

VASCUTEK LIMITED T/A TERUMO AORTIC - TERMS AND CONDITIONS OF PURCHASE OF GOODS & SERVICES

1. DEFINITIONS

- 1.1 **Affiliate** means an organisation which is directly or indirectly controlled by, in Control of, or under common Control with, either Supplier or Company as appropriate, in each case for the time being and from time to time.
- 1.2 **Agreement** means the agreement between Company and Supplier consisting of the Purchase Order, these Terms and Conditions, the ABC Policy, the MODSA Policy, the Data Protection Standards, and any other documents (or parts thereof) specified in the Purchase Order or otherwise expressly incorporating these Terms and Conditions.
- 1.3 **Company** means Vascutek Limited, trading as Terumo Aortic, incorporated in Scotland under the Companies Acts (no.SC079773) and having its registered office at Newmains Avenue, Inchinnan, Renfrewshire PA4 9RR, UK, but shall, where rights or benefits are granted or Services provided, also include its Affiliates.
- 1.4 **Confidential Information** means all information disclosed (in any format, including without limitation in writing, verbally, electronically, visually or otherwise) by (directly or indirectly) Company to Supplier (including, without limitation, information of or relating to a third party that Company are obligated to keep confidential), where such information is designated, labelled, or marked as confidential or where, given the nature of the information or the circumstances of its disclosure, such information reasonably should be considered as confidential. Confidential Information includes, without limitation, all information relating to Company's forecasts, accounting information, financial information, human resources and personnel matters, corporate matters, products (currently marketed or in development), technology, intellectual property, know-how, engineering information, formulas, designs, prototypes, patterns, plans, methods, techniques, processes, programs, devices, codes, data and results/reports arising out of or generated as a result of the Purchase Order, customers, customer lists, business plans, marketing activities, and other business affairs.
- 1.5 **Control** means the ownership of 50% or more of the shares of any organisation or the legal power to direct or cause the direction of the general management of either Supplier or Company as appropriate.
- 1.6 **Data Protection Legislation** means the UK GDPR (which has the meaning given to it in section 3(10) as supplemented by section 205(4)) of the Data Protection Act 2018) the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018; and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued from time to time by the Information Commissioner's Office or the European Data Protection Board; and any statutory modification or re- enactment thereof and any applicable codes of conduct.
- 1.7 **Deliverables** means any outputs of the Services and any other documents, products and materials provided by Supplier to Company in relation to the Services.
- 1.8 **Goods** means all (or any) of the goods specified in the Purchase Order.
- 1.9 **Incoterms** means ICC Incoterms 2020 for the interpretation of trade terms.
- 1.10 **Intellectual Property Rights** means any and all rights in and/or to; patents; inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; formulas, processes, compositions of matter, formulations, methods of use or delivery, data, reports, specifications and computer programs or models; copyright and related rights; moral rights; design rights; trade marks and service marks; business or trade names, domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition; database rights; confidential information, know-how, trade secrets; and other intellectual property rights; in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or

equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.11 **Losses** means all losses, claims, liabilities, costs, awards, fines, penalties, expenses, all related costs, expenses and payments to third parties (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties) and damages of any nature whatsoever and whether or not reasonably foreseeable or avoidable.
- 1.12 **Purchase Order** means Company's purchase order issued to Supplier setting out Company's requirements for Goods and/or Services, and where applicable, Deliverables.
- 1.13 **Services** means the services specified in the Purchase Order.
- 1.14 **Supplier** means the person, company or other legal entity to whom the Purchase Order is addressed.
- 1.15 **Terms and Conditions** means the terms and conditions set out in this document.

2. STATUS OF THESE TERMS AND CONDITIONS

- 2.1 These Terms and Conditions and other special conditions set out in the Purchase Order shall apply to the purchase by Company from Supplier of all Goods and/or Services set out on the Purchase Order to the exclusion of all other Terms and Conditions, including any terms or conditions which are implied by trade, custom, practice or course of dealing or which Supplier may purport to apply under any other document or otherwise or which are endorsed upon any correspondence or documents issued by Supplier irrespective of their date of communication to Company, provided, however, that, notwithstanding the foregoing, in the event that, as of the date the Purchase Order is issued, the parties have executed a separate written contract governing the Goods or Services identified in the Purchase Order, such contract shall have precedence and these Terms and Conditions shall have no applicability to such Purchase Order.
- 2.2 The Purchase Order constitutes an offer by Company to purchase the Goods or Services specified therein in accordance with these Terms and Conditions. The Purchase Order and these Terms and Conditions shall be deemed to be accepted by Supplier on the earlier of (a) Supplier issuing a written acceptance of the Purchase Order; or (b) Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Agreement shall come into existence.
- 2.3 Company will not be liable in respect of any Purchase Order(s) or instructions other than those issued or confirmed on its official Purchase Order documents, whether issued in hard copy or by facsimile (in which case such documents shall be valid only when duly signed), or issued electronically in accordance with these Terms and Conditions.
- 2.4 Except in the case of fraud, wilful misconduct or gross negligence by Company, Company shall not be liable for any costs arising from Supplier's failure to perform its obligations in respect of any Purchase Order due to the lack of knowledge or understanding of specification or otherwise given in a Purchase Order.
- 2.5 These Terms and Conditions do not give, or purport to give, Supplier any rights of exclusivity in relation to any Goods and/or Services.
- 2.6 Supplier waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of Supplier that is inconsistent with these Terms and Conditions.
- 2.7 Company's rights and remedies under these Terms and Conditions are in addition to its rights and remedies implied by statute and common law.

