GENERAL TERMS OF SALE

1 GENERAL
1.1 All sales by Medtronic (Africa) (Pty) Ltd or such of its affiliates as may be otherwise stipulated, (hereafter “SELLER”) are subject to the special terms of sale specified on offers and sales agreements issued or signed by SELLER and to these General Terms. Amendments must be in writing, signed by a duly authorized representative of SELLER. Submission of an order to SELLER shall mean that BUYER is deemed to have accepted the special and general terms of sale applicable as specified in SELLER-issued or signed documents.

1.2 In the event of conflict, the order of priority shall be: (a) the special terms issued or signed by SELLER and applicable to the concerned sale, (b) these General Terms.

1.3 “Products” shall mean the products offered for sale by SELLER.

2 PRODUCT INFORMATION SUPPLIED TO BUYER

2.1 Catalogues and price lists are supplied to BUYER purely for information, and nothing contained therein shall form any part of these General Terms, and SELLER may change prices or the list of Products available for sale at any time without notice, provided, however, that SELLER shall not change any prices after SELLER has formally accepted an order from BUYER.

2.2 Save as provided in Paragraph 8, SELLER makes no representation or warranty regarding Products. SELLER shall use its reasonable efforts to deliver Products which conform to the Product specifications issued by SELLER or included in SELLER’s Product catalogues user manuals or other Product information documents but reserves the right to change or modify the design, specification or source of the products. BUYER shall store Products in facilities appropriate for Products' future use, and shall not use Products after the specified ‘Use before Date’.

3 ORDERS

3.1 BUYER shall submit orders for Products by e-mail, mail, electronic ordering system/EDI or facsimile to SELLER or to SELLER’s authorised representative. All telephone orders must be confirmed in writing within seven days and will only be processed upon written confirmation being received. Such orders shall specify the following minimum information, with respect to each Product ordered: (i) the Product number, (ii) the quantity ordered, (iii) the price per item, (iv) the requested delivery dates, (v) agreed delivery and payment terms if applicable, and (vi) the shipping instructions and any other pertinent information.

3.2 An order shall be binding upon BUYER at the time of submission to SELLER. SELLER shall be bound only upon formal acceptance by SELLER which may be given by e-mail, mail, electronic order system/EDI or facsimile.

3.3 BUYER shall not cancel any order, in part or in whole, once BUYER has received SELLER’s formal acceptance of such order, unless BUYER: (i) notifies SELLER of the desired cancellation before the Products are delivered by SELLER, and (ii) at Medtronic’s discretion, agrees to pay SELLER a cancellation fee amounting to fifty percent (50%) of the total order or part order to be cancelled.

3.4 Where an order is agreed to be consignment stock controlled by BUYER, the terms and conditions of Medtronic’s Consignment Agreement shall apply. The sale of Products becomes effective immediately upon BUYER’s use of the Product in consignment, or upon the occurrence of any event which alters the Product’s packaging, conditioning, characteristics, performance or quality in any way or for any reason whatsoever, or upon BUYER’s loss of the Product due to any cause whatsoever. Until the sale becomes effective, SELLER shall have the right to repossess Product in consignment stock at any time, with or without prior notice to BUYER, and BUYER shall not refuse SELLER or SELLER’s representative access to the Products during normal business hours.

4 DELIVERY, TITLE, RISK

4.1 The SELLER’S Products are imported into South Africa and the SELLER is the authorized representative of the Products in South Africa.

4.1.1 Products sold within South Africa are sold DAP [place to be determined]. The risk associated with loss of, or damage to, Products shall be for BUYER’s account as from the time of delivery to the BUYER.

4.1.2 Products sold outside South Africa are sold CPT [place]. The risk associated with loss of, or damage to, Products shall be for BUYER’s account as from the time of shipping to the BUYER.

4.2 Title to the Products shall pass to BUYER when SELLER receives full payment from BUYER.
4.3 BUYER shall not refuse delivery of partial shipments or of any shipment that includes Product errors or damaged Products. To notify SELLER of damaged products or errors, BUYER shall make the appropriate notice on the shipment documents at the time of delivery of Products, and shall send a copy of such annotated shipment documents to SELLER at the latest seven (7) days after such delivery. Failing such notification, BUYER shall have no right to claim that Products shipped were not in perfect condition and corresponding to the invoice and SELLER shall not be responsible for any defects which examination of Products would or should have revealed. BUYER shall store the Products until returned to SELLER.

