

## TERMS AND CONDITIONS

The below apply for purchases of products directly from Smith & Nephew Limited (S&N). For purchases of S&N's AWM products from S&N authorised distributors, only Sections 5 through 13 apply, as terms covered by Sections 1 through 4 shall be negotiated and agreed to between Customer and the S&N authorised distributor.

1. **ORDERS.** Orders for S&N products may be placed by:

S&N Products – New Zealand			
	Advanced Wound Management	Orthopaedics – Reconstructive, Trauma & NAVIO <sup>®</sup>	Endoscopy – Sports Med, ENT & Spine
<b>Phone</b>	131360	Contact your local S&N sales rep	Contact your local S&N sales rep
<b>Fax</b>	1800 671 000	Contact your local S&N sales rep	Contact your local S&N sales rep
<b>EDI</b>	customerservice.anz@smith-nephew.com	customerservice.anz@smith-nephew.com	customerservice.anz@smith-nephew.com
<b>S&amp;N Sales Rep</b>	Contact your local S&N sales rep	Contact your local S&N sales rep	Contact your local S&N sales rep
<b>Special, Custom, MTO Products</b>	Contact your local S&N sales rep	Contact your local S&N sales rep	Contact your local S&N sales rep

Not all products listed in catalogues are available in all countries; contact your local S&N representative for specific availability. No Customer order is deemed accepted by S&N until received and approved by authorised S&N personnel. Product is sold in full unbroken selling units of measure as defined per the product code. For Advanced Wound Management products, the minimum dollar order amount is \$250.00 and, for orders under the minimum that are accepted by S&N, a handling fee of \$25 shall be added. S&N accounts are not transferable. Any major change within Customer's organisation requires a new and independent review by S&N before it shall extend a Customer's account to the changed organisation. As elected by S&N, Products are sold directly by S&N to Customer or through S&N's authorised distributors. For the name and address of your S&N representative or authorised distributor, contact S&N's customer service team noted above. Sales personnel may not alter the terms of this agreement, extend credit, or accept payment for merchandise. For all Orthopaedic orders, unless Customer issued a valid purchase order number at the time of initial order placement, Customer shall issue a valid purchase order number within forty-eight (48) hours of receipt of product.

2. **SPECIAL, CUSTOM, MADE TO ORDER (MTO) PRODUCTS.** Requests for special, customised or MTO orthopedic or endoscopy instrument products must be submitted at the contacts provided in the above table, which contacts shall provide a price quote valid for thirty (30) days and the estimated time required to manufacture the product. Manufacturing shall not begin until receipt of a purchase order for the requested product and credit is approved. All special, customised or MTO sales are final and nonreturnable, and product lead time may vary depending on the product. In some cases, the surgeon shall be required to sign a copy of the blueprint and/or template prior to S&N beginning to manufacture the product. Service agreements and service exchange is not available on special, customer or MTO endoscopy instrument products, as such products are serviced on a repair only basis.
3. **TITLE; DELIVERY; SHIPMENT VERIFICATION AND RISK.** Product shall be deemed accepted by Customer upon delivery at the named point of destination. S&N reserves the right to select the mode and carrier. If Customer requests a certain method, carrier or other special or rush shipping then additional shipping and handling charges may be added to the invoice. Customer is responsible for noting any damage, potential damage and shortages on freight bill at time of delivery and notifying S&N's customer service team within seven (7) days of delivery. Any discrepancy in the quantity billed and quantity received resulting from damage (concealed or otherwise), shortages, overages, non-delivery or wrong product must be reported to S&N's customer service team within seven (7) days of date a shipment is or was to have been received. Any discrepancy reported after seven (7) days shall be addressed by S&N in its sole discretion, failing which S&N shall be under no liability for such issues. All risk for the products passes to Customer on delivery. Title in products passes to the Customer on payment in full for the products.
4. **PRICE; PAYMENT.** The latest published price list supersedes all previous price lists. For sales by S&N to its distributors, distributor is free to resell products at prices determined in its sole discretion. Payment by Customer is due net thirty (30) days from date of invoice and must be sent to the address on S&N's invoices/statements to Customer. S&N reserves the right to terminate or limit open account credit at any time. Any discrepancy in an invoiced price and the corresponding order price must be reported to S&N's customer service team within thirty (30) days of the date of invoice. Customer's failure to make timely payment is a material breach for which (in addition to other available remedies) S&N may suspend performance under any or all S&N agreements until all past due amounts are brought current. Interest shall accrue on past-due amounts at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law. Customer shall reimburse S&N for reasonable costs (including attorneys' fees) relating to collection of past due amounts. Any credits due to Customer under an agreement may be applied first to any outstanding balance. If, after product delivery, Customer does not make required payments within forty-five (45) days after the payments are due, S&N may, upon ten (10) days' prior written notice to Customer, either enter upon Customer's site and remove the products or temporarily disable the products so they are not operational.
5. **GST.** Words or expressions in this Section 5, which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations or Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires. "GST Act" is a reference to the *Goods and Services Tax Act 1985*, as amended or replaced, and including applicable regulations. Prices are subject to applicable tax. Unless GST is expressly included, the consideration to be paid or provided under any other condition of this Agreement for any supply made under or in connection with this Agreement does not include GST. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided. Organisations exempt from taxes or that resell product must provide S&N with a valid exemption or resale certificate for each applicable jurisdiction to avoid being invoiced for taxes. Exemption or resale certificates received after the sale shall not void taxes already charged but shall prevent tax from being charged on future invoices. To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit. Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable.