3. DELIVERY OF GOODS AND DELIVERABLES AND PROVISION OF SERVICES

- 3.1 Unless otherwise instructed in writing by Company's nominated representative, all Goods and/or Deliverables must be delivered and all Services must be performed at the time and place specified in the Purchase Order.
- 3.2 All deliveries of Goods must be accompanied by a delivery note (and any other delivery documentation specified in the Purchase Order or otherwise in the Agreement) showing the date of the Purchase Order, the Purchase Order number, the type and quantity of Goods and/or Deliverables being delivered, special storage instructions (if any) and, if the Goods and/or Deliverables are being delivered by instalment, the outstanding balance remaining to be delivered.
- 3.3 If Goods and/or Deliverables are incorrectly delivered Supplier shall be responsible for additional expenses incurred in delivering them to the correct point specified in the Agreement or subsequently advised in writing by Company.
- 3.4 The quantity, specification and quality of Goods, Deliverables or Services specified in the Agreement may not be substituted or changed without Company's prior written consent. Quantities of Goods, Deliverables or Services delivered in excess of those stated in the Agreement may not be accepted, at Company's sole discretion.
- 3.5 Supplier shall not deliver the Goods in instalments without Company's prior written consent or unless set out in the Purchase Order. Where it is agreed that Goods are to be delivered in instalments, they may (at Company's option) be invoiced and paid for separately. However, failure by Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Company to the remedies set out in clause 7 (without prejudice to Company's other rights and remedies).
- 3.6 Time shall be of the essence in relation to the performance of any and all of Supplier's obligations pursuant to the Agreement.
- 3.7 Supplier shall notify Company immediately upon becoming aware of any actual or anticipated event or other development which may have a material impact upon Supplier's ability to comply with any of its obligations under the Agreement. Such events shall include but not be limited to failure to deliver Goods, Deliverables and/or Services by a pre-specified date.

4. PASSING OF TITLE AND RISK IN GOODS / DELIVERABLES

- 4.1 Unless Incoterms are agreed (in which case risk shall pass to Company in accordance with the agreed Incoterms), risk in Goods and Deliverables shall pass to Company on completion of delivery at the place specified in the Agreement, and title to the Goods and/or Deliverables shall pass to Company upon payment.
- 4.2 Neither payment by, nor passing of title or risk in the Goods, Deliverables and/or the Services to, Company shall be deemed to constitute acceptance of the Goods, Deliverables and/or the Services.

5. PRICE AND PAYMENT TERMS

- 5.1 The price (which shall be a firm capped price) for the Goods and/or Services (and where applicable, the Deliverables) shall be the price set out in the Purchase Order. Unless otherwise agreed in writing, the price is inclusive of VAT, taxes, custom duties and charges and the costs of all packaging, off-loading, freight, delivery and insurance. Any increase in the price for any reason shall be subject to the express prior written consent of Company. Any and all expenses, costs and other charges incurred by Supplier directly or indirectly in the performance of its obligations under the Agreement shall be met by Supplier.
- 5.2 Provided the Goods, Deliverables and/or Services have been delivered to Company and are accepted and have not been rejected in accordance with clause 7, payment will be made by Company to Supplier for Goods, Deliverables and/or Services which comply with the Agreement. Unless otherwise agreed between the parties in writing, Supplier may invoice

Company for the Goods on or at any time after the completion of delivery and, in respect of Services, may invoice Company upon completion of the Services. Payment will be made by Company within 45 days of a valid and undisputed invoice to a bank account nominated in writing by Supplier. All taxes (including VAT) will be shown separately on all invoices as a strictly net extra. Company reserves the right to set off any sums in respect of which Supplier may be in default to Company.