4.4 In case of faulty Products, SELLER shall use its reasonable efforts to promptly ship, at SELLER’s exclusive cost, replacement Products to BUYER. Such replacement Products shall be invoiced separately to BUYER, at the prices agreed in the accepted order, while Products returned and accepted by SELLER, pursuant to SELLER’s Product return policy set out in paragraph 12 shall be credited to BUYER at the invoiced price.

5 PRICES, INVOICES
5.1 The Product price list current at the time the order is accepted by SELLER shall determine the invoice price, unless SELLER notifies BUYER of a different price. SELLER may at its discretion change the prices for the Products. All prices are exclusive of duty or tax, in particular VAT, which BUYER shall be liable to pay at the applicable rate from time to time.

5.2 SELLER shall use its reasonable efforts to issue invoices for Products at the soonest on the day of shipment of an order. Any one order may result in several and separate invoices from SELLER in case of separate shipments, provided that each invoice shall clearly reference the order it corresponds to.

6 PAYMENT TERMS
6.1 BUYER shall pay all invoices for Products within thirty (30) days net of the date of the invoice. Payment shall be considered as effective only upon receipt of the full amount invoiced, without any deduction of any kind, into the bank account identified separately by SELLER to BUYER, in the currency specified in the invoice.

6.2 Any amount not received by SELLER when due shall automatically accrue interest at the late payment interest rate of 1.5% per month. Interest accrued can be waived at the sole discretion of SELLER.

6.3 Until such time as property in the Products passes from SELLER pursuant to clause 4.2 or upon the occurrence of any of the termination events in clause 14 below, SELLER may (without prejudice to any of its other rights and remedies) by notice in writing request BUYER to deliver up to it such Products as have not been resold. If BUYER fails to do so within 14 days SELLER may enter upon any land or premises owned, occupied or controlled by BUYER where such Products are situated and repossess the Products and take all necessary steps to enable it to recover and dispose of the Products.

6.4 SELLER may suspend any further shipment of Products, even after orders have been accepted, until any and all overdue amounts, including accrued late payment interest charges until the date of actual payment, have been paid into SELLER’s bank account. Such remedies are in addition, not in lieu of, any other remedies available to SELLER under applicable law.

6.5 BUYER shall not be entitled to deduct or set off against any sum due to SELLER any monies which are not presently payable by SELLER or in relation to which SELLER disputes liability.

7 LIMITATION OF LIABILITY - FORCE MAJEURE
7.1 SELLER shall use reasonable efforts to deliver Products upon the dates or within the delays specified in the accepted order, but SELLER shall not be liable in case of late delivery, and BUYER shall not refuse, in part or in whole, any delivery of Products due to any delay in shipment.

7.2 SELLER shall not be liable to BUYER for failing to perform, in whole or in part, any of its obligations if such failure is caused by Force Majeure. Force Majeure is understood, for the purposes of these General Terms, to include any and all events beyond the reasonable control of SELLER. SELLER shall inform BUYER of the occurrence of the Force Majeure event promptly, as well as of the expected effect on the fulfillment of SELLER’s obligations. Moreover, SELLER shall use its reasonable efforts, however, to mitigate the consequences of Force Majeure, or to find alternative means of fulfilling its obligations in reasonably comparable economic ways. In case Force Majeure is preventing, or expected by SELLER to prevent, SELLER from delivering Products ordered to BUYER for more than thirty (30) days past the planned date of delivery, BUYER and SELLER shall have the right to cancel the concerned order in whole or in part, by informing the other party in writing at
any time before the effective shipment of the Products by SELLER.

7.3 SELLER shall not be responsible for the correct classification by the BUYER of the Products for the purposes of any BBBEE claims that may be made by the BUYER.

8 LIMITED PRODUCT WARRANTY

8.1 SELLER grants BUYER with respect to the particular Products that benefit from a product warranty, a limited Product warranty in the terms set out in the relevant Product documentation or packaging. The remedies set out in such Product warranty are the only remedies available in the event of breach of such warranty.

