

GENERAL TERMS AND CONDITIONS OF SALE

1 Definitions

1.1 In these General Terms and Conditions of Sale (hereinafter referred to as “these General Conditions”), the following terms shall mean:

“Handicare”	Handicare Limited (registered in England, company number 04108172) whose registered office is at Ashcombe House, 5 The Crescent, Leatherhead, Surrey KT22 8LQ;
“Dealer”:	the other party with which Handicare enters into a Contract for the (re)sale of Products, on the basis of a distribution agreement or otherwise;
“Customer”:	the party which purchases Products from Handicare and to that end enters into a Contract with Handicare;
“User”:	the party by whom the Products are intended to be used;
“Distribution Agreement”:	a contract between Handicare and a Dealer for the (re)sale of the Products;
“Contract”:	any contract concluded between Handicare and a Customer or a Dealer – on the basis of a distribution agreement or otherwise – with respect to the sale of a Product, any modification or addition thereto;
“Order”:	any order by the Customer or any acceptance by the Customer of an offer to enter into a Contract with Handicare;
“Products”:	manual or electric wheelchairs, scooters or other goods including spare parts supplied by Handicare, which Handicare sell on the basis of a Contract.

2 Applicability

2.1 These General Conditions shall apply to all Contracts which Handicare (including, but not limited to, all companies over which Handicare has actual or legal control) concludes with other parties for the supply and purchase of the Products. Merely by placing the Order and/or accepting the goods supplied the Customer accepts these conditions and will be deemed to have agreed to any further Orders being fulfilled on these General Conditions irrespective of a written confirmation by Handicare.

2.2 Handicare reserves the right to alter or add to these General Conditions, which alterations or additions will not, however, apply to Contracts concluded or Orders made prior to the alteration or addition.

2.3 The alterations referred to in paragraph 2.2 shall be binding as from the fifteenth day after Handicare has notified the Customer of the alterations.

2.4 In so far as relevant to the rights and obligations of the User, the applicability of these General Conditions shall entail that the Dealer commits himself to reselling the Product to third parties only on the relevant conditions as contained in these General Conditions. The warranty conditions (paragraph 9) of these General Conditions must in any event form an integral part of

the contracts of sale to be concluded between the Dealer and third parties. In addition, the Dealer shall limit his liability to third parties with due observance of the provisions paragraph 10.

- 2.5 Where applicable, a Customer granting the use of the Products to Users must incorporate the provisions referred to in paragraph 2.4 of these General Conditions into a user agreement between Customer and User.
- 2.6 Prior to entering into a user agreement or contract of sale with User or third parties for the sale or grant of the right of use of a Product, the Customer shall furthermore provide the User with comprehensive information regarding the appropriate use of the Product, to which end the Customer shall in any event supply a copy of the user's manual.

3 Offer: Conclusion of Contracts

- 3.1 Oral Orders submitted by the Customer shall only be binding if confirmed in writing by Handicare. Unless within one working day (during regular working hours, Monday to Friday inclusive) after receipt of this confirmation the Customer lodges a written notice querying the details of his Order, the Customer shall be bound by the Contract as confirmed.
- 3.2 Contracts will also be concluded upon receipt by Handicare of an Order signed by the Customer.
- 3.3 All oral and written offers and quotations issued by Handicare shall be non-binding and serve only as invitations to the Customer to submit Orders.

4 Payment

- 4.1 Unless otherwise agreed in writing, payment for the Products supplied must be effected by the Customer within thirty (30) days after the invoice date. Unless otherwise agreed in writing, all amounts billed shall be paid in full without any discount, rebate or deduction.
- 4.2 If a fixed discount percentage for the purchase of Products has been agreed in writing with the Customer, such percentage will be discounted in the invoices concerned. If a variable discount percentage for various Products has been agreed in writing, a quarterly set-off will be effected against accounts receivable, immediately payable or otherwise.
- 4.3 Unless expressly agreed otherwise, the prices quoted by Handicare shall include the delivery of the Products to the Customer.
- 4.4 If the delivery date stated by Handicare has passed without delivery having been effected and the delay can be attributed to causes as referred to in paragraph 13.1, after three months of delay (after the stated date) any increased costs incurred by Handicare may be charged on to the Customer.
- 4.5 Payment of the price increase as referred to in paragraph 4.4 shall be simultaneous with payment of the principal sum or, if payment by instalments has been agreed, payment of the final instalment.