- 5.3 The correct Purchase Order number must be quoted on all invoices, and Company will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers.
- 5.4 Supplier acknowledges and agrees that Company normally requires invoices to be submitted electronically, and Supplier will accordingly issue all invoices under the Agreement such that they will be delivered to Company via email to invoicesuk@terumoaortic.com (or such other email address as Company may notify from time to time) and Supplier will work with Company, or Company's nominated representative, and use reasonable efforts to ensure that Supplier is able to send invoices via email, or as soon as practicable after, the date the Purchase Order to which any invoice relates is issued by Company.
- 5.5 In the event Company reasonably considers that any invoice submitted by Supplier is invalid, defective or relates to Goods supplied or Services performed otherwise than in accordance with Supplier's obligations under the Agreement, Company shall be entitled to withhold payment of the disputed amount (without prejudice to any other rights or remedies it may have) pending resolution of the dispute between the parties (each acting in good faith).
- 5.6 Any payment for an undisputed bona fide invoice not received by the due date may be subject to an interest charge. Interest under this clause 5.6 will accrue each day at the lesser of (a) one percent (1%) a year above the Bank of Scotland's base rate from time to time; or (b) the minimum rate permitted by applicable law.
- 5.7 All prices shall be expressed in the currency as stated on the Purchase Order.
- 5.8 Company reserves the right to set off any sums in respect of which Supplier may be in default to Company.

6. QUALITY AND FITNESS FOR PURPOSE OF GOODS AND DELIVERABLES

- 6.1 The Goods and Deliverables must comply in all respects with their description and any specification as supplied by Supplier and/or requested by Company.
- 6.2 The Goods and Deliverables supplied must comply in all respects with the Agreement and the implied conditions, warranties and terms contained in the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, related statutes and any statutory re-enactment(s) or modification(s) thereof.
- 6.3 Without prejudice to clauses 6.1 and 6.2 above, the Goods and Deliverables must be supplied with adequate instructions as to use and use-by date, fit for the purpose for which they are intended (and in this respect Company relies on Supplier's skill and judgement), of satisfactory quality and free from defects in design, material and workmanship.
- 6.4 Supplier shall ensure that the Goods and Deliverables comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

7. REJECTION, REPAIR AND REPLACEMENT OF GOODS AND DELIVERABLES

- 7.1 In the case of Goods and/or Deliverables which are not delivered on the agreed delivery date and/or are not conforming with the Agreement and without limiting any of its other rights or remedies, Company may, at its discretion, and whether or not it has accepted the Goods and/or Deliverables:

- 7.1.1 reject the Goods and/or Deliverables (in whole or in part) and return them to Supplier at Supplier's own risk and expense; and/or
 - 7.1.2 require Supplier as soon as reasonably practicable to either repair or replace the Goods and/or Deliverables at the site of delivery or Supplier's premises, whichever Company shall so determine, or to refund to Company any amounts paid in respect of any Goods and/or Deliverables which do not correspond with the Agreement (and repaired or replacement Goods and/or Deliverables shall themselves be subject to the obligations in the Agreement); and/or
 - 7.1.3 in the case of incorrect delivery, require Supplier to promptly reimburse Company in respect of any cost (including but not limited to freight, clearance, duty and storage charges) incurred by Company; and/or
 - 7.1.4 purchase Goods and/or Deliverables elsewhere which, as nearly as practicable, accord with the Agreement (and any extra expense thus incurred shall be paid by Supplier to Company on demand), provided that before exercising such right to purchase elsewhere Company shall give Supplier a reasonable opportunity to replace rejected Goods with goods which conform with the Agreement; and/or
 - 7.1.5 claim damages for any other costs, losses or expenses incurred by Company which are in any way attributable to Supplier's failure to carry out its obligations under the Agreement.
- 7.2 In the event of a rejection (in whole or in part) in accordance with clause 7.1 above Company will notify Supplier in writing, and the payment obligation in relation to any such delivery shall be suspended immediately.
- 7.3 The parties shall use their reasonable endeavours to resolve any dispute arising pursuant to clauses 6 or 7.1. If no agreement can be reached within 30 days, the parties shall agree on an independent expert (not an arbitrator) whose decision on whether or not the Goods and/or Deliverables in question comply with the Agreement and as to which party should pay its fees (the default result being that the fees shall be borne by the party against whom the expert's decision is given) shall be final and binding. Each party shall bear its own respective costs in relation to the dispute, notwithstanding the decision reached.
- 7.4 If the expert finds that any delivery of the Goods and/or Deliverables has not complied with the Agreement, Company shall have the rights stated in clause 7.1.
- 7.5 If the expert finds that the Goods and/or Deliverables comply with the Agreement, Company may pay for such Goods and/or Deliverables in accordance with the payment provisions contained in the Agreement.

8. PACKAGING OF GOODS AND DELIVERABLES

At no cost to Company, Supplier will package and label the Goods and Deliverables in a manner suitable for transit and storage so as to enable them to reach their destination in perfect condition. Company will not pay for or return packaging materials unless previously agreed between the parties and confirmed in writing. Supplier shall ensure that packaging complies with all relevant legislative requirements, including those pertaining to environmental, and occupational health and safety standards. Supplier will investigate potential environmental improvements to packaging and will, where practicable, use minimal packaging, recyclable packaging and recycled packaging materials.

