



**ENDOLOGIX INTERNATIONAL HOLDINGS B.V.  
GENERAL TERMS AND CONDITIONS OF SALE AND CONSIGNMENT**

**1. General**

- 1.1 **Scope of Application.** These Terms and Conditions (“**Terms and Conditions**”) apply to all offers and agreements concluded or to be concluded by Endologix International Holdings B.V. (“**Endologix**”) and the person, company or hospital (separately and jointly: the “**Buyer**”) that purchases and/or orders for and/or keeps in consignment products from Endologix (“**Products**”), as well as to any related activities and any further legal relationship between Endologix and Buyer. These Terms and Conditions consist of this Section 1 – *General*, which applies to all agreements and the specific Sections A and B, which apply in addition thereto depending on the nature of the agreement. In the event of any inconsistency or conflict between a provision of this Section 1 and the specific Sections A or B, the specific section prevails to the extent of the inconsistency or conflict.
- 1.2 **Buyers Terms and Variation.** Products furnished by Endologix to Buyer are sold only and offered for consignment only on the terms and conditions stated herein and Endologix rejects the applicability of any terms and conditions applied by Buyer. Irrespective of any terms or conditions on Buyer’s order, Endologix’s performance of an agreement is expressly made conditional on Buyer’s agreement to these Terms and Conditions, unless expressly agreed otherwise in writing by Endologix. No variation to these Terms and Conditions or to any offers or orders confirmations from Endologix shall be binding unless expressly agreed in writing and executed by a duly authorized representative on behalf of Endologix.
- 1.3 **Formation of Contract.** All offers made by Endologix shall be free of any obligation, unless the contrary has been expressly indicated in writing by Endologix. Endologix shall be entitled to reject any orders placed by Buyer. A contract will be deemed to have been concluded after Endologix has confirmed an order placed by Buyer in writing, or if Endologix has commenced the execution of that order, whichever moment occurs first. In the event that an agreement is concluded by e-mail or in the event that an agreement is concluded through another means of electronic communication, such e-mail message or statement made through another means of electronic communication is deemed to be equal to a written statement and the principle will apply, without prejudice to the foregoing, that an agreement may be concluded without Endologix having to fulfill any conditions provided by law pertaining to electronic communication.
- 1.4 **Modifications.** Endologix reserves the right to make at any time, without notice, changes in design or additions to or improvements in its Products, without liability or obligation to replace any Products delivered prior thereto to Buyer. In addition, Endologix reserves the right to discontinue or withdraw any Products without notice.
- 1.5 **Lead Times.** Times and dates indicated by Endologix for delivery/making available Products are estimates only. Endologix will use all reasonable efforts to meet the estimated times and dates but will not be in default upon the mere failure to meet any such estimated times and dates.
- 1.6 **Product Recall.** Endologix shall promptly inform Buyer in the event it issues a product recall (as required or voluntarily) and Buyer shall, in joint consultation, promptly provide all necessary cooperation in connection with the same. Buyer shall follow through with all instructions given by Endologix, if Endologix determines that Products made available to Buyer have to be taken off of the market, or that patients have to be warned or that any other measure has to be taken in the light of any recall. Endologix’ liability towards Buyer in respect of a product recall will be limited to the amount equal to the actual price paid by Buyer in respect of the recalled Products. Buyer shall ensure that it has an adequate system in place triggering notification that a device recall exists for a specific product and possibility to identify whether the device has been implanted in a patient, was scheduled to be implanted or resides in (consignment) inventory at the medical facility of Buyer. At the request of Endologix, Buyer shall provide all information regarding its recall procedures and contract details of responsible officers. Buyer shall immediately report to Endologix in writing (including a detailed description), of any adverse incidents it becomes aware of or reasonably suspects. An adverse event is to be understood as an event that causes, or has the potential to cause, unexpected or unwanted effects involving the safety of Products users (including patients) or other persons.
- 1.7 **Return.** Buyer may only return any consigned or purchased Products with prior authorization from Endologix’s Customer Service Department at [EUCustomerService@endologix.com](mailto:EUCustomerService@endologix.com), who will issue the Buyer a Return Goods Authorization (RGA) number. Returned items must be in original, unopened shipping cartons in saleable condition and must be accompanied by the RGA number and have a best before date of at least one (1) month.



