

**TERMS AND CONDITIONS**

1. **ORDERS.** Orders for Smith & Nephew (S&N) products may be placed by:

<b>S&amp;N Products – Canada</b>			
	<b>Advanced Wound Management</b>	<b>Orthopaedics – Reconstructive &amp; Trauma</b>	<b>Endoscopy – Sports Med &amp; ENT</b>
<b>Phone</b>	800-463-7439 Option 2	877-977-1772	877-977-1772
<b>Fax</b>	800-671-9140	877-977-1773	877-977-1773
<b>EDI</b>	800-463-7439 Option 2	877-977-1773	877-977-1773

Not all products listed in catalogues are available in all countries; contact your local S&N representative for specific availability. S&N reserves the right to discontinue products or change specifications or designs from time to time. No Customer order is deemed accepted by S&N until received and approved by authorized S&N personnel. For Advanced Wound Management products, the minimum dollar order amount is \$500.00 and, for orders under \$500.00 that are accepted by S&N, a handling fee of \$25 may be added. S&N accounts are not transferable. Any major change within Customer's organization requires a new and independent review by S&N before it shall extend a Customer's account to the changed organization. As elected by S&N, Products are sold directly by S&N to Customer or through S&N's authorized distributors. For the name and address of your S&N representative or authorized distributor, contact S&N's customer service team noted above. Sales personnel may not alter the terms of this agreement, extend credit, or accept payment for merchandise. For all Orthopaedic orders, unless Customer issued a valid purchase order number at the time of initial order placement, Customer shall issue a valid purchase order number within forty-eight (48) hours of receipt of product.

2. **SPECIAL, CUSTOM, MADE TO ORDER (MTO) PRODUCTS.** Requests for special, customized or MTO orthopedic or endoscopy instrument products must be submitted at the contacts provided in the above table, which contacts shall provide a price quote valid for thirty (30) days and the estimated time required to manufacture the product. Manufacturing shall not begin until receipt of a purchase order for the requested product and credit is approved. All special, customized or MTO sales are final and nonreturnable, and product lead time may vary depending on the product. In some cases, the surgeon shall be required to sign a copy of the blueprint and/or template prior to S&N beginning to manufacture the product. Service agreements and service exchange is not available on special, customer or MTO endoscopy instrument products, as such products are serviced on a repair only basis.
3. **TITLE; DELIVERY; SHIPMENT VERIFICATION.** Title to products shall pass to customer as follows: for Advanced Wound Management products, upon delivery at the destination point; for Orthopaedic and Endoscopy products, when signed for by the carrier at the shipper's dock. Product shall be deemed accepted by Customer upon delivery at the named point of destination. S&N freight terms on orders shipped to destinations within Canada are CIP, carriage and insurance paid to Customer's dock, except shipping and insurance is only pre-paid by S&N and then added to Customer's invoice. If Customer requests special shipping then additional shipping costs may be added to the invoice. S&N reserves the right to select the mode and carrier of S&N's choice. When Customer specifies a certain method and/or carrier, S&N reserves the right to pass on the additional freight cost plus an additional handling charge. Customer is responsible for noting any damage or potential damage and/or shortages on freight bill at time of delivery and notifying S&N's customer service team within fifteen (15) days of delivery. In addition, any discrepancy in the quantity billed and the quantity received resulting from damage (concealed or otherwise), shortages, overages, non-delivery or wrong product, must be reported to S&N's customer service team within fifteen (15) days of the date a shipment is or was to have been received. Any discrepancy reported after fifteen (15) days shall be addressed by S&N in its sole discretion, failing which S&N shall be under no liability for such issues.
4. **PRICE; PAYMENT.** The latest published price list supersedes all previous price lists. Prices are subject to applicable tax. Organizations exempt from taxes or that resell product must provide S&N with a valid exemption or resale certificate for each applicable jurisdiction to avoid being invoiced for taxes. Exemption or resale certificates received after the sale shall not void taxes already charged but shall prevent tax from being charged on future invoices. All taxes are due for payment as billed. Payment by Customer is due net thirty (30) days from date of invoice and must be remitted via the means and address designated by S&N. S&N reserves the right to terminate open account credit at any time. Any discrepancy in an invoiced price and the corresponding order price must be reported to S&N's customer service team within thirty (30) days of the date of invoice. Customer's failure to make timely payment is a material breach for which (in addition to other available remedies) S&N may suspend performance under any or all S&N agreements until all past due amounts are brought current. Interest shall accrue on past-due amounts at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law. Customer shall reimburse S&N for reasonable costs (including attorneys' fees) relating to collection of past due amounts. Any credits due to Customer under an agreement may be applied first to any outstanding balance. If, after product delivery, Customer does not make required payments within forty-five (45) days after the payments are due, S&N, upon ten (10) days' prior written notice to Customer, may either enter upon Customer's site and remove the products or temporarily disable the products so they are not operational.
5. **RETURNS.** All product returns, whether for defect or otherwise, require the prior written authorization of S&N, which must be obtained through S&N's customer service team. If the return is authorized, S&N shall provide Customer a return authorization, and Customer must return the product to S&N within thirty (30) days of receipt of such return authorization. Any product returned after thirty (30) days shall be addressed by S&N in its sole discretion. Credit shall be issued only after product is received by S&N and then examined and determined to be returnable by S&N's return goods department. Customer shall not make any changes to the return authorization without receiving prior approval through S&N's customer service team.
- In addition, product may be returned only under the following conditions:

