discretion.
- (b) The Customer may not dispose or purport to dispose of or create or purport to create or permit to be created any 'security interest' or PMSI in the collateral other than with the express written consent of the Company. The Customer must not

lease, hire, bail or give possession ('on-hire') of the collateral to anyone else unless the Company (in its absolute discretion) first consents in writing. Any such on-hire must be in writing in a form acceptable to the Company and must be expressed to be subject to the rights of the Company under this agreement. The Customer may not vary an on-hire without the prior written consent of the Company (which may be withheld in its absolute discretion).

- (c) The Customer must ensure that the Company is provided at all times with up-to-date information about the on-hire including the identity of the on-hirer, the terms of and state of accounts and payment under the on-hire and the location and condition of the collateral.

12. CONFIDENTIALITY

12.1 Subject to clause 12.3, all information of a confidential nature obtained by the Customer under or in connection with the supply of goods and services under these Terms and Conditions by the Company to the Customer ("Confidential Information") including, but not limited to, materials and costings, will be treated by the Customer in confidence and will not be disclosed to any third party nor used for any purpose, except as expressly permitted by these Terms and Conditions.

12.2 Information will not be treated as 'Confidential Information' for the purposes of clause 11.1 if it was generally available to the public when it was received by the Customer from the Company and information will cease to be 'Confidential Information' for the purposes of clause 12.1 if it subsequently becomes generally available to the public other than as a result of a breach by the Customer of this clause.

12.3 Clause 12.1 does not prohibit the disclosure by the Customer of any Confidential Information which:

- (a) was known to the Customer prior to its disclosure to the Customer by the Company or which subsequently comes into the Customer's possession from a third party which does not owe a duty of confidence to the Company in respect of that information;
- (b) the Customer is obliged by law to disclose; or
- (c) the Customer requires to provide to its insurers or professional advisers to allow the Customer to properly conduct its business.

13. LIMITATION OF LIABILITY

13.1 Except as provided under law regarding liability for death and personal injury arising from proved negligence, the Company is not liable for any direct, indirect or consequential costs, losses (including loss of profits) or charges arising from the use, possession, failure or nonavailability of goods and services, or as a result of any act or omission of its employees.

13.2 Subject to clause 13.1, the Company's total aggregate liability arising under or in connection with these Terms and Conditions shall in no event exceed an amount equivalent to the total of the price for the Goods or fee for the Services.

14. FORCE MAJEURE

14.1 Neither party shall be in breach of these Terms and Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Terms and Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

15. GOVERNING LAW

15.1 This agreement and all matters based upon, arising out of or relating in any way to this agreement shall be exclusively governed by and construed in accordance with the law of the State of New South Wales including without limitation all disputes, claims or causes of action arising out of or relating to this Agreement as well as the interpretation, construction, performance and enforcement of the agreement. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. If any provision in this agreement shall be or become invalid or ineffective then that provision shall be severed and the remainder of the agreement shall remain in full force and effect.