



**ENDOLOGIX INTERNATIONAL 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 B.V. a company incorporated in the Netherlands and whose UK establishment number is BR015544 and whose UK establishment office is 4-4a Bloomsbury Square, London, WC1A 2RP (“**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.  
A reference to writing or written includes e-mail and fax.
- 1.2 **Buyers Terms and Variation.** Products furnished by Endologix to Buyer are sold only and offered for consignment only on these Terms and Conditions and Endologix rejects the applicability of any other terms and conditions by Buyer. Irrespective of the inclusion of any terms or conditions on Buyer’s order, Endologix’ performance of any agreement shall be in accordance with 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 not be legally binding 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 accepted an order placed by Buyer in writing, or if Endologix has commenced the execution of that order, whichever occurs first.
- 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 breach of these Terms and Conditions 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 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’ 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 (or the equivalent under applicable law); (ii) Buyer applies for or is granted a moratorium of payment, is declared insolvent, bankrupt or an application to that effect is pending; (iii) Buyer has not paid any undisputed amount on the due date for payment and remains in default for 14 days after written notification of the same (iv) Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (v) a person becomes entitled to appoint a receiver over all or any of Buyer's assets (vi); any permit or license required for the performance of the agreement or use of the Products is withdrawn; (vii) Buyer ceases its business; (viii) Endologix has sound reasons to believe that Buyer is unable to fulfill its (payment) obligations under any agreement; or (ix) 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, applicable law, request of an administrative agency or governmental body, provided that, where it is not prohibited from doing so, written notice is given promptly 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' 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' 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 Clause 1.10. 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 non-performance of any purchase order or its obligations under any agreement with Buyer where such arises out of causes beyond the control of Endologix. Causes beyond Endologix' 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 labour or trade dispute, industrial action or lockouts, fire or earthquake or other natural disaster, unusually severe weather, pandemics or epidemics, terrorist attack, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, delays in supplies of Endologix' suppliers or the occurrence of any of the other circumstances mentioned herein affecting Endologix' suppliers and import and export embargoes ("**Force Majeure Event**"). In the occurrence of a Force Majeure Event, if Endologix has already partially fulfilled its obligations or is only able to fulfill its obligations in part, it is entitled to receive payment for the part already supplied in which case Buyer shall pay such invoice in accordance with these Terms and Conditions. If the period during which performance is prevented due to a Force Majeure Event 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 any liability to Buyer.
- 1.12 Liability. Nothing in these Terms and Conditions shall limit or exclude the Endologix' liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 1.13 Subject to Clause 1.12, Endologix will in no event be liable to the Buyer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise for any indirect or consequential damages arising under or in connection with these Terms and Conditions. Indirect damages are, without being limited thereto, loss of profits, loss of revenue, loss



- of actual or anticipated savings and loss of goodwill.
- 1.14 Subject to Clause 1.12, Endologix' liability whether arising out of tort, contract or any other legal basis, shall be limited to the higher of (i) one hundred thousand pounds (£100,000); or (ii) the total payment received from the Buyer in the preceding twelve (12) months prior to any claim of liability (excl. VAT). The limitations provided for in this Clause extend to any member, director, officer, agent or employee of or 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 right to bring a claim under the agreement or in tort, howsoever arising, will expire after one (1) year from the moment in which the Buyer should have reasonably have known that the event underlying the claim had arisen.
  - 1.15 Information and Guidance. Endologix may, through field sales and clinical specialists employed by it, provide information to Buyer on the use of the Products and assist physicians in selecting Products for minimally invasive treatment of aortic disorders. This information has been communicated as guidance to assist with understanding the Products and to add value to the Buyer's purchase. Such information 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 Clause 1.12, Endologix shall not be liable for any information or guidance it provides regarding or in connection with the Products.
  - 1.16 Compliance and Indemnification. Buyer shall comply with all applicable laws, rules and regulations concerning medical devices and respective guidelines of the Medicines and Healthcare products Regulatory Agency. 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.
  - 1.17 Assignment. Any agreement concluded with Buyer hereunder or any claims related thereto cannot be assigned and/or transferred, novated, mortgaged, charged, subcontracted, delegated, declare a trust over or dealt with in any other manner with any of its rights and obligations under without the prior written consent of Endologix. Any assignment and/or transfer contrary to this clause is null and void. 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 assignment and/or transfer (including those proposed). Buyer acknowledges that Endologix shall have the right to subcontract any of its obligations under these Terms and Conditions and/or agreement concluded with Buyer.
  - 1.18 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.
  - 1.19 Non-Waiver. Subject to Clause 1.14, a waiver by either party of any provision of these Terms and Conditions 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 any subsequent breach of the same condition or provision. Any remedies 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.
  - 1.20 Applicable Law & Dispute Resolution. The validity, interpretation, construction and performance of these Terms and Conditions and any offer, order or agreement referred to in Clause 1.1 as well as any other ensuing agreement, shall be governed by and construed in accordance with English law.
  - 1.21 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 Clause 1 of these Terms and Conditions and any ensuing agreement shall be submitted to the exclusive jurisdiction of the courts of England and Wales to settle and/or resolve.
  - 1.22 Privacy. In the context of the agreement between Endologix and the Buyer the Data Protection Laws shall apply. Data Protection Laws means all applicable data protection and privacy legislation including without limitation the UK General Data Protection Regulation as defined in section 3 (10) as supplemented by section 205 (4) Data Protection Act 2018, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and all applicable laws which replace it, including the e-Privacy Regulation) and, to the extent it may apply to the processing of personal data of EU data subjects, the EU General Data Protection Regulation (2016/679). The terms "**personal data**" "**processing**" and "**processor**" shall be as defined in the Data Protection Laws. Endologix shall process personal data in the capacity of



