

ACTIVINSIGHTS LTD

TERMS AND CONDITIONS OF SALE

1.0 INTRODUCTION

These Terms and Conditions of Activinsights Ltd ("the Supplier") relate to every contract for the supply of goods or services to the Purchaser ("the Client"). All contracts accepted by the Supplier are undertaken on these conditions and unless otherwise agreed in writing these conditions shall override any conditions or terms stipulated, referred or incorporated by the Client in its order or negotiations.

2.0 ORDERS

All orders should be placed in writing with a Client Purchase Order Number or Reference Number. Orders placed by fax or email will be accepted. Minimum order values apply, please contact for further details.

Pack sizes are detailed in the price list and products must be ordered in these multiples. Where an order does not comply with minimum pack sizes, the order or that part of the order will be increased to the minimum pack size

3.0 PRICING

Unless Activinsights otherwise agrees in writing, all prices quoted are based in GB Pounds. Prices quoted are effective for ninety (90) days from the date of the quotation, unless specifically noted. All prices are subject to change without notice. For all shipments outside of the United Kingdom, all taxes, duties and fees associated with importation are the responsibility of the customer.

4.0 PAYMENT AND DELAYS IN PAYMENT

The Supplier shall grant the Client a credit account at its discretion, and such accounts and credit limits may be reviewed or revoked at any time, dependent upon trading history and professional references.

Accounts are payable, net 30 days of invoice.

Remittances sent by post are at the Client's risk for loss during transit.

The Client should quote their order number and the Supplier's invoice number on all correspondence.

The Client should ensure that all payments include both the Client's and the Supplier's bank charges so that the exact amount of monies owing is received.

Failure by the Client to adhere to the Supplier's payment terms shall result in the Clients account being put on Credit hold. When the Client's account is released from Credit Hold, the sales value of any held order shall be invoiced at value of the then current price list even if the original order was placed at a promotional or pre-price increase period.

Discounts shall not apply on overdue accounts and the value of any overdue invoices shall be adjusted accordingly.

Persistent failure by the Client to adhere to the Supplier's payment terms shall result in the withdrawal of any credit facilities that have been granted, with future contracts being accepted on a Pro-forma only basis.

If the Client fails to make payment by the due date, then without prejudice to any of the Supplier's other rights, the Supplier shall be entitled to charge the Client interest from the date of invoice at 8% above the Bank of England base rate until full payment is received.

The Supplier also reserves the right to charge a minimum Administration Fee of £60 to offset the costs when recovering the overdue amount.

5.0 CHANGES AND CANCELLATIONS.

Activinsights does not accept Customer's order change or cancellation unless both Activinsights and Customer agree in writing. If Activinsights consents to Customer's change or cancellation prior to delivery, Activinsights shall charge a £50 service fee. Activinsights will charge a 15% restocking fee if product has been shipped. Under no circumstances shall the Customer return any good prior to Activinsights written approval. Please call Customer Service at 01480 862082 for a Return Materials Authorization (RMA) number prior to returning any product.

6.0 DELIVERY

Dates given for deliver are 'best estimates' and are given in good faith. However they are not guaranteed and time is not the essence of the contract. Unless otherwise agreed in writing by the Supplier delivery of the Goods shall take place at the Buyer's place of business.

The Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods.

The Supplier may deliver the goods by separate installments. Each installment shall be invoiced and paid in accordance with the provisions of the Contract.

7.0 NON-DELIVERY OR DAMAGED GOODS

The quantity of any consignment of Goods as recorded by the Supplier upon dispatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Client on delivery unless the Client can provide conclusive evidence proving the contrary.

The Supplier shall not be liable for any non-delivery of Goods unless the Client gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the Ordinary course of events have been received. The Supplier asks that the Client inspects incoming packages upon receipt and any damages be reported within 24hrs.

Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note against at pro rata rate against any invoice raised for such Goods.

8.0 GOODS RETURNED

In all cases prior approval to return Goods must be obtained from the Suppliers Customer Services Department. No returns shall be accepted later than 30 days of receipt. Returned goods must be in their original packaging, in re-saleable condition and will be subject to a 15% handling charge

Should the goods be returned without prior approval, the Supplier reserves the right to refuse credit and dispose of the goods in whatever manner it deems appropriate.