9. STANDARD OF SERVICES

- 9.1 Supplier warrants and represents to Company that any Services performed by Supplier or duly appointed sub-contractor (to be pre-approved by Company in writing):
 - 9.1.1 shall be performed in a good and workmanlike fashion attributable to the type of Services being supplied and with all due speed and the highest level of care, skill and diligence; and

- 9.1.2 shall be carried out in accordance with the Agreement, with current industry standard codes of practice, and the highest standards prevailing in Supplier's industry.
- 9.2 Supplier shall ensure that all of its personnel and sub-contractors are suitably qualified and experienced to perform the Services and that all necessary licences, work permits or other authorisations have been obtained. Supplier shall ensure that personnel are in sufficient number to enable Supplier to fulfil its obligations under the Agreement. Where Company requires in writing that key personnel of Supplier perform the Services, Supplier shall only use such key personnel and use its best endeavours not to make any changes to the key personnel throughout the term of Agreement and obtain the prior written approval of Company to any replacements for such individuals.
- 9.3 Supplier shall co-operate with Company in all matters relating to the Services, and comply with Company's instructions.
- 9.4 Company shall have the right exercisable during the performance of the Services to suspend any payment obligation in respect of the Services if the performance does not conform in quality with any stipulations in the Agreement or if the performance is delayed.
- 9.5 If the Services do not conform with the Agreement, Company shall have the right to have any sums previously paid by Company to Supplier in respect of the affected Services refunded by Supplier, purchase Services from elsewhere and any extra expense incurred in doing so shall be paid by Supplier to Company. Before exercising such right to purchase the Services from an alternative Supplier Company may, at its discretion, give Supplier an opportunity to re-perform the Services with Services which conform with the Agreement.
- 9.6 Supplier shall notify Company immediately upon becoming aware of any actual or anticipated event or other development which may have a material impact upon Supplier's ability to comply with any of its obligations under the Agreement. Such events shall include but not be limited to failure to deliver Goods and/ or Services by a pre-specified date.
- 9.7 Supplier represents and warrants, and hereby agrees, that as between the parties, Supplier is solely liable for its use of any third party equipment or facilities. Supplier agrees that Company has no control over, and shall have no responsibility for, such equipment or facilities. Supplier shall indemnify, defend, hold harmless, waive and release Company from any responsibility, liability, demands or claims of any kind arising out of Supplier's use of any third party equipment or facility.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Supplier shall fully indemnify Company and its Affiliates, and keep them indemnified, on demand from and against all Losses incurred or suffered as a result of or in connection with any claim that the Goods and/or Deliverables or the provision of the Services by Supplier, or the use by or on behalf of Company of the Goods and/or Deliverables infringes the Intellectual Property Rights or any other rights of any third party.
- 10.2 Supplier shall, at its expense, defend any and all claims or legal proceedings arising from infringements or alleged infringements of its Intellectual Property Rights in connection with the Goods, Deliverables and/or Services, provided that Company gives Supplier all reasonable assistance and the sole authority to defend or settle any legal proceedings at Supplier's expense.
- 10.3 Company retains Intellectual Property Rights in, and ownership of all materials, plans, drawings, tools, data, the specification, patterns and/or designs provided by Company to Supplier, and they shall all be returned at any time in good condition to Company at Company's request and within 7 days of termination of the Agreement.
- 10.4 Where Goods and/or Deliverables are made to Company's specification, model, or plans, the Intellectual Property Rights in the Goods and/or Deliverables in so far as they relate to the specification, model, or plans, and any improvements or developments thereof shall be the

absolute property of Company, and Supplier shall and hereby assigns all such Intellectual Property Rights to Company.

- 10.5 Intellectual Property Rights arising during or out of the provision of Services, including but not limited to the Deliverables ("**Foreground IP**") shall be and remain the property of Company. Supplier hereby unconditionally assigns to Company (with full title guarantee and free of all encumbrances) all of the Foreground IP. This assignment shall take effect on the date of the Agreement in respect of any Foreground IP then in existence, or as a present assignment of future rights that will take effect immediately on the coming into existence of the Foreground IP, as appropriate. At its cost, Supplier shall do all such further acts and things, and execute all such other documents, as Company may reasonably request to vest the Foreground IP in Company and/or to enable Company to protect, perfect, enforce or enjoy the full benefit of the rights assigned under the Agreement.
- 10.6 Supplier grants or shall procure the grant to Company a worldwide, perpetual, irrevocable, royalty-free, fully paid-up and non-exclusive licence to use all pre-existing Intellectual Property Rights owned by or licensed to Supplier that are required to enable Company to protect, perfect, enforce or enjoy the full benefit of the rights assigned under clause 10.4 and/or clause 10.5 and/or to allow Company to enjoy the full benefit of the Services, Goods and any Deliverables.
- 10.7 In the event that any Intellectual Property Rights relating to the Goods, Deliverables and/or Services are held by the courts to infringe a third party's rights, and their use is enjoined by that third party, Supplier shall have the option and at its expense to procure for Company the right to continue using the Goods and/or Deliverables, or replace the Goods and/or Deliverables with non-infringing Goods and/or Deliverables, or modify the Goods, Deliverables and/or Services so that they become non-infringing without detracting from their overall performance and functionality.