8.2 Save as expressly provided in these General Terms no term, condition or warranty is made or implied, including as to the quality (satisfactory or otherwise) or fitness of the Products supplied, or to the effect that Products will be suitable for any particular purpose or for use under any specific conditions which may be known or made known to SELLER.

8.3 Without prejudice to paragraph 8.1 above and to the fullest extent permissible by law, SELLER shall be under no liability to BUYER for any loss, damage, injury or expense whatsoever arising from a defect in the Products or from any cause whatsoever relating to the Products.

8.4 To the fullest extent permissible by law, any liability that SELLER may have under these General Terms shall be limited to the damage suffered directly by BUYER and shall in no case exceed the sums payable in respect of those Products which have been supplied in breach of these General Terms.

8.5 To the fullest extent permissible by law, the SELLER shall not be liable in contract delict (including negligence or breach of statutory duty) statute or otherwise for any indirect or consequential loss or damage of any kind or for any increased costs or expenses or for loss of profit, business, use, contract, revenues or savings, whether or not SELLER has been advised of the possibility of such loss.

8.6 No employee, agent or representative of SELLER shall have any authority to bind SELLER to any statement concerning the Products which is not expressly contained or referred to in these General Terms. BUYER shall have no remedy in respect of any statement, whether written or oral (other than a fraudulent misstatement) made to it upon which it relied in entering into these General Terms and SELLER shall have no liability to BUYER other than pursuant to the express terms of these General Terms.

8.6 Nothing in these General Terms shall exclude or restrict any implied conditions or warranties or exclude or restrict SELLER’s liability to the extent that such cannot be excluded or restricted by law.

9 RECALLS

BUYER shall maintain a tracking system which shall record or allow it to retrieve, in the format required by law, for the lifetime of each SELLER’s product used by BUYER (plus five years), all information on each SELLER’s product which is needed to comply with all legal requirements and/or official Guidelines which are or may become applicable to such SELLER’s products, including information on the end-user.

10 NOTIFICATIONS

BUYER shall immediately notify the responsible SELLER’s Quality Control Officer at the SELLER’s address by telephone and fax with a letter of confirmation by registered mail of any information on product performance or safety including, but not limited to, any malfunction, failure, deterioration in the characteristics and/or performance, as well as inaccuracies in the instructions for use, coming to the attention of BUYER. BUYER shall hand over to SELLER all relevant documentation pertaining thereto including in relation to end users, customers and patients.

11 FIELD ACTION

BUYER shall actively assist SELLER in taking any steps required by SELLER to perform a field action with regard to SELLER’s Products purchased by BUYER, including but not limited to implementation of any update, upgrade, change order, reminder to users correspondence regarding correct use, recall or withdrawal of Products. BUYER shall be responsible for its own costs of such assistance unless otherwise agreed.

12 PRODUCT RETURN POLICY

12.1 SELLER must be informed of any Product return request by BUYER and must expressly approve such request in advance.

12.2 Minimum criteria for return:

a) Products must be in original packaging, unopened and undamaged and not marked or written on including that no supplemental labels have been added.
b) Seal of all implantable Products must not be damaged or broken.
c) SELLER must inspect programmers, externals, etc. before acceptance. Cost of possible repair will be charged to BUYER.
d) Credit will be granted to BUYER only if and when returned Product is accepted by SELLER.

12.3 SELLER shall not, under any circumstances, accept return of:

a) Products which require special storage conditions
b) Products having their "use before date" expired or less than six months to run after the date of return.
c) Hazardous materials, human tissue
d) Products which have been integrated into, or which constitute, a custom procedure kit or tray

g) Custom manufactured products.

12.4 Tissue valves

12.4.1 Tissue valve returns will be accepted only if the products have at least a remainder of eighteen (18) months of the "use before date".

12.4.2 Tissue valves must be shipped in white temperature boxes and have an external temperature gauge if no temperature gauge is built in the original product packaging providing evidence of continuous compliance with temperature requirements.