6. **RETURNS.** All product returns, whether for defect or otherwise, require the prior written authorisation of S&N, which must be obtained through S&N's customer service team within seven (7) days of delivery of the product. If the return is authorised, S&N shall provide Customer a return authorisation, and Customer must return the product to S&N within seven (7) days of receipt of such return authorisation. Any product returned after seven (7) days shall be addressed by S&N in its sole discretion. Credit shall be issued only after product is received by S&N and then examined and determined to be returnable by S&N's return goods department. Customer shall not make any changes to the return authorisation without receiving prior approval through S&N's customer service team. In addition, product may be returned only under the following conditions:
- From date of invoice, up to seven (7) for Advanced Wound Management and Orthopaedic products and up to thirty (30) days for Endoscopy products.
  - A restocking fee shall be charged: the greater of 15% or \$50 for Advanced Wound Management products and 20% for Orthopaedic and Endoscopy products, except for product defects or an error by S&N.
  - Only unopened, fully unbroken selling units of measure as defined per the product code.
  - Credit, if allowed, shall be based on saleable product still listed in S&N's current price list.
  - For Advanced Wound Management products, a copy of the original invoice is included.
  - S&N reserves the right to destroy product shipped to S&N that it deems unfit for sale.
- S&N shall not accept returns for product:
- not in standard S&N packaging.
  - purchased through anyone other than S&N.
  - with unauthorised labels or that has been defaced.
  - that is a temperature controlled product.
  - that is obsolete, discontinued, special price, damaged or in broken selling units of measure.
  - that is a sterile Endoscopy products with less than 1 year of shelf live remaining.
  - except for warranty claims, NAVIO<sup>®</sup> products may not be returned.
7. **PRODUCT RECALLS.** If Customer is directed to assist in any suspension of supply or recall of products for any reason by S&N, the Therapeutic Goods Administration or a health or other authority, Customer shall cooperate and comply with all such directions and provide all assistance requested by S&N.
8. **PPSA.** In this Section 8: (i) "PPSA Law" means *Personal Property Securities Act 1999* (PPS Act), as amended or replaced, and applicable regulations and any amendment made to any other legislation as a consequence of the PPS Act; and (ii) a term that is used in italics has the same meaning as in the PPS Act. Customer acknowledges and agrees that: (i) this Agreement creates a *security interest* in all present and after acquired products and any *proceeds* as security for Customer's obligations to S&N; (ii) S&N is a *secured party* in relation to the products and any *proceeds*, and is entitled to register its interest on the *register* as a *security interest* and a *purchase money security interest*, at the discretion of S&N; (iii) S&N may, by notice to Customer, require Customer to take all steps that S&N considers to be necessary or desirable to ensure its *security interest* in the products and the *proceeds* is enforceable, and to perfect or better secure the position of S&N under this Agreement as a first ranking security, and Customer shall comply with that notice; (iv) Customer shall comply with a notice from S&N under this clause at the cost and expense of Customer; (v) Customer shall promptly inform S&N of any change to information that it provides to S&N under this clause; and (vi) S&N is not obliged to give any notice, document or information under the PPSA Law (including notice of a verification statement) unless the provision of the notice, document or information is required by the PPSA Law and cannot be excluded. Customer agrees that nothing in section 114(1)(a), 133 and 134 of the PPS Act shall apply to any agreement, or the *security* under any agreement, and waives its rights under sections 121, 125, 129, 131 and 132 of the PPS Act.
9. **COMPLIANCE.** Each party shall conduct its business and affairs in an ethical manner and comply with all applicable laws, regulations, and industry codes. Any breach by Customer or its representatives or agents shall entitle S&N to terminate this agreement immediately upon S&N's written notice to Customer. Customer acknowledges receipt of S&N's Code of Conduct that is available on S&N's website at <http://www.smith-nephew.com/compliance/global-compliance-programme/>. All transactions between Customer and S&N in connection with this agreement are made in good faith on the basis of arms-length negotiation and all prices are consistent with fair market value. The prices reflected on S&N invoices incorporate applicable discounts to S&N's list prices for the named products. Prices may be subject to further rebates earned (if any) pursuant to an agreement between Customer and S&N.
10. **LIMITED WARRANTY.** S&N products are warranted to conform in all material respects to S&N's standard specification for a particular product in effect at the time of product delivery to the buyer (including any tolerance parameters) for the warranty period specified for the products at [www.SNWarranties.com](http://www.SNWarranties.com) (Warranty Period); provided, however, for any products for which ArthroCare Corporation is the legal manufacturer, the product warranty (including warranty length) is as stated in the Information For Use (IFU) accompanying the product (see product packaging for the name of the legal manufacturer). The Parties specifically agree that the products are supplied to Customer for business purposes and, to the extent not prohibited by law, provisions of the *Consumer Guarantees Act 1993*, as may be amended from time to time, do not apply. To the extent not prohibited by law, for any products found to not be in conformance with this warranty during the Warranty Period, this warranty provides and is restricted to, as elected by S&N, (i) repair or replacement of such products or the supply of equivalent products without charge and within a reasonable period of time; (ii) the payment of the cost of replacing the products or of acquiring equivalent products; or (iii) the payment of the cost of having the products repaired. If S&N repairs or replaces product under this warranty and requests Customer to return such product, Customer must ship such product to S&N freight prepaid by Customer. Customer shall be invoiced for any replacement product if Customer does not return the requested replaced product within thirty (30) days after S&N's shipment of the replacement product. This warranty does not cover and is voided by any of the following: (i) product packaged or labeled by someone other than S&N or its authorised agents; (ii) product not used in compliance with the specifications, instructions or claims for use of the product; (iii) equipment product used in conjunction with disposables or accessories not specified for use with such equipment; (iv) equipment product used in conjunction with reprocessed disposables or accessories; (v) modification of product; (vi) product past its expiration date; (vii) normal wear and tear; (viii) damage due to misuse, reprocessing, alteration, unauthorised repair or negligent handling or damage due to lack of care by the owner, user or handler of the product including but not limited to storage, handling or cleaning; or (ix) any other damage inflicted to products by the owner, user or handler. A 90-day warranty on repairs applies to the defective component repaired. This warranty applies only to the original buyer from S&N (or its authorised distributor) and is not transferable. **EXCEPT TO THE EXTENT PROHIBITED OR OTHERWISE REQUIRED BY APPLICABLE LAW, THIS WARRANTY IS THE SOLE WARRANTY OF S&N, AND ALL OTHER WARRANTIES OF ANY KIND OR DESCRIPTION WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, ARE EXCLUDED.**

11. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF ITS GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, BREACH OF ANY CONFIDENTIALITY PROVISION OF THIS AGREEMENT, LIABILITY OWED TO THIRD PARTIES OR FOR DEATH OR PERSONAL INJURY, OR AS OTHERWISE PROHIBITED BY LAW: (I) IN NO EVENT SHALL S&N BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR TYPES OF LOSS OR DAMAGE OF ANY KIND, OR FOR ANY LOST OR ANTICIPATED PROFITS OR SAVINGS, COST OF COVER FOR REPLACEMENT OR ALTERNATIVE PRODUCT OR DAMAGE TO REPUTATION OR GOODWILL, ARISING FROM THIS AGREEMENT; (II) TO THE EXTENT NOT PROHIBITED BY LAW, THE CUSTOMER'S SOLE REMEDY FOR S&N'S BREACH OF ANY PRODUCT WARRANTY SHALL BE THE REPAIR, REPLACEMENT, RESUPPLY OR PAYMENT OF THE COST OF REPLACING THE PRODUCTS OR ACQUIRING EQUIVALENT PRODUCTS BY S&N AS PROVIDED IN THE WARRANTY; AND (III) TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL THE TOTAL LIABILITY OF S&N UNDER ANY THEORY OF LIABILITY EXCEED THE PURCHASE PRICE PAID FOR THE APPLICABLE PRODUCT(S). THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE PRECEDING LIMITATIONS ON LIABILITY ARE A FAIR COMPROMISE AND WAIVE ANY RIGHT TO LATER CHALLENGE THEM AS UNREASONABLE, UNCONSCIONABLE OR OTHERWISE.
12. **GOVERNING LAW; JURISDICTION.** This agreement shall be construed and enforced in accordance with the laws of New Zealand, and each party submits to the non-exclusive jurisdiction of the courts of New Zealand, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement. .
13. **MISCELLANEOUS.** S&N reserves the right to discontinue products or change specifications or designs from time to time. Neither party is liable for delays or failures in performance (other than payment obligations) due to causes beyond its reasonable control. In the event of such delay, the time for performance shall be extended as reasonably necessary to enable performance. No modified, additional or different terms or conditions proposed by Customer, verbally or in writing, including without limitation any terms set forth in Customer's RFP or purchase order, shall apply and are expressly rejected by S&N. Any waiver of any breach of any provision of this agreement shall not be a waiver of any subsequent breach of the same or of any other provision of this agreement. Customer shall keep all terms of this Agreement confidential and shall not disclose, disseminate, use or otherwise make them available to any third party for any purpose, including use as a basis for competitive solicitation. The terms hereof shall not be construed to create between the parties the relationship of principal and agent, joint venturers, partners or any other similar relationship, the existence of which is expressly denied by each party. If a court of competent jurisdiction finds any provision of this agreement is invalid or unenforceable, such finding shall not affect the remainder of these terms and conditions and otherwise shall remain in full force and effect. These terms and conditions of sale are subject to change by S&N effective on notice to Customer.