11. CONFIDENTIALITY AND PUBLICITY

- 11.1 Supplier shall (a) use Confidential Information only as necessary to comply with its obligation under the Agreement and shall not use any Confidential Information for any other reason; (b) not disclose Confidential Information to any third party without Company's prior written consent; (c) maintain all Confidential Information as confidential and, at a minimum, treat all Confidential Information with at least the same degree of care as it would apply to its own confidential information, but in no event less than a reasonable degree of care, including by taking steps and implementing procedures to prevent unauthorised disclosure or use; and (d) restrict dissemination of Confidential Information to only those of its employees and sub-contractors who need to know the Confidential Information to carry out the Agreement and who are subject to obligations no less restrictive than those contained in the Agreement. Supplier shall not without Company's prior written consent disclose, copy, publicise or publish Confidential Information, the existence of the Agreement or any information related to the Agreement including the name of Company, any of its Affiliates, the Goods, Services, or the place of delivery or performance.
- 11.2 Clause 11.1 shall not apply in respect of Confidential Information which, as demonstrated by competent evidence, (a) is or becomes publicly known through no act or omission of Supplier in breach of the Agreement or any other obligation; (b) is known to Supplier prior to first disclosure of such Confidential Information by Company; (c) is hereafter furnished to Supplier by a third party authorised or permitted to do so and without contractual, legal, fiduciary, or other restriction on disclosure, provided that Supplier promptly notifies Company in writing of this third party disclosure after receipt thereof; or (d) is independently developed by Supplier without reference to or use of Confidential Information, as evidenced by contemporaneous written record.
- 11.3 All documents and materials containing Confidential Information shall remain the property of Company or its Affiliates. On termination of this Agreement, Supplier shall (a) arrange for the prompt and safe return to Company of Confidential Information belonging to Company, together with all copies in Supplier's possession, custody or control, including all copies held by any agent or sub-contractor, or (b) delete and/or destroy all documents and materials containing Confidential Information, including without limitation electronically stored information and

tangible things held by any agent or third parties, and shall in each case ((a) and (b)) notify Company of the completion of such return or destruction.

- 11.4 Supplier shall store the Confidential Information securely and at Company's request promptly delete or destroy it permanently and securely. In the event that it is destroyed, Supplier shall confirm in writing to Company that it has been destroyed.
- 11.5 Supplier shall not use any third party equipment so as to, and shall not enter into any third party agreement that would, make Company's Confidential Information available to any third party in violation of Supplier's confidentiality obligations under this Agreement. Supplier shall be fully responsible for any third party's unauthorised access or use of Company's Confidentiality Information arising out of Supplier's use of any third party equipment in performance of this Agreement.

12. FORCE MAJEURE

- 12.1 Neither party shall be liable for, nor be deemed to be in default of the Agreement, on account of any delay in completion or the performance of any other act under the Agreement due to circumstances which could not have been contemplated by the parties and which are beyond the party's reasonable control ("**Force Majeure**"), provided that the party claiming hereunder shall notify the other as soon as possible specifying the cause and probable duration of the delay or non-performance and shall minimise the effects of such delay or non-performance.
- 12.2 If the performance by either party of any of its obligations under the Agreement is prevented or delayed by Force Majeure:
 - 12.2.1 for a consecutive period in excess of 5 working days, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances; and
 - 12.2.2 for a period in excess of 60 days cumulatively or consecutively, then the other party shall in its discretion have the right to immediately terminate the Agreement upon written notice.
- 12.3 In the event of Force Majeure arising, Company may, by notice in writing to Supplier, cancel any deliveries of Goods or Services (and the applicable Purchase Orders or parts thereof) which in Company's opinion cannot be made within a reasonable time after the due date without incurring any liability on the part of Company.

13. POLICIES, LICENCES AND COMPLIANCE WITH LAWS AND REGULATIONS

- 13.1 In performing its obligations under the Agreement, Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force and comply with Company's policies as made known to Supplier by Company from time to time.
- 13.2 Supplier shall ensure that at all times it has and maintains all the licences, permissions, consents and permits that it needs to lawfully carry out its obligations under the Agreement and to grant the rights set out in the Agreement.
- 13.3 Supplier warrants that the Goods and Services, and where applicable the Deliverables, shall comply with the Agreement, all relevant laws, regulations and other legal requirements.
- 13.4 Supplier warrants not do or omit to do anything which may cause Company to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.
- 13.5 In performing its obligations under the Agreement, Supplier shall comply with all policies of Company and/or its Affiliates as made available by Company from time to time.