- 1.8 Suspension and Termination. Endologix will be entitled to immediately suspend (further) performance of its obligations or to terminate any agreement concluded with the Buyer, in whole or in part, if (i) any goods made available by Endologix to Buyer become subject to attachment; (ii) Buyer is granted a moratorium of payment, is declared bankrupt or an application to that effect is pending; (iii) any permit or license required for the performance of the agreement or use of the Products is withdrawn; (iv) Buyer ceases its business; (v) Endologix has sound reasons to believe that Buyer is unable to fulfill its (payment) obligations under any agreement; or (vi) Buyer does not follow the specifications and instructions as issued by Endologix for use of the Products.. Any right of Buyer to suspend performance is hereby excluded.
- 1.9 Confidentiality. Any data or information required or acquired by Buyer in connection with an agreement as well as the contents of the same, including but not limited to information regarding Endologix' business affairs, correspondence, customers, finances, methods, Products or technology and specifications shall be treated as confidential and as proprietary information and shall be protected from disclosure by Buyer and its employees, except for (i) information that at the time of contracting was already readily available in the public domain; and (ii) information of which disclosure is required pursuant to court order, request of an administrative agency or governmental body, provided that direct notice is given to Endologix. Buyer shall adequately inform its employees of the obligations under this provision and use its best efforts to ensure that its employees comply with the same.
- 1.10 IP Rights. All current and future intellectual property rights, including but not limited to trademark rights, copy rights, patent rights, design rights with respect to Endologix's Products and any specifications regarding the same shall at all times exclusively vest in Endologix (or its parent company Endologix LLC or any other group company, as the case may be). Buyer may not reproduce, copy or in any manner disclose the specifications of the Products to third parties without Endologix's prior written consent. In the event that Endologix gives written consent to Buyer to disclose the specifications to third parties, Buyer shall ensure that such third parties shall have the same obligations as set forth in this Article 1.10. Notwithstanding delivery of and the passing of title in any Products, nothing in any agreement shall have the effect of granting, licensing, or transferring to, or vesting in, Buyer any intellectual property rights, including but not limited to trademark rights, copy rights, patent rights, design rights in or to any Products.
- 1.11 Force Majeure. Endologix shall not be liable for delays in or any improper performance of any purchase order or its obligations under any agreement with Buyer where such arises out of causes beyond the control of Endologix (situation of "*force majeure*"). Causes beyond Endologix's control shall in any event include (without limitation) government actions or measures or failure of the government to act where such action is required, transport problems, strikes or other labor trouble, fire or unusually severe weather, pandemics or epidemics, delays in supplies of Endologix's suppliers or the occurrence of any of the other circumstances mentioned herein affecting Endologix's suppliers and import and export embargoes. In the event that Endologix has already partially fulfilled its obligations upon the occurrence of a situation of force majeure or is only able to fulfill its obligations in part, it is entitled to separately invoice the part already supplied in which case Buyer shall pay such invoice in accordance with these Terms and Conditions as if it pertained to a separate agreement. If the period during which performance is prevented due to an event of force majeure lasts longer or is expected to last longer than two consecutive months, both parties have the right to terminate the agreement upon written notice, unless Endologix indicates that it wishes to extend the term for performance by a longer period, without such giving rise to any entitlement to damages of Buyer.
- 1.12 Liability. Endologix will in no event be liable for any indirect or consequential damages (being any damages other than direct damages; indirect damages are, without being limited thereto, loss of profits, loss of revenue, loss of actual or anticipated savings and loss of goodwill). Endologix' total maximum liability towards Buyer for any direct loss or damage (being the costs that are necessary in order to have Endologix comply with the agreement), whether arising out of tort, contract or on any other legal basis, shall be limited to (i) the actual amount ultimately paid out by Endologix' insurance company not supplemented with the applicable deductible or alternatively, failing any such payment; or (ii) an amount equal to the aggregate amount paid or payable by Buyer under the relevant sales agreement of the Product to which the liability relates, regardless of whether such liability consists of an obligation to pay damages or repayment of an amount received from Buyer. If the agreement is a continuing performance contract with a term of more than one (1) year, the sum shall be set at the total amount owed by Buyer (excl. VAT) for the preceding six (6) month period. In any case, the total aggregate liability of Endologix for direct damage or loss, for whatever reason, shall not exceed an amount of one hundred thousand Euros (EUR 100,000). The limitations provided for in this Article