12.4.3 The airway bill must mention: «Fragile heart valves – must be transported between 10°C and 25°C.»

12.5 BUYER may request that refused returned Products be re-shipped to it, at its exclusive expense; or SELLER will have refused Product destroyed.

13 DATA PROTECTION

Information which the BUYER provides or which is obtained in dealings with the BUYER may constitute personal information as defined in the Protection of Personal Information Act, 4 of 2013 ("POPIA") and will in such cases be processed by the SELLER in accordance with the provisions of POPIA.

As part of providing the Products and any related services, the SELLER may process:

(a) Personal information of the BUYER, the BUYER’s staff members, including but not limited to its shareholders, directors, employees, trainees, interns, authorized agents, representatives and BUYER’s suppliers and contractors ("BUYER Data"), as well as

(b) Personal information of the BUYER’s customers, patients, or other contact persons of the BUYER whose information the BUYER warrants was lawfully conveyed to the SELLER by the BUYER ("Third Party Data").

The SELLER will process the BUYER Data to fulfill the contractual relationship with the BUYER in order to provide the Products and any related services. The BUYER will be the Responsible Party and each shall be accountable to ensure compliance with POPIA.

The SELLER will only process Third Party Data on the BUYER’s behalf and explicit instruction and unless otherwise agreed.

Conditions for Processing the BUYER Data

Purpose and Legal Basis: The SELLER will process the BUYER Data to provide the Products and related services; to review, develop and improve the Products and any related services; to enable the SELLER to provide the BUYER with relevant information through marketing materials; to safeguard and protect the SELLER’s rights and interests; and to comply with the SELLER’s legal obligations and with legitimate judicial, governmental and law enforcement requests or orders. The SELLER will process the BUYER Data on the basis of, where appropriate, the individual’s consent or the necessity of the processing for: (i) the performance of an agreement with the BUYER; or (ii) complying with a legal obligation; or (iii) observing the SELLER’s and other third parties’ legitimate interests where they outweigh the rights of the individual with regard to the protection of his or her personal information.

Types of Personal Information: The BUYER Data processed may include, but are not limited to, individuals’ basic identity information, contact details, professional activities and affiliations, professional qualifications, education and training, financial information and personal preferences. The SELLER may identify certain characteristics, preferences or traits on the basis of which the SELLER may create or compile professional, financial or Behavioural profiles for the abovementioned purposes.

Transfer: The SELLER may make the BUYER Data available to the SELLER’s business partners, suppliers, contractors and affiliated entities anywhere in the world, insofar as this is required for any of the purposes described in clause. Where the BUYER Data is transferred outside the Republic of South Africa, the SELLER will ensure that adequate legal safeguards are in place which ensure the safety and security of the BUYER Data to a level equivalent to that provided by POPIA.

Retention and Data Security: The BUYER Data will only be processed in an identifiable format for as long as required to achieve the purposes listed in this clause. The SELLER will take reasonable technical and organizational measures necessary to ensure an adequate level of protection against unauthorized access or theft as well as accidental loss, tampering or destruction.

Data Subject Rights: The individuals whose personal information is considered the BUYER Data have certain rights regarding The
SELLER’s processing of their personal data. Such rights include the right to access, correction of information, restriction, erasure, withdrawal of earlier given consent, and filing complaints with the Information Regulator. Where the SELLER and the BUYER are jointly responsible as controllers, they shall take such steps in order to ensure that, to the extent reasonably possible, individuals first and foremost address their request and complaints to the BUYER. Where appropriate, the BUYER may refer these request or complaints to the SELLER’s Information Officer by emailing rs.privacyeurope@medtronic.com. Where the SELLER is solely responsible for the processing, individuals may direct any such requests or complaints to rs.privacyeurope@medtronic.com. Where the SELLER and the BUYER are jointly responsible for the processing of personal information, the BUYER will provide all legally required information regarding the SELLER’s processing to the individuals and will obtain on behalf of the SELLER, when required, the legally valid consents of the individuals to the intended processing.