14. INSPECTION

- 14.1 Company, and any third party it appoints on its behalf, shall have the right upon prior notice to inspect and carry out any tests, or batch sampling, it wishes on all Goods and/or Deliverables at Supplier's premises (and Supplier shall procure equivalent rights for Company in relation to the premises of any sub-contractors and on any premises where the Services are provided). Where pre-shipped inspection is specified, Supplier must, at its expense, facilitate the same and provide any or all relevant certificates of analysis. If, following any such inspection or testing, Company considers that the Goods, Deliverables and/or Services are unlikely to comply with the Agreement, Company shall inform Supplier and Supplier shall immediately take such remedial action as is necessary to ensure compliance. Company shall have the right to conduct further inspections and tests after Supplier has carried out its remedial actions.
- 14.2 Any inspections, tests, approvals or acceptance given on behalf of Company in relation to the Goods, Deliverables and/or Services shall not relieve Supplier from its obligations or liabilities under the Agreement.
- 14.3 Supplier shall, and shall ensure that its sub-contractors shall, grant a right of access to Company and any third party it appoints in order to inspect and test the Goods and/or Deliverables for compliance with relevant environmental, occupational health and safety legislation and other requirements such as Company standards or any requirements set out in the specification.

15. DATA PROTECTION

- 15.1 Supplier shall adhere to Company's data protection standards available at www.terumoaortic.com/static/vascutek-data-processing-standards-august22.pdf and as Company may update it from time to time ("**Data Protection Standards**") and all applicable requirements of the Data Protection Legislation at all times throughout the term of the Agreement. Nothing within the Agreement relieves Supplier of its responsibilities and liabilities under the Data Protection Legislation. Supplier shall enter into a data processing agreement with Company upon request by Company or if otherwise required by applicable Data Protection Laws.
- 15.2 Supplier agrees to fully indemnify Company and keep Company indemnified and defend Company, at Supplier's expense, against all direct costs, claims, damages or expenses incurred by Company or for which Company may become liable due to any failure by Supplier and/or Supplier's sub-processors, officers, employees or agents to comply with any of its obligations under this clause 15, the Data Protection Standards, and/or under the Data Protection Legislation. Any limitation of liability set forth in the Agreement or otherwise shall not apply to this clause 15.2. Breach of this clause 15 by Supplier shall be deemed a material breach of the Agreement.

16. SUPPLIER'S PERSONNEL

- 16.1 For the duration of the period that any Services are being provided, the employment of any employee of Supplier shall remain with Supplier and shall not pass or otherwise transfer to Company or its Affiliates and nothing in the Agreement shall be construed or have effect as constituting any relationship of employer and employee between Company (or its Affiliates) and the employees and/or sub-contractors of Supplier. Supplier agrees that it is performing the Services as an independent contractor and will retain all responsibility for payment of any income tax, national insurance contributions, and any other taxation that may arise from the provision of the Services, and shall indemnify Company and its Affiliates, and keep them indemnified, on demand from and against all Losses incurred or suffered as a result of or in connection with Company or its Affiliates having to pay any tax, income tax or national insurance contributions and/or make any deductions at source in respect of the Services.

17. SOFTWARE DEFECTS

- 17.1 Supplier warrants that any Goods and/or Deliverables comprising computer hardware or software, and supplied by Supplier to Company (the "**Products**");

- 17.1.1 are free from viruses, defects, disabling codes, software routines or hardware components designed to permit (either automatically or through externally applied controls) unauthorised access or allow the Products to be disabled, have content erased, or otherwise be harmed (collectively, "**Contaminants**"), have been duly tested to ensure that there are no such Contaminants, and are subject to recognised and appropriate release procedures including the latest version of a proprietary virus detection software package approved by Company, and Supplier shall procure that corresponding obligations are imposed with its sub-contractors or agents;
- 17.1.2 have been obtained from a reputable and reliable software developer and not through any interest group or multi-organisational software sharing scheme, and do not include any open source, freeware or shareware (unless otherwise agreed in writing in advance by Company); and
- 17.1.3 will comply and function substantially in accordance with any related user documentation.
- 17.2 Supplier warrants that neither the performance nor the functionality of the Products will be adversely affected by any changes caused by the advent of a particular calendar date.
- 17.3 Supplier shall indemnify Company and its Affiliates, and keep them indemnified, on demand from and against all Losses incurred or suffered as a result of or in connection with Supplier's breach of the warranties set out in clauses 17.1 and 17.2 above.