- also inure to the benefit of any auxiliary persons engaged by Endologix. Nothing in these Terms and Conditions will limit Endologix' liability if and to the extent that any damages incurred by Buyer are the result of Endologix' executive management's gross negligence or willful misconduct. Buyer's claims, howsoever arising, will expire upon expiry of one (1) year following the moment in which the event underlying the claim has arisen.
- 1.13 Advice. Endologix may, through field sales and clinical specialists employed by it, render advice to Buyer on the use of the Products and assist physicians in selecting Products for minimally invasive treatment of aortic disorders. Such advice will in no event qualify as medical diagnosis or medical treatment advice and Buyer and its physicians shall solely be responsible for the final determination of the appropriate Products to be used for medical treatment of patients. Without prejudice to Article 1.12, Endologix shall not be liable for any advice it renders regarding or in connection with the Products.
- 1.14 Compliance and Indemnification. Buyer shall comply with all applicable laws, rules and regulations concerning medical devices and respective guidelines of the European Commission (currently MDR). Buyer shall indemnify and hold harmless Endologix from any and all claims, damages, losses or expenses, which (i) are different from or higher than a claim that Buyer is entitled to make towards Endologix pursuant to the agreement; and/or (ii) are caused by or arise out of any non-compliance of Buyer, or Buyer's agents, employees or subcontractors under such laws or regulations and any handling, storage or use of the Products which is contrary to applicable guidelines, including the instructions of Endologix for use of the Products, and any other applicable guidelines or laws and/or regulations.
- 1.15 Assignment. Any agreement concluded with Buyer hereunder or any claims related thereto cannot be assigned and/or transferred by Buyer without the prior written consent of Endologix. Any assignment and/or transfer in deviation of this clause is null and void, and this provision is intended to have the non-assignability and/or non-transferability effect as set forth in Article 3:83 under paragraph 2 of the Dutch Civil Code. Endologix is entitled to assign and/or transfer any rights and obligations and/or its contractual position under these Terms and Conditions and any agreement concluded with Buyer (i) to a company part of the Endologix group of companies; or (ii) in connection with the sale or transfer of the business or assets to which it relates without the prior written consent of Buyer, and Buyer hereby agrees to and cooperates in advance with any such (proposed) assignment and/or transfer. Buyer agrees that Endologix shall have the right to subcontract any of its obligations under these Terms and Conditions and/or agreement concluded hereunder with Buyer.
- 1.16 Severability. All of the provisions of these Terms and Conditions are separate and severable. If any provisions of these Terms and Conditions are held invalid or unenforceable by a competent judge or tribunal, such invalidity or unenforceability shall not affect the validity or enforceability of the other portions hereof.
- 1.17 Non-Waiver. The waiver by Endologix of any term, provision, or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition, or provision hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same condition or provision. Any remedies of Endologix provided for in these Terms and Conditions or otherwise under any agreement concluded with Buyer are non-exclusive and shall be in addition to any remedies available by applicable law.
- 1.18 Applicable Law & Dispute Resolution. The validity, interpretation, construction and performance of these Terms and Conditions and any offer, order or agreement referred to in Article 1.1 as well as any other ensuing agreement, shall be governed by and construed in accordance with the laws of The Netherlands, except its conflict of laws rules. The applicability of the UN Convention on Contracts for the International Sale of Goods ("CISG" 'Weens Koopverdrag') is excluded.
- 1.19 Any claims and disputes arising from and/or in connection with these Terms and Conditions and/or any offer, order or agreement referred to in Article 1 of these Terms and Conditions and any ensuing agreement shall be submitted to the exclusive jurisdiction of the competent court of Amsterdam, The Netherlands, whereby Endologix reserves the right to submit a claim or dispute to another court that would have jurisdiction absent this provision.
- 1.20 Privacy. In the context of the agreement between Endologix and the Buyer, data from the Buyer's patients can be exchanged to the extent necessary for the execution of the agreement. The applicable regulations apply to this exchange of data, including the GDPR ('AVG'). More specifically, data under the agreement may also be shared with entities located in the USA, affiliated with the Endologix group. The Buyer shall ensure and indemnify Endologix against any and all claims in this regard that it has the consent of the patients concerned at all times and that it has set up and secured its systems in accordance with the regulations. In the case of data sharing with entities in the USA, Buyer will ensure that the explicit consent of the patient has been obtained and other required measures have been taken in accordance with the current state of regulations. If and insofar as necessary, Endologix and Buyer will conclude a processing agreement. Endologix ensures that the processing of personal data – if applicable – complies with the laws and regulations regarding the protection of personal data. Buyer is deemed to have taken note of the privacy statement of Endologix included on her website [www.endologix.com](http://www.endologix.com) and to agree to the processing of the personal data described therein.
- 1.21 Change of Terms and Conditions. These Terms and Conditions can be changed by Endologix, insofar no mandatory legal



provisions opposes this. The latest version of the Terms and Conditions, as applicable at the time of the establishment of the legal relationship, applies to the agreement between Endologix and Buyer.

