

Careium – Terms and Conditions for the Sale of Products and Subscription Products

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. PARTICULAR ATTENTION IS DRAWN TO CLAUSES 4, 6 AND 9.

1 Interpretation

1.1 Definitions:

Accompanying Documents: the documents (including any order confirmation, order form or order quotation) issued by Careium incorporating these Conditions which sets out details in relation to the Order.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Careium: Careium UK Limited registered in England and Wales with company number 04133585 of Aspinall House, Walker Park, Blackburn, Lancashire, England BB1 2QE.

Charges: the fees payable by the Customer to Careium for the Products and the Subscription Products, as detailed in the Accompanying Document(s).

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4.

Contract: the contract between Careium and the Customer for the sale and purchase of the Products and Subscription Products in accordance with these Conditions.

Customer: the person or firm who purchases the Products from Careium, as detailed in the Accompanying Document(s).

Delivery Location: has the meaning given to it in the Accompanying Documents or as otherwise agreed in writing between the parties.

Force Majeure Event: any occurrence which hinders, delays or prevents a party in performing any of its obligations under this Contract to a material extent which is beyond the control of, and without the fault or negligence of, such party and which by the exercise of reasonable diligence it would have been unable to prevent or provide against including but not limited to act of God, war, civil war, fires, flood, epidemic, utility disruption, subsidence, strikes, lock-outs, insurrection or riots, third party suppliers, embargoes, unavailability of raw materials or services, delays in transportation, changes in the requirements or regulations of any governmental authority.

Initial Subscription Period: has the meaning given to it in clause 4.2.

Order: the Customer's order for the Products, as set out in the Accompanying Document(s).

Privacy Notice: Careium's privacy notice available at <https://www.careium.co.uk/privacy-and-cookies/>, as may be updated from time to time.

Products: the products purchased by the Customer from Careium, as detailed in the Accompanying Documents.

Renewal Period: has the meaning given to it in clause 4.2.

Retail Price Index: the index of retail prices (all items figure) published from time to time by the ONS in the monthly digest of statistics (or by any government department upon which duties in connection with such index shall have devolved).

Specification: any specification for the Products, including any related plans, technical product documentation and drawings, provided by Careium to the Customer.

Subscription Period: means the Initial Subscription Period and any Renewal Period(s).

Subscription Products: the subscription products provided by Careium to the Customer on a subscription basis, as detailed in the Accompanying Document(s).

Warranty Period: has the meaning given in clause 6.1.

1.2 Interpretation:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its successors and permitted assigns.
- 1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** excludes fax.
- 1.2.6 If there is any conflict or ambiguity between these Conditions and the contents of any Accompanying Document, a term contained in an Accompanying Document shall have priority over the Conditions.

2 Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Products and Subscription Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted on the earlier of:
 - 2.3.1 the signature of the Contract;
 - 2.3.2 shipment of the Products and / or Subscription Products by Careium; or
 - 2.3.3 Careium issuing a written acceptance of the Order,at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Careium and any descriptions or illustrations contained in Careium's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Products and Subscription Products given by Careium shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3 Products

- 3.1 The Products are described in the Specification.
- 3.2 Careium reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and Careium shall notify the Customer in any such event.