5 Delivery

- 5.1 Agreed times of delivery shall be approximates and shall not be absolute deadlines.
- 5.2 The period of delivery shall commence when all technical details of the specifications as required by the Customer in respect of the Product to be delivered have reached Handicare.
- 5.3 If the Customer presents different product specifications once the Contract has been concluded, Handicare shall be allowed a reasonable period of time to process these new specifications and

the Customer shall be obliged to compensate any additional costs incurred as a consequence thereof.

- 5.4 Unless expressly agreed otherwise in writing, all Products sold by Handicare shall be delivered to the Customer and the risk in the goods shall pass to the Customer the moment when Handicare places a Product at the disposal of the Customer by delivering it to him.
- 5.5 Handicare shall be entitled to charge the Customer a delivery charge in respect of orders with a value of less than £50, and in respect of overnight deliveries where the Customer requests overnight delivery.

6 Packaging

- 6.1 Handicare shall package Products in accordance with the nature and the use of the Product sold.
- 6.2 If the Customer has special wishes in terms of packaging, Handicare shall satisfy such wishes to the best of its ability, to which end Handicare may charge a fee.

7 Default

- 7.1 The expiry of the agreed term for payment without payment being received by Handicare shall cause the Customer to be in default, in which case all accounts receivable for whatever reason shall be immediately payable.
- 7.2 On all amounts not paid by the last day of the term of payment Handicare reserves the right to charge interest for late payment at a rate equal to 4% per annum above the base rate from time to time of Barclays Bank plc.
- 7.3 Handicare shall be entitled at all times to demand security from the Customer for the payment of all present and future accounts receivable.
- 7.4 Pending the issue of security Handicare shall be entitled immediately to suspend performance of its obligations.

8 Retention of title

- 8.1 Notwithstanding actual delivery, no title to the Products shall pass to the Customer until the Customer has paid in full and clear funds all amounts he is or will be liable to pay under the Contract.
- 8.2 Until title to the Products has passed to the Customer, the Customer shall not be entitled to rent out, pledge or otherwise encumber the Products or grant the use thereof to third parties. The Customer shall only be entitled to sell, deliver or grant third parties the use of the Products, of which Handicare is the owner, in so far as such action is necessitated in the pursuance of the Customer's ordinary business activities.
- 8.3 If and as long as Handicare still owns the Products, the Customer shall immediately notify Handicare of any (imminent) seizure of the Products or other claim made with respect to the Products. The Customer shall likewise – in the event that he is in a position in which he has ceased to make payment – notify Users, if any, of the retention of title made by Handicare.
- 8.4 Upon request, the Customer shall inform Handicare where the Products the title to which is still held by Handicare are located.

9 Warranty

9.1 Save in so far as the following provisions stipulate otherwise, Handicare warrants to the Customer or User of the Product that the Product is sound and fit for the purpose for which the Product is intended to be used – as set forth in the user's manual of the Product. Handicare furthermore warrants the quality of the material used to manufacture the Product as well as the quality of the manufacturing process.

9.2 Handicare shall replace parts of the Product which are defective due to faulty materials or manufacturing defects on free of cost basis, provided that such defects arise within one (1) year after the date of delivery of the Product to the Customer and that the Customer uses the agreed Handicare returns procedure in order to receive credits for warranty replacement parts. The following shall be excluded from the scope of free replacement as specified in the preceding sentence:

- a replacement of parts of the Product required on account of defects arisen more than one (1) year after the date of delivery of the Product to the Customer;
- b replacement of parts of the Product required on account of defects resulting due to improper or careless use of the Product or resulting due to using the Product for a purpose other than the intended purpose; if the Customer is a Dealer, the Customer shall indemnify Handicare from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product;
- c parts subject to wear and tear, and the repair/replacement of these parts is the result of normal wear and tear;
- d with respect to the battery of the electric wheelchair and the electric scooter the warranty only covers instances of malfunctioning or non-functioning which are evidently the direct result of material defects or manufacturing defects. The warranty as set out in these provisions does not cover a battery which is malfunctioning or non-functioning due to normal wear and tear or due to improper or incompetent use of the Product or the battery forming part of the Product, including the improper charging of the battery and the failure to perform timely and proper maintenance; the Customer shall indemnify Handicare from and against any claims by Users or other third parties for defects resulting due to improper or careless use of the Product or the battery forming part thereof. This includes damage resulting due to the leakage of battery acid when performing maintenance to (wet) batteries.