18. LIABILITY, INDEMNITY AND INSURANCE

- 18.1 Supplier shall indemnify Company and its Affiliates, and keep them indemnified, on demand from and against all Losses incurred or suffered as a result of or in connection with any (a) any defect, including but not limited to defects in workmanship, quality or materials in the Goods, Deliverables and/or Services, (b) any breach by Supplier of its obligations hereunder or of any statutory duty, or (c) any act or omission of Supplier's employees, agents or sub-contractors.
- 18.2 At all times during the term of the Agreement, Supplier shall maintain in force with a reputable insurance company insurance in respect of its liabilities under the Agreement for a minimum of £5,000,000 per event and if so required at any time produce the policy of insurance and the receipt for the current premium to Company for its inspection. Supplier agrees that any monies received by Supplier from the insurance company in full or part settlement of a claim arising out of the Agreement and paid by or due to Company shall be paid immediately to Company without offset or counter claim.
- 18.3 Any limitation, monetary or otherwise in such insurance policy referred to in clause 18.2 above shall not be construed as a limitation on Supplier's liability and Supplier shall, notwithstanding such limitation, remain liable in full for any matters and to any extent not covered by the policy.
- 18.4 Nothing in the Agreement shall limit or exclude any liability which cannot be legally excluded, including for death or personal injury caused by negligence or fraud or fraudulent misrepresentation.
- 18.5 Subject to clause 18.4, Company shall not be liable to Supplier, whether in contract or delict, or for breach of statutory duty or misrepresentation, or otherwise, for any indirect or consequential damage or loss suffered by Supplier that arises under or in connection with the Agreement.
- 18.6 Subject to clause 18.4, Company's total liability to Supplier, whether in contract or delict, or for breach of statutory duty or misrepresentation, or otherwise, shall not exceed the total value of the price paid under the Agreement in the previous six (6) month period immediately preceding the date of the incident resulting in a claim.

19. BRIBERY ACT AND MODERN SLAVERY ACT

- 19.1 Unless otherwise required or prohibited by law, Supplier warrants that in relation to the supply of Goods, Deliverables and/or Services under the terms of the Agreement:

- 19.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Foreign Corrupt Practices Act and the Bribery Act 2010 ("**Relevant Requirements**");
 - 19.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements (including without limitation sections 1, 2 or 6 of the Bribery Act 2010);
 - 19.1.3 comply with the Company Ethics and Anti-bribery Policy (<http://terumoaortic.com/policies/anti-bribery>) and Ethics Statements ([Policies – Terumo Aortic](#)) as Company may update it from time to time ("**ABC Policy**"), and such other anti-bribery policies as made available to Supplier from time to time;
 - 19.1.4 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the ABC Policy and will enforce them where appropriate;
 - 19.1.5 promptly report to Supplier any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of the Agreement; and
 - 19.1.6 if requested, provide Company with any reasonable assistance, to enable Company to perform any activity required by a relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.
- 19.2 Supplier shall ensure that any person associated with Supplier who is performing Services or providing Goods and/or Deliverables in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Supplier in this clause 19 ("**Relevant Terms**"). Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Supplier for any breach by such persons of any of the Relevant Terms.
- 19.3 Breach of this clause 19 by Supplier shall be deemed a material breach of the Agreement.
- 19.4 For the purpose of this clause 19, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 19.5 Unless otherwise required or prohibited by law, Supplier warrants that in relation to the supply of Goods, Deliverables and/or Services under the terms of the Agreement it shall ensure encourage compliance with ethical standards and human rights, and without limitation it shall not permit the use of forced, compulsory or trafficked labour, or anyone held in slavery or servitude, whether adults or children.
- Supplier agrees that it is responsible for controlling its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent supplier of Goods and Services that are used by Supplier when performing its obligations under the Agreement, and Supplier agrees to comply with Company's anti-slavery and human trafficking policy available at [\[www.terumoaortic.com/static/anti-slavery-human-trafficking-policy-27_04_20.pdf\]](http://www.terumoaortic.com/static/anti-slavery-human-trafficking-policy-27_04_20.pdf) as Company may update it from time to time ("**MODSA Policy**").
- 19.6 Company reserves the right upon reasonable notice (unless inspection is for cause, in which case no notice shall be necessary) to enter upon Supplier's premises to monitor compliance by Supplier of the warranties set out in clause 19.1 and 19.5 above and Supplier shall, subject to compliance with law, furnish Company with any relevant documents requested by Company in relation thereto.

20. TERMINATION

- 20.1 If either party to the Agreement is in breach of the Agreement and does not remedy the breach within 30 days of notice from the other party so to do (if capable of remedy) the other party may terminate the Agreement immediately by notice to the party in breach.
- 20.2 If either party becomes bankrupt, dissolved, wound up, or makes any arrangement with its creditors or has a receiver, administrative receiver, liquidator or provisional liquidator appointed over all or any part of its assets or goes into liquidation (whether voluntary or otherwise) save as part of a bona fide reconstruction not involving insolvency or takes or suffers any similar action as a result of its liability to pay its debts or its insolvency it shall promptly so notify the other party in writing providing particulars of the circumstances whereupon the other party may terminate the Agreement immediately by notice.
- 20.3 If at any time during the term of the Agreement there shall be any change in the legal or beneficial ownership or Control of Supplier:
- 20.3.1 Supplier shall immediately so notify Company in writing; and
- 20.3.2 Company may, upon receiving notice or otherwise becoming aware of a change in the legal or beneficial ownership or Control of Supplier, terminate the Agreement immediately by notice in writing to Supplier if it considers in its sole discretion that such change of ownership or Control is prejudicial to its interests.
- 20.4 The Agreement may be cancelled at any time by Company for any reason whatsoever, with immediate effect by giving Supplier notice in writing.