- From date of invoice, up to 180 days for Advanced Wound Management and Orthopaedic products and up to 60 days for Endoscopy products.

- A restocking fee shall be charged: 25% for Advanced Wound Management products and 20% for Orthopaedic and Endoscopy products, except for product defects or an error by S&N.
- Only unopened, full cases.
- Credit, if allowed, shall be based on saleable product still listed in S&N's current price list.
- For Advanced Wound Management products, a copy of the original invoice is included.
- S&N reserves the right to destroy product shipped to S&N that it deems unfit for sale.

S&N shall not accept returns for product:

- not in standard S&N packaging.
- purchased through anyone other than S&N.
- with unauthorized labels or that has been defaced.
- that is a temperature controlled product.
- that is obsolete, discontinued, special price, damaged or in broken lots or cases.
- that is a sterile Endoscopy product with less than 1 year of shelf live remaining.
- except for warranty claims, NAVIO<sup>®</sup> products may not be returned.

6. **COMPLIANCE.** Each party shall conduct its business and affairs in an ethical manner and consistent with the provisions of S&N's Code of Conduct and Business Principles (a copy of which may be obtained at <http://www.smith-nephew.com/compliance/global-compliance-programme/guidance-on-the-code-of-conduct-for-third-parties/>) and shall comply with all applicable laws, regulations, and industry codes. Any breach by Customer or its representatives or agents shall entitle S&N to terminate this agreement immediately upon S&N's written notice to Customer.
7. **LIMITED WARRANTY – OTHER THAN ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** S&N products are warranted to conform in all material respects to S&N's standard specification for a particular product in effect at the time of product delivery to the buyer (including any tolerance parameters) for the warranty period specified for the products at [www.SNWarranties.com](http://www.SNWarranties.com) (Warranty Period). For any products found to not be in conformance with this warranty during the Warranty Period, this warranty provides and is restricted to, as elected by S&N, either (i) repair or replacement of such products without charge and within a reasonable period of time or (ii) a refund or credit in the amount of the purchase price of such products (except for product equipment the refund shall be based on the straight line depreciation schedule specified at Warranty Period website). If S&N repairs or replaces product under this warranty and requests Customer to return such product, Customer must ship such product to S&N freight prepaid by Customer. Customer shall be invoiced for any replacement product if Customer does not return the requested replaced product within thirty (30) days after S&N's shipment of the replacement product. This warranty does not cover and is voided by any of the following: (i) product packaged or labeled by someone other than S&N or its authorized agents; (ii) product not used in compliance with the specifications, instructions or claims for use of the product; (iii) equipment product used in conjunction with disposables or accessories not specified for use with such equipment; (iv) equipment product used in conjunction with reprocessed disposables or accessories; (v) modification of product; (vi) product past its expiration date; (vii) normal wear and tear; (viii) damage due to misuse, reprocessing, alteration, unauthorized