## **PART A - SALE OF PRODUCTS**

### **2. Applicability**

2.1 In addition to the above provisions, the provisions of this Section A apply in the event that Buyer purchases Products from Endologix.

### **3. Prices and Taxes**

3.1 Buyer shall pay Endologix for the Products according to Endologix' then current prices. Prices indicated on any price lists are exclusive of all applicable levies or taxes including but not limited to (local) municipal and all other governmental excise, sales, use, and similar taxes, VAT, duties, or tariffs, which will be charged to Buyer, and Buyer agrees to pay all such taxes, duties, and tariffs. If Endologix is required to pay or remit such levies or taxes at a higher rate than initially charged or pay additional taxes, Buyer shall immediately compensate and hold Endologix harmless for all such taxes (*i.e.*, including any (additional) VAT that may arise). Except as otherwise stated by Endologix and unless otherwise agreed in writing, all prices are given by Endologix on an ex works basis (EXW according to Incoterms 2020).

### **4. Terms of Payment**

4.1 Buyer is obliged to communicate any complaints regarding invoices from Endologix within three (3) days after receiving the invoice. These complaints need to be communicated in written via e-mail to [EUFinance@endologix.com](mailto:EUFinance@endologix.com).

4.2 Unless otherwise agreed in writing, Buyer shall pay the entire purchase price, or the remainder thereof in the event of advance payment, within thirty (30) days from the date of Endologix' invoice, as directed by Endologix, by transfer to or deposit. If Buyer fails to effectuate payment within such payment term, it shall be in default and all claims of Endologix will become fully due and payable. Overdue payments are subject to the statutory interest as applicable to trade agreements plus two percent (+ 2%), until the date of payment in full. In the event of any payment default, Buyer shall compensate Endologix for any ensuing extra-judicial costs, including the costs of collection and reasonable attorney's fees, including the costs involved with sending any payment reminders and notices of default, which costs will amount to at least fifteen percent (15%) of the invoiced amount subject to minimum of two hundred fifty Euro (€250).

4.3 Buyer shall make all payments due under any agreement in full without any deduction whether by way of set-off, withholding, counterclaim or otherwise.

### **5. Payment Security**

5.1 In the event Buyer fails to fulfill previous terms of payment or in case Endologix has any doubt at any time as to Buyer's creditworthiness, Endologix may request Buyer - and Buyer shall promptly comply with the same - to meet certain additional payment conditions or offer payment security before making further deliveries and accept further orders from Buyer. Such payment and/or security conditions may include, amongst others, that Buyer (i) makes certain advance payments; (ii) provides an irrevocable letter of credit meeting Endologix's conditions; (iii) provides any other payment security to the benefit of Endologix as deemed fit by Endologix; (iv) fulfills another special payment arrangement as reasonably requested by Endologix; or (v) grants, at the reasonable request of Endologix, a further security on any assets in ownership of Buyer.

### **6. Delivery and Transfer of Title and Risk**

6.1 Unless otherwise agreed upon in writing, delivery will be made Ex Works (in accordance with the Incoterms 2020 or any more recent version) Endologix' European warehouse located at Doctor Paul Janssenweg 150, 5026 RH Tilburg, The Netherlands (in care of: Rhenus Logistics) or any other location as specified by Endologix. Endologix reserves the right to deliver items in a single or in multiple shipments. Both risk of loss and damage and title to the Products purchased hereunder shall transfer to Buyer upon delivery in accordance with the delivery term referred to in this Article 6.

### **7. Inspection and Acceptance**

7.1 Buyer will with due care inspect (or procure inspection by a third party of) the Products upon delivery by Endologix for any visual defects or non-conformity in respect of the purchase order. Buyer must report in writing any visible defects and/or shortages immediately after delivery. Likewise, Buyer must report in writing any defects that are not visible upon delivery within forty eight (48) hours of their discovery though in any event at the moment in which they reasonably should have been discovered. Buyer will bear the risk for inspecting the Products by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered if the





entire shipment had been inspected (either by itself or a third party). In the event of a complaint on good grounds, Endologix shall in its sole discretion either replace the relevant Product(s) or credit or refund the purchase price charged with respect to the relevant product.