9.3 The warranties as explained in the preceding provisions shall in any event cease to be effective if:

- a the Product maintenance guidelines drawn up by Handicare have not been observed at all or to an insufficient extent;
- b repair/replacement of parts results from neglecting, damaging or overburdening the Product or using the Product for purposes other than its intended purpose;
- c parts of the Product have been replaced by parts not of the same origin as those used by Handicare and/or parts of the Product have been replaced without authorisation by Handicare.

9.4 The warranties as set forth in paragraphs 9.1 up to and including 9.3 above shall become null and void if the Product is reused by a new User within the warranty period and that reuse necessitated modifications, of whatever kind, to the Product, which modifications were not authorised or performed by and/or on the instructions of Handicare.

9.5 The above warranty shall also become null and void if through the agency of the Customer, in instances other than those mentioned in paragraph 9.4, the Products have been altered in such

way as to cause the Products to malfunction.

- 9.6 In the event of damage to any Products the User or the Customer must contact Handicare as soon as possible and provide the most extensive information possible if they wish to retain their rights under the warranty set out above. The possibility to lodge a claim under the above warranty shall lapse upon expiry of a period of twenty (20) days after the damage occasioning the claim arose.
- 9.7 The replacement of a part or the repair or reconditioning of the Product during a warranty period shall not extend the warranty period.
- 9.8 Any repair to or reconditioning of the Product not authorised or performed by and/or on the instructions of Handicare shall not be covered by the scope of this warranty. If a User has authorised or performed and/or instructed the repair or reconditioning of a Product, the Customer shall indemnify Handicare from and against any claims by third parties following from such repair or reconditioning.
- 9.9 The following parts subject to wear and tear or breakage risk shall in any event be excluded from the scope of free repair/replacement unless the breakage and/or wear and tear has been caused by faulty materials and/or manufacturing defects:
- a foot plates and/or foot rests
 - b carbon brushes;
 - c upholstery of the seat;
 - d Frame covers, rain covers and other covers, apron, winter cover, immobilisation waistcoats, cross straps, sitter's pants and other similar accessories;
 - e tubes;
 - f damage to breakable materials such as lamps and other parts qualifying as vulnerable.

Depending on the other specifications of the Product, this list may be extended by Handicare. If so a list is attached to these terms and conditions (Schedule 1).

- 9.10 In the event that a User lodges a claim under a warranty with a Customer or that a Customer lodges such claim, Handicare shall be notified immediately.
- 9.11 If Handicare has determined a claim under the warranty to be justified, the costs of transport to Handicare will be borne by the Customer, the costs of transport to the Customer will be borne by Handicare.

10 Liability

- 10.1 Subject to the following provisions, Handicare will only be liable for causing death or bodily injury if this arises due to Handicare's own negligence or due to a defect in the Product for which Handicare is liable. Handicare will also be liable for damage to other goods owned by the User of the Product in a private capacity, if such damage is the direct result of a defect in the Product.
- 10.2 Handicare shall indemnify for damage as referred to in paragraph 10.1.
- 10.3 Handicare shall not assume any other or additional liability than the liability set out in paragraph 10.1. In particular, Handicare shall not assume any liability for indirect or consequential loss or damage in whatever form.

- 10.4 In so far as Handicare (notwithstanding the provision of paragraph 10.3) is ordered by a court or in any other forum for the settlement of disputes to pay damages other than referred to in paragraph 10.1, Handicare shall make indemnification in accordance with the provisions of paragraph 10.2.
- 10.5 Handicare shall not assume liability for damage resulting due to repair or replacement required to remedy defects caused by improper or careless use of the Product or caused by modifications made by the Customer or User which were not authorised or performed by and/or on the instructions of Handicare.
- 10.6 The Customer shall indemnify Handicare from and against any claims by Users under the warranty provisions referred to in paragraph 9 or claims for liability at law if the Customer or third parties have made modifications which are not in accordance with the supplied instructions and/or which have been made using the wrong materials, unless this failure to observe the instructions or use the right materials is based on an error in the technical manual or other instructions imparted by Handicare.
- 10.7 The Customer shall likewise indemnify Handicare from any against any liability resulting due to representations made by the Customer with regard to the Product which are incompatible with the quality or the normal use of the Product.