9.0 RISK / TITLE

The Goods are at the risk of the Client from the time of delivery. Legal ownership of the goods shall not pass to the Client until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

The Goods:

And all other sums which are or which become due to the Supplier from the Client on any account. Until ownership of the Goods has passed to the Client, the Client shall hold the goods on a fiduciary basis as the Suppliers bailee. Store the Goods (at no cost to the Supplier) separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as the Supplier's property. Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods. Insure their full price against all risks to the reasonable satisfaction of the Supplier.

May resell the Goods before ownership has passed to it in the ordinary course of the Clients business at full market value.

The Client's right to possession of the Goods shall terminate immediately if the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceeding are commenced relating to the insolvency or possible insolvency of the Client; or The Client suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Supplier and the Client, or is unable to pay its debts, or the Client ceases to trade.

The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership any of Goods has not passed from the Supplier.

The Client grants the Supplier, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored to inspect them, or, where the Client's right to possession has terminated, to recover them. Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Client's right to possession has terminated, the Client shall be deemed to have sold all goods of the kind sold by the Supplier to the Client in the order in which they were invoiced to the Client.

On termination of the contract, howsoever caused, the Supplier's (but not the Client's) rights contained within this condition shall remain in effect.

10. SOFTWARE AND TRADE SECRETS.

Activinsights retains and reserves all rights and interest in and to

- (i) any and all Software and
- (ii) any and all Trade Secrets.

11. FORCE MAJEURE.

Except for the payment of any monetary sums required to be paid under any other provision of this Contract, neither party shall have any responsibility

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for or liability with respect to any failure or delay in the performance of any term or condition in this Contract, if such failure or delay in performance is due to in whole or part to any event of Force Majeure. In the event of the occurrence of any event of Force Majeure, then, except for the payment of any monetary sums required to be paid under any other provision of this Contract, either party's performance of this Contract shall be suspended until the removal of such occurrence, event or condition and the establishment of the conditions prevailing prior thereto, and the time for performance, except for the payment of any such monetary sums, shall be extended for an adequate period; provided, however, that the party so prevented from performing shall use its best efforts to remedy as soon as reasonably possible the cause or causes preventing it from performing.

12. SPARE PARTS.

Activinsights shall use reasonable efforts to maintain a normal stock of spare parts, which may include reconditioned parts, reasonably related to the items and quantities for normal operating requirements. Sale of spare parts (other than those covered under any service contract with Activinsights) shall be at Activinsights prevailing price. If Customer utilises spare parts from a source other than Activinsights spare parts, Activinsights warranty obligations shall cease.

13. MANUAL.

Activinsights shall provide Customer an Operator's Manual at no additional charge.

14. NON-APPROVED MODIFICATIONS.

Customer shall hold Activinsights harmless from and against all losses and liabilities resulting from any Product modification by Customer or its successors or assigns, unless Activinsights approves in writing prior to such modification. Activinsights shall void all of its warranty obligations for Customer modifications not approved in writing.

15. MODIFICATIONS BY ACTIVINSIGHTS.

Activinsights may from time to time change the construction or design of the Product without notice to Customer, so long as neither the function nor performance of the Product is substantially altered thereby. Activinsights reserves the right to utilize reconditioned components or parts in the repair of the Product.

16. NOTICE OF CLAIM OR INJURY.

Customer shall give notice to Activinsights within five (5) days of any claim or occurrence known to Customer, which could give rise to a claim against Activinsights. In addition, for as long as Customer owns or operates the Product, Customer shall within forty-eight (48) hours report any patient injury or injuries arising out of or in connection with the use of the Product by giving written notice to Activinsights.

17. PRODUCT WARRANTY.

Activinsights warrants that the GeneActiv sold hereunder and any replacement parts or any replacement Product introduced during the warranty period will be free from defects in materials and workmanship for a period ending one (1) year from the Date of invoice. If Customer discovers a defect within such period, it must promptly notify Activinsights in writing, and Activinsights must receive such notification within such warranty period. The Warranty coverage is subject Activinsights evaluation and approval.

18. LIMITATIONS ON PART COVERAGE.

Parts or components damaged due to misuse or negligence are not covered under the Warranty, and those items listed in Sec.19 Exclusions.