## **8. Limited Warranty**

8.1 Subject to Article 1.12, Endologix warrants that the Products will be free from defects in materials and workmanship under normal conditions of use from delivery of the product until the expiration date indicated on the Product. THE FOREGOING IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. ENDOLOGIX EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No person has the authority to bind Endologix to any representation or warranty and there are no warranties that extend beyond these Terms and Conditions. Buyer acknowledges that the conditions of handling, storage and use of the Products are factors beyond the control of Endologix and may affect the quality and life cycle of the Products and the results obtained from the Products. Endologix' warranty shall not apply, *inter alia*, in the following situations, (i) normal wear and tear; (ii) Products are not properly stored; (iii) defects are caused by wrong handling or (attempted) modification of the Products by Buyer or a third party; and/or (iv) inappropriate or negligent use of the Products, including any use inconsistent with Endologix's instructions or user guidelines and/or use of the Products in combination with any third party products not approved by Endologix. Buyer shall promptly after discovery notify Endologix of any (alleged) warranty claim. In respect of any valid and timely claim by Buyer under this warranty within the warranty period, Endologix shall at its exclusive option either credit the relevant Product(s) for their original purchase price or replace the Product(s), whereby Buyer shall return such Product(s) in accordance with Article 1.7 above and any other instructions given by a duly authorized representative of Endologix. This warranty also applies to any replacement Products.

8.2 This Article 8 contains an exhaustive description of the warranty granted by Endologix in respect of the Products and applies to the exclusion of any other express or implied warranties whether oral or written including any statements contained in (standard) sales documentation provided by Endologix.

8.3 Any claims of Buyer with respect to the Products, on whatever legal basis, including non-conformity or breach of warranty, as well as any right to dissolve any agreement on account of the same, will lapse at the earlier of the following moments, (i) upon late reporting pursuant to Article 7 or 8; or (ii) upon expiry of the warranty period specified in this Article 8.

### **8.4 Retention of title.**

All Products supplied by Endologix remain property of Endologix until full payment has been made. Until the amount owed has been paid in full, Endologix therefore remains the legal owner of the Products. Buyer commits to keep the supplied Products identifiable as ownership of Endologix for that reason, in line with Article 12.1 of part B – CONSIGNMENT OF PRODUCTS.

In case of any attachment measure against Buyer and its assets; declaration of bankruptcy of Buyer or Buyer has been granted a moratorium of payment, the Buyer shall immediately inform the person levying the attachment or the trustee in bankruptcy about the retention of title with respect to the Products. Buyer shall obtain and maintain adequate insurance coverage for the Products delivered under retention of title against theft, fire, water and elementary loss

## **PART B - CONSIGNMENT OF PRODUCTS**

### **9. Applicability**

9.1 In the event Products are made available on a (temporary) consignment basis, the following terms apply in addition to, and to the extent of any inconsistency with the provisions set forth above (Section 1 and Part A), in deviation thereof. In any of the situations set out in Article 10.2 of these Terms and Conditions, Part A shall also be applicable.

### **10. Scope; Term and Termination**

10.1 Consignment entails that Endologix provides Buyer with Products (hereinafter: "Consignment Products") for storage for a definite or indefinite term ("Consignment Term") until the use (that is, implantation in a patient) of the Consignment Products or any other reason why the Products are (to be) purchased by Buyer and/or the Consignment Term ends. During the Consignment Term and until the moment of use (or until the moment there is another reason why title of a Product is transferred to Buyer pursuant to the agreement and/or these Terms and Conditions), title to the Consignment Products shall remain with Endologix, whereas risk of partial loss and damage to the Consignment Products will pass to Buyer upon the moment they are made available by Endologix (or its carrier) at Buyer's medical facility or the agreed storage location. Consignment Products shall be delivered for consignment on a [DDP basis] (Incoterms 2020) at the location specified by Buyer.