Conditions for Processing Third Party Data
The SELLER will process Third Party Data in the manner and under the conditions agreed between The SELLER and The BUYER and as required by law. The BUYER instructs the SELLER in any case to process Third Party Data insofar as required to provide the Products and any related services requested by The BUYER; to safeguard and protect the legitimate interests of The SELLER and the BUYER in relation to providing the Products and related services to the BUYER; and to comply with the BUYER’s and the SELLER’s legal obligations in relation to the provision of the Products and related services and with legitimate judicial, governmental and law enforcement requests or orders. This clause shall apply unless the BUYER and the SELLER have concluded a separate agreement pertaining to the processing of personal information in relation to a given product or service; in such cases the provisions of the separate agreement shall prevail over this clause 13.

14 TERMINATION
SELLER shall be entitled (without prejudice to its other rights and remedies against BUYER) by notice in writing to BUYER to terminate or suspend any agreement for the purchase of Products if:
   a) BUYER permits any judgment to be taken or levied against it, becomes insolvent or unable to pay its debts, goes into liquidation or enters into any voluntary arrangement with its creditors or members, commences or has commenced against it any proceedings for liquidation or any voluntary arrangement, has a receiver or administrative receiver appointed over any of its assets, presents or has presented against it a petition for the appointment of an administrator or applies for an administration order, has a moratorium imposed pursuant to applicable insolvency legislation; or suffers or undertakes anything analogous to the foregoing under the laws of any applicable jurisdiction; or
   b) breaches any of its obligations under these General Terms.
15 MISCELLANEOUS

15.1 The validity, interpretation and enforcement of this Agreement shall be governed solely by the laws of the Republic of South Africa.

15.2 To the extent legally possible, and in the event the parties cannot find an amicable solution after reasonable efforts and negotiations, all disputes that arise out of this Agreement or in connection therewith shall be subject to the exclusive jurisdiction of the competent courts of the Republic of South Africa. Notwithstanding the foregoing, SELLER shall have the right to seek injunctive relief and/or bring an action for payment of debts against BUYER before any competent court, including courts with jurisdiction according to the registered address of BUYER or the address of shipment origin or destination of Products. The provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods are hereby excluded.

15.3 WAIVER
SELLER shall not be deemed to have waived any of its rights or remedies whatsoever unless such waiver is in writing and signed by a duly authorized representative of SELLER. No delay or failure of SELLER in exercising or enforcing any of its rights or remedies shall operate as a waiver thereof.

15.4 INVALIDITY
The invalidity or unenforceability for any reason of any clause or part thereof in these General Terms shall not prejudice or affect the validity or enforceability of the remainder.

15.5 BUYER may not assign or transfer any of its obligations under this agreement without the prior written agreement of SELLER.

15.6 Any notice required or permitted to be given by one party to the other under these General Terms of Sale shall be sent by special courier to the other party at the address provided in the formal acceptance by the SELLER, or at any other address subsequently notified by one party to the other; any such notice shall be deemed to have been received, on next Business Day following the date of delivery by the special courier service.

15.7 COMPLIANCE WITH APPLICABLE LAW
In performing its obligations hereunder BUYER shall comply with any law or regulation applicable to it or to its activity of purchasing Products from SELLER.

BUYER agrees to maintain a high standard of moral and ethical behavior concerning its activities under this Agreement and conduct its business with the highest degree of integrity.

BUYER warrants that it shall not, directly or indirectly, make, offer, promise, or authorize the payment or giving of any money or thing of value to any Third Party (which is defined to include a Government Official or any other customer or person) for the purpose of obtaining any improper business advantage. Such purpose shall be deemed to exist if a payment or gift is made, offered, promised or authorized with the intent to or with the knowledge that it is likely to: (i) corruptly affect or influence any act or decision of a Third Party, including a decision to fail to perform his or her lawful duty, or (ii) induce a Third Party to corruptly affect or influence any act or decision of any Public Authority or customer in order to assist SELLER or BUYER in connection with the use or sale of the Products. BUYER acknowledges that no employee of SELLER or any of its Affiliates has any authority to give any direction, written or oral, in contravention of the foregoing in connection with the making of any payment or commitment by BUYER to any third party.

BUYER further acknowledges SELLER’S policy prohibiting the offer or giving of anything of value to a healthcare professional (HCP) with an explicit or implicit requirement to use or purchase future Medtronic products, or as a reward for prior use or purchase of Medtronic products.