a processor. The Buyer shall provide Endologix with personal data of the Buyer's patients to the extent necessary for the execution of the agreement, ensure it has a valid legal basis to do so and that its systems comply with the Data Protection Laws. The Buyer shall indemnify and hold harmless Endologix against any and all claims regarding the Buyer's non-compliance. 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 Data Protection Laws. Buyer is deemed to have taken note of the privacy statement of Endologix included on its website [www.endologix.com](http://www.endologix.com) and to agree to the processing of the personal data described therein.

- 1.23 **Change of Terms and Conditions.** These Terms and Conditions can be amended by Endologix by prior written notification to Buyer. The version of the Terms and Conditions entered into by the parties on concluding the agreement shall apply between Endologix and Buyer.
- 1.24 **Notice.** Any notice given to a party under or in connection with the agreement shall be in writing, addressed to that party at its registered office or such other address specified to the other party in writing in accordance with this Clause, and shall be delivered by hand, or sent by pre-paid first class post or other next working day delivery service, fax or email. A notice shall be deemed to have been received (i) if delivered by hand, when left at the relevant address; (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or (iii) if sent by fax or email, on the same day or next Business Day after transmitted after 5:30 pm. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any method of dispute resolution. A Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.25 **Third party rights.** No one other than a party to this agreement and their permitted assignees shall have any right to enforce any of these Terms and Conditions.
- 1.26 **Entire Agreement.** These Terms and Conditions with the details of any accepted order constitute the entire agreement between the parties. Each party acknowledges that in entering into such, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Terms and Conditions.

## **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. If Buyer fails to make payment within the relevant term, it shall be in default and all claims of Endologix will become fully due and payable. Overdue payments are subject to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) at 8% above the Bank of England base rate, from the due date until the date of payment in full. Where the Buyer is in default, the Buyer shall compensate Endologix for any ensuing extra-judicial costs, including the costs of collection and reasonable attorney's fees, including an administrative fee of £50.00 for the costs involved with sending any payment reminders and notices of default.
- 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' 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 and title to the Products purchased hereunder shall transfer to Buyer upon delivery in accordance with the delivery term referred to in this Clause 6. Where Endologix has agreed to deliver the Products not in accordance with the Incoterms 2020 (as updated), risk in the Products shall pass on delivery and the transfer of title shall be as set out in Clause 8.4.

**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 reasonably 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 Clause 1.12, Endologix warrants that the Products will be (i) 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; and (ii) materially comply with the description of the Products as confirmed by Endologix at the time of acceptance. 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' 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 Clause 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 Clause 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 Clauses 7 or 8; or (ii) upon expiry of the warranty period specified in



this Clause 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 Clause 12.1 of part B – CONSIGNMENT OF PRODUCTS.

In case of any attachment measure (or its equivalent under applicable law) against Buyer and its assets; declaration of bankruptcy of Buyer or Buyer has been granted a moratorium of payment or the Buyer becomes insolvent under applicable laws, the Buyer shall immediately inform the person levying the attachment (or its equivalent under applicable law) 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. Upon any of these circumstances occurring, Endologix shall have the right to enter the premises where the Products are stored and retrieve them. Buyer shall provide all reasonable assistance where required by Endologix.

### **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 Clause 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 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 depository 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 Clause 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 Clause 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 re-ordered 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 (or its equivalent under applicable law) 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 Clause 12.4 of this Part B – CONSIGNMENT OF PRODUCTS. Upon any of these circumstances occurring, Endologix shall have the right to enter the premises where the Products are kept and retrieve them. Buyer shall provide all reasonable assistance where required by Endologix.