- 10.2 Endologix shall not charge consignment fees. The following events shall give rise to sale of the Products by Endologix and purchase of the Products by Buyer, whereby title passes to Buyer and Buyer becomes obligated to pay Endologix in accordance with these Terms and Conditions, (i) when a Product is used; (ii) in the event a Product is damaged (due to improper handling, storage or otherwise); (iii) in the event that Product packaging is altered or modified or opened; (iv) in the event that any Product is missing or unaccounted for following any consignment products, audit or accounting of consigned consignment products; and/or (v) in the event the expiration date of a Product is less than thirty ( $\leq 30$ ) days. Products that are provided pre-packaged and sterile are deemed used by Buyer if the packaging has been opened, damaged or marked in any way.
- 10.3 Endologix will determine the final number of Products initially stocked for consignment.
- 10.4 All consignment products will be coordinated by a local authorized representative of Endologix in due consultation with the responsible physician of Buyer or, as the case may be, any authorized representative of Buyer. Endologix may request, that Consignment Products with date of less than one (1) month be removed and replaced. Buyer is obliged to execute any request from Endologix in this matter.
- 10.5 Without prejudice to any other rights under these Terms and Conditions or applicable law, Endologix reserves the right to terminate consignment and immediately take back any Consignment Products if it has sound reasons to believe that Buyer fails to comply with any of the obligations under these Terms and Conditions and/or agreement, which right shall not be unreasonably exercised. Moreover, Endologix is entitled to reduce the consignment volume and remove Consignment Products at its discretion upon fourteen (14) days' notice if the actual purchase rates are below expectations.
- 11. Inspection**
- 11.1 Buyer shall, during normal business hours at any time, grant Endologix access to the premises where the Consignment Products are stored, for inspection or stock count, and allow auditing of all files pertaining to Consignment Products. Endologix' findings regarding any stock loss shall prevail over any findings of Buyer. Buyer shall provide for a periodical (not less than once every month) physical stock count of the consignment products and issue a signed report to Endologix (in a format instructed by it) which shall in any event include details regarding, (i) quantity; (ii) product codes and expiration dates; and (iii) identified stock loss. Buyer shall keep proper records on file.
- 12. Obligations of Buyer**
- 12.1 Duty of Care. Buyer shall, at its sole expense, adequately store the Consignment Products in a proper, clean location, segregated from goods belonging to it or third parties and marked in such a manner that the Consignment Products can at all times be easily identified as the property of Endologix. Buyer shall exercise the care of a good depositary with respect to the Consignment Products in stock. Buyer shall refrain from encumbering the Products or granting any third party any (security) rights in respect of the same and is not entitled to sell, lend, or give away the Consignment Products.
- 12.2 Use. The Consignment Products shall exclusively be for use in accordance with Endologix usage documentation by a trained physician or a physician who is being trained pursuant to Endologix' guidelines and Buyer shall ensure that Consigned Products are not used other than for their designated purpose by said qualified persons. Buyer shall not use expired Consignment Products and timely inform Endologix of any Consigned Products with a short expiry date.
- 12.3 Insurance. Buyer shall obtain and maintain adequate insurance coverage for the Consignment Products against theft, fire, water and elementary loss whereby Endologix shall be included as a third-party beneficiary in the relevant insurance policy. At the request of Endologix, Buyer shall provide Endologix with a copy of the insurance policy in place.
- 12.4 Return. During the term of consignment, Buyer may return unopened, unexpired, and undamaged Products for exchange of other Consignment Products in accordance with Article 1.7. Buyer shall arrange for, insure, and pay for the shipping and other costs associated with the return of Consignment Products. Except for any Products that are deemed to be purchased pursuant to Article 10.2, Buyer shall, free of charge, promptly return any unused Consignment Products to Endologix upon expiry of the Consignment Term or at an earlier moment as indicated by Endologix once as it has been determined that such Consignment Products will not be used for a specific scheduled treatment.
- 12.5 Reporting and Payment. Buyer shall promptly (ultimately one (1) working day following use) report the use of a Consignment Product(s) by sending a Product Usage Report (PUR) to Endologix containing the information as instructed by Endologix. Unless agreed otherwise in writing, this document shall qualify as the purchase order between parties authorizing Endologix to invoice the Consignment Products sold. Endologix shall charge Buyer the then current price or any price as otherwise agreed in writing in advance. In the event it results that Buyer reports the use of the Consignment Products with a delay of more than seven (7) days, Endologix may in its discretion either (i) reduce the payment term; or (ii) charge a penalty equal to two percent (2%) of the purchase price of the relevant Product(s), without



prejudice to any other rights.

**13. Replenishment**

13.1 Unless agreed otherwise, any Consignment Products used/purchased by Buyer shall be replaced by placing an order with Endologix and such Consignment Products used/purchased shall be invoiced at the then current price (or such price as may be agreed in writing between the parties).

**14. Bankruptcy**

14.1 In case of attachment measures on assets of Buyer, granted moratorium of payment or declaration of bankruptcy on the part of the Buyer, the Buyer shall immediately inform the person levying the attachment, the administrator or the trustee in bankruptcy about the Consignment and ownership of Endologix with respect to the Products, which must be kept identifiable by the Buyer for that reason as described in Article 12.4 of this Part B – CONSIGNMENT OF PRODUCTS.