repair or negligent handling or damage due to lack of care by the owner, user or handler of the product including but not limited to storage, handling or cleaning; or (ix) any other damage inflicted to products by the owner, user or handler. A 90-day warranty on repairs applies to the defective component repaired. This warranty applies only to the original buyer from S&N (or its authorized distributor) and is not transferable. **EXCEPT TO THE EXTENT PROHIBITED OR OTHERWISE REQUIRED BY APPLICABLE LAW, THIS WARRANTY IS THE SOLE WARRANTY OF S&N, AND ALL OTHER WARRANTIES OF ANY KIND OR DESCRIPTION WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, ARE EXCLUDED.**
8. **LIMITED WARRANTY – ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** For any products for which ArthroCare Corporation is the legal manufacturer, the product warranty (including warranty length) is as stated in the Information For Use (IFU) accompanying the product. (See product packaging for the name of the legal manufacturer.)
9. **LIMITATION OF LIABILITY.** WITH THE EXCEPTION OF ITS GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, BREACH OF ANY CONFIDENTIALITY PROVISION OF THIS AGREEMENT, LIABILITY OWED TO THIRD PARTIES OR FOR DEATH OR PERSONAL INJURY, OR AS OTHERWISE PROHIBITED BY LAW: (I) IN NO EVENT SHALL S&N BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR TYPES OF LOSS OR DAMAGE OF ANY KIND, OR FOR ANY LOST OR ANTICIPATED PROFITS OR SAVINGS, COST OF COVER FOR REPLACEMENT OR ALTERNATIVE PRODUCT OR DAMAGE TO REPUTATION OR GOODWILL, ARISING FROM THIS AGREEMENT; (II) CUSTOMER'S SOLE REMEDY FOR S&N'S BREACH OF ANY PRODUCT WARRANTY SHALL BE THE REPAIR, REPLACEMENT OR REFUND BY S&N AS PROVIDED IN THE WARRANTY; AND (III) IN NO EVENT SHALL THE TOTAL LIABILITY OF S&N UNDER ANY THEORY OF LIABILITY EXCEED THE PURCHASE PRICE PAID FOR THE APPLICABLE PRODUCT(S). THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE PRECEDING LIMITATIONS ON LIABILITY ARE A FAIR COMPROMISE AND WAIVE ANY RIGHT TO LATER CHALLENGE THEM AS UNREASONABLE, UNCONSCIONABLE OR OTHERWISE.
10. **GOVERNING LAW; DISPUTE RESOLUTION.** This Letter Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, without reference to its conflicts of laws provisions, and the federal laws of Canada in effect in the Province of Ontario. Each of the parties irrevocably submits to the Courts of the Province of Ontario for non-exclusive jurisdiction with respect to all matters relating to this agreement.
11. **MISCELLANEOUS.** Neither party is liable for delays or failures in performance (other than payment obligations) due to causes beyond its reasonable control. In the event of such delay, the time for performance shall be extended as reasonably necessary to enable performance. No modified, additional or different terms or conditions proposed by Customer, verbally or in writing, including without limitation any terms set forth in Customer's RFP or purchase order, shall apply and are expressly rejected by S&N. Any waiver of any breach of any provision of this agreement shall not be a waiver of any subsequent breach of the same or of any other provision of this

agreement. If a court of competent jurisdiction finds any provision of this agreement is invalid or unenforceable, such finding shall not affect the remainder of these terms and conditions and otherwise shall remain in full force and effect. These terms and conditions of sale are subject to change by S&N effective on notice to Customer. <sup>^</sup>Indicates trademark of S&N.