19. EXCLUSIONS.

The Warranty does not cover the following:

- (a) Consumable supplies, parts and materials
- (b) Supplies and services required because of accident, neglect, misuse, abuse, acts of God, flood, fire, strike, industrial unrest, and acts of war, insurrection, riot or civil disorder, failure of electric power, air conditioning, humidity control or other causes other than ordinary use.
- (c) Upgrades to any portion of the GeneActiv.
- (d) Defects or damages caused during the process of sending the GeneActiv monitors or Charging Docking Stations via the Mail service in packaging that has not been approved by The Company

20. NO IMPLIED WARRANTY.

THERE IS NO REPRESENTATION, RIGHT, WARRANTY, CONDITION, AGREEMENT OR UNDERSTANDING (ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY, LEGAL, CONVENTIONAL, COLLATERAL OR OTHER) RESPECTING THE PRODUCT OR ANY SUPPLIES OR SERVICE PROVIDED HEREUNDER, OR THE CONDITION, QUALITY,

MERCHANTABILITY, COMPLETENESS, SUITABILITY OR FITNESS FOR ANY PURPOSE OF ANY OF THE FOREGOING, EXCEPT AS EXPRESSLY STATED HEREIN.

21. LIMIT.

EXCEPT FOR ANY AMOUNTS WHICH MAY BE PAYABLE BY ACTIVINSIGHTS FOR INJURY TO A PATIENT UNDERGOING TREATMENT UTILISING THE PRODUCT (WHICH AMOUNTS ARE NOT LIMITED HEREIN), ANY AND ALL LIABILITIES OF ACTIVINSIGHTS WHICH MAY ARISE OUT OF OR RELATE IN ANY WAY, DIRECTLY OR INDIRECTLY TO THE PRODUCT OR THE PERFORMANCE OR NON-PERFORMANCE OF THIS CONTRACT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED IN ALL EVENTS WHATSOEVER

TO AN AMOUNT OR AMOUNTS NOT EXCEEDING IN AGGREGATE THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCT (NET OF TAXES) WHICH HAS BEEN PAID TO ACTIVINSIGHTS.

22. NO OTHER DAMAGES.

IN NO EVENT SHALL ACTIVINSIGHTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER OR HOWSOEVER ARISING, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, REVENUE OR PROFITS.

23. TERMS & CONDITIONS ACCEPTANCE.

These Terms and Conditions of Sale shall govern, amend and prevail over any terms and conditions of Customer's purchase order to the extent that a conflict exists.

24. CONFIDENTIALITY.

Customer hereby acknowledges that it will obtain knowledge of and access to restricted information. Customer agrees at all times, from and after the date hereof (a) to keep all such Restricted Information confidential; (b) not to use such Restricted Information on behalf of any competing person, firm or entity; (c) not to use such Restricted Information for any purpose other than in connection with the Product and upon the terms and conditions of this Contract; and (d) not to disclose any such Restricted Information to any third party, without Activinsights advance written authorization. Customer shall not without prior Activinsights written consent, publish or release, or permit the publication or release of any materials regarding the operation or use of the Product.

25. INDEMNIFICATION.

Customer shall protect, indemnify and hold harmless Activinsights from and against all liabilities, obligations, claims, damages, penalties, actions, causes of action, losses, costs, fees and expenses (including, without limitation, reasonable attorneys' fees and disbursements), except any of the foregoing relating to defects in the design or manufacture of the Product, imposed upon or incurred by or asserted against Activinsights by reason of (a) any accident to, injury to or death of persons, or loss of or damage to property, occurring by reason of the use of the product, (b) any use, non-use, operation or condition of the Product, or (c) any failure on the part of Customer to pay, perform or comply with any of the provisions of this Contract. In the event any action, suit or proceeding is brought against Activinsights, Customer, upon Activinsights written request and at the Customer's expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Activinsights and approved by Customer, which approval shall not be unreasonably withheld.

26. NOTICES.

Any notice issued hereunder shall be in writing, and shall be deemed sufficiently given on the day of service personally on the party to whom directed; seventy-two (72) hours after mailing by first class mail, registered or certified, postage pre-paid, and properly addressed to the party at its principal place of business or any other address that such party may designate by written notice to the other; or the next business day after the time of sending a facsimile if confirmed by letter sent by first class mail, as set forth herein, or courier not later than the next business day.

27. GOVERNING LAW AND JURISDICTION.

These Terms and Conditions shall be governed by and construed in accordance with the laws of England and Wales. Any legal action brought in connection with this Contract shall be subject to the exclusive jurisdiction of the English Courts.