21. CONSEQUENCES OF TERMINATION

- 21.1 Within 7 days after termination of the Agreement for any reason, Supplier shall:
- 21.1.1 at Company's option and cost, deliver to Company (or as Company shall direct) all quantities of the Goods and/or Deliverables in its possession which comply with the Agreement;
- 21.1.2 at Supplier's cost, return to Company all documents provided to Supplier by Company; and
- 21.1.3 at Supplier's cost, ensure that all documents containing Intellectual Property Rights and/or any information of a technical nature relating to the Goods and/or Deliverables, the manufacture of the Goods and/or Deliverables and the provision of Services, or of a confidential nature and supplied by Company to Supplier, are returned to Company or destroyed by Supplier at Company's option.
- 21.2 If Supplier fails to fulfil its obligations under clause 21.1, then Company may, and/or its authorised representatives may, enter Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, Supplier shall be solely responsible for their safe keeping.
- 21.3 With effect from termination of the Agreement Supplier shall not make any use for any purpose whatsoever of any Intellectual Property Right which is the property of Company.
- 21.4 Termination of the Agreement or withdrawal of any Goods or Services from the Agreement shall be without prejudice to the continuation in force of clauses 1, 2, 7, 10, 11, 15, 16, 17, 21, 22, 23, 24.9 and 24.10 and such other clauses required to give effect to the foregoing clauses. Supplier agrees to provide Company with all reasonable support with respect to any investigation required by Company or any regulator with respect to the Goods or Services carried out prior or after such termination or withdrawal. Company will reimburse Supplier's reasonable costs in providing such assistance.
- 21.5 On termination of the Agreement for any reason, Supplier shall, if so requested by Company:

21.5.1 complete any outstanding Services; and/or

21.5.2 provide all assistance reasonably required by Company to facilitate the smooth transition of the Services to Company or any replacement Supplier appointed by it, and within such timescales as reasonably required by Company.

21.6 Termination or expiry shall not relieve either party from any liability or action accrued prior to such termination or expiry. A fair and reasonable price will be paid for all Services in progress that have been delivered to Company and which comply with the Agreement.

22. ASSIGNATION

22.1 Supplier's rights and obligations under the Agreement may not be assigned in whole or in part without the prior written consent of Company (acting in its sole discretion) and any such consent shall not be deemed to relieve Supplier of any of its obligations and liability to Company pursuant to the Agreement.

22.2 Company shall be entitled at any time by notice in writing to Supplier to assign the whole or any part of its rights and obligations under the Agreement to any Affiliate or to any successor in title to the whole or part of that part of Company's business which relates to the Goods or Services.

23. NOTICES

23.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business.

23.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address or otherwise at 9.00 am on the second Business Day after posting.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

24. GENERAL

24.1 Supplier shall not, without the prior written consent of Company, appoint any sub-contractor or any person or persons to carry out its obligations under the Agreement. In the event that Supplier appoints a sub-contractor or other person to perform its obligations it shall remain liable to Company for the performance of all its obligations and shall ensure that any such sub-contractor or other person agrees to be bound by terms equivalent to those in the Agreement.

24.2 Other than set out herein, the Agreement contains the whole agreement between the parties in respect of the subject matter of the Agreement and supersedes all prior written or oral agreements, arrangements and understandings between them relating to that subject matter.

24.3 Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty made or given, or purportedly made or given, by or on behalf of the other party (whether made negligently or innocently) other than as expressly set out in the Agreement.

24.4 Nothing in the Agreement shall create, or be deemed to create a partnership, joint venture or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement.

24.5 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy and nor shall it preclude

or restrict its further exercise. In addition, no single or partial exercise of any such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

- 24.6 If any provision of the Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 24.7 The Agreement may not be modified except by an instrument in writing signed by the duly authorised representatives of both parties.
- 24.8 Except for any rights granted to Company's Affiliates, which the parties hereby designate as intended third party beneficiaries to the Agreement, no person who is not a party to the Agreement shall have any rights under the Agreement and the Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017.
- 24.9 Without prejudice to any other rights or remedies that Company may have, Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of the Agreement by Supplier. Accordingly, Company shall be entitled to the remedies of interdict, specific performance or other equitable relief for any threatened or actual breach of the terms of the Agreement.
- 24.10 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) is governed by and shall be construed in accordance with the laws of Scotland. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to the Agreement.
- 24.11 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter (including non-contractual disputes or claims).