11 Intellectual property

- 11.1 Neither the Customer nor the User shall obtain any right of intellectual property with regard to the Products.
- 11.2 The Customer shall not be allowed to alter or remove Products or any identifying marks on the packaging thereof, or to make copies of the Products or any part thereof.
- 11.3 Handicare warrants that to the best of its knowledge the Products do not infringe any intellectual property rights held by third parties. In the event of claims by third parties for infringement of such rights, Handicare may if required replace or alter the Product concerned or terminate the Contract in whole or in part. The Customer shall only be entitled to terminate the Contract if and in so far as the Customer cannot reasonably be expected to uphold the Contract.
- 11.4 The Customer shall notify Handicare forthwith of any claim made in respect of the Products. In the event of such claim, Handicare shall be authorised to raise a defence on its own and on the Customer's behalf or to take legal action against the third party in question or to negotiate an out-of-court settlement with that third party. In so far as he can reasonably be required to do so, the Customer shall refrain from initiating such action and render his full assistance to Handicare.

12 Termination

- 12.1 If the Customer wishes to terminate the Contract without there being any failure in the performance of the contractual obligations on the part of Handicare and Handicare consents to termination, the Contract will be terminated by mutual agreement. Handicare shall then be entitled to compensation for all financial loss suffered such as operating losses, loss of profits and costs incurred in the assembly of a Product, amongst other things.
- 12.2 Handicare shall be entitled to terminate the Contract if the Customer is in default or in any of the following events:
- a a winding-up order has been made against the Customer, the Customer has gone into voluntary liquidation, an administrator or an administrative receiver has been appointed in respect of the Customer or the Customer has applied for a suspension of payments;

- b a third party attaches/garnishes goods and/or claims of the Customer;
- c the death or bankruptcy of the Customer, if the Customer is a natural person.

13 Force majeure

- 13.1 If as a result of an event of force majeure Handicare is prevented in whole or in part from delivering a Product under a Contract, Handicare will be authorised to suspend performance of its obligations arising from the Contract for the duration of the event.
- 13.2 Only if the period during which Handicare as a result of an event of force majeure is prevented from fulfilling its obligations arising from the Contract has continued for longer than three (3) months shall the Customer be entitled to cancel the Contract. However, if it is established that the event of force majeure is permanent, each party shall be entitled to cancel the Contract with immediate effect by written notice sent by registered post.
- 13.3 Handicare shall not be liable towards the Customer or the User for direct or indirect damage or loss suffered by the Customer or the User as a consequence of Handicare's breach of contract on account of force majeure, unless this force majeure was caused by intent or gross negligence on the part of Handicare.
- 13.4 If as a result of an event of force majeure Handicare is prevented from performing its obligations arising from the Contract, Handicare will notify the Customer without delay and furthermore keep the Customer informed of developments with regard thereto.
- 13.5 The term "force majeure" as referred to in this paragraph 13 shall be understood to include any circumstance beyond the control of Handicare which prevents Handicare from fulfilling all or any of the obligations under the Contract temporarily or permanently or by reason of which Handicare cannot reasonably be required to fulfil its obligations, regardless of whether such event was foreseeable at the time when the Contract was made. Such circumstances in any event include but are not limited to: (civil) war, imminent war, insurrection, strikes, shortage of labour, fire, epidemics, restrictive measures imposed by any government authority or a malfunctioning component of the assembly line or the electrical equipment.

14 Applicable law

- 14.1 These General Conditions as well as the Contract shall be governed by the laws of England.
- 14.2 All disputes arising out of or in connection with Contracts shall be submitted to the sole judgement of the English Courts.
- 14.3 The United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna 1980) shall not be applicable, nor shall any other international (set of) regulation(s) exclusion of which is permitted.
- 14.4 The parties may agree to settle their disputes through arbitration or mediation by way of alternative to civil action.

15 Conversion

- 15.1 If any one or more of these conditions should contravene any provision of statutory law either in whole or in part, the remainder of these conditions will continue in full force and effect, and with respect to the voided provision the parties shall furthermore be deemed to have agreed on a provision which is allowed under statutory law and approximates the effect of the voided provision most closely.

SIGNATURE..... PRINT NAME..... DATE.....

COMPANY.....