4 Subscription Products

- 4.1 Where the Customer purchases Subscription Products, this clause 4 shall apply in relation to the Subscription Products only.
- 4.2 Careium shall provide the Subscription Products to the Customer for a period of one year from the date on which the Subscription Products are delivered to the Customer (**Initial Subscription Period**). Following the Initial Subscription Period, this Contract shall automatically continue for further periods of 12 months (each a **Renewal Period**) in relation to the Subscription Products unless if either party provides the other with at least 30 days' notice to terminate, such notice to take effect at the end of the Initial Subscription Period or the immediately following Renewal Period (as relevant).
- 4.3 Notwithstanding the remainder of this Contract:
- 4.3.1 the Customer acknowledges that the Subscription Products are provided on a subscription basis. In line with this, Careium (or its third party supplier) shall retain all ownership and title to the Products at all times and nothing in this Contract shall be taken as transferring ownership of the Subscription Products to the Customer. Notwithstanding the foregoing, Careium agrees that the Customer may part with possession of the Subscription Products in providing them to its end customers;
- 4.3.2 the Customer acknowledges that the Subscription Products are provided by a third party supplier. In line with this:
- a) the Customer shall not resell the Subscription Products;
 - b) Careium may increase the price of the Subscription Products immediately on notice in line with any increases imposed by the relevant third party supplier and invoice the Customer for the same;
 - c) Careium may review and adjust the price of the Subscription Products:
 - i to reflect any increases due to circumstances beyond its control (including inflation, regulatory changes, legislative changes or industry practice) upon providing 30 days' prior notice, such adjustment to be effective upon expiry of the notice and to apply to any further Charges falling due following such notice period; and / or
 - ii once in each calendar year and on at least 14 days' written notice in accordance with the Retail Price Index;
 - d) subject to clause 9.2, Careium shall have no liability in relation to the Subscription Products or any issues in relation to the same and the Customer's remedies for the Subscription Products will be against the relevant third party supplier or as set out in their terms and conditions;
 - e) Careium provides no warranty in relation to the Subscription Products and clause 6 shall not apply in relation to the Subscription Products; and
 - f) the Customer will only be entitled to any warranty or other benefit as may be made available by the relevant third party supplier and the Customer shall contact Careium immediately if there are any issues in relation to the Subscription Products so that Careium may inform it of its rights and options in relation to the same;
- 4.3.3 subject to clause 4.3.4 below, if the Customer anticipates the Subscription Product(s) being inactive (being paused, inactive or missing heart beat on the device management portal) for a period of three months or more, it shall inform Careium of the same immediately in writing and Careium may choose to pause the Charges for the relevant Subscription Product(s) during the inactive period. The Customer shall provide Careium with reasonable advance written notice ahead of reactivating the relevant Subscription Product(s) and Careium shall re-commence the Charges relating to the relevant Subscription Product(s). The parties acknowledge and agree that this clause 4.3.3 shall not amend the Subscription Period in any way;
- 4.3.4 the Customer acknowledges that the inactive period shall not exceed six months in total. If the inactive period exceeds six months, Careium may terminate the Contract on 30 days' written

notice to the Customer. If this Contract is terminated in line with this clause 4.3.4, clause 4.3.6 below shall apply;

- 4.3.5 if Careium determines that use of the Subscription Products exceeds fair usage or there is any misuse of the same, it may restrict the use of the Products and revoke the Customer's right to use the Subscription Products; and
- 4.3.6 the Customer acknowledges that if the Contract is terminated during the Subscription Period, the Customer may be liable for early termination fees and any advance payments made in relation to the same shall be non-refundable unless determined by Careium in its sole discretion to return the same (or any proportion thereof).

5 Delivery

- 5.1 Careium shall ensure that each delivery of the Products and Subscription Products is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Careium reference numbers, the type and quantity of the Products and Subscription Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products and Subscription Products are being delivered by instalments, the outstanding balance of the same remaining to be delivered.
- 5.2 Careium shall deliver the Products and Subscription Products to the Delivery Location at any time after the Customer receives notification that the same have been shipped and / or an estimated delivery date. Any dates quoted for delivery are approximate only and the time of delivery is not of the essence. Careium shall not be liable for any delay in delivery of the Products and / or Subscription Products, including any delay that is caused by a Force Majeure Event or the Customer's failure to provide Careium with adequate delivery instructions or any other instructions that are relevant to the supply of the Products and Subscription Products.
- 5.3 If Careium fails to deliver the Products and Subscription Products, Careium shall investigate the cause of the same and its liability shall be limited to either re-shipping the relevant Products and Subscription Products or providing the Customer with a refund of any Charges paid for the same.
- 5.4 Subject to clause 5.5.1, delivery is completed on the completion of the delivery of the Products and Subscription Products at the Delivery Location.
- 5.5 If the Customer fails to take delivery of the Products and Subscription Products within three delivery attempts by the courier (or such other frequency as the relevant courier may impose), then, except where such failure or delay is caused by a Force Majeure Event or Careium's failure to comply with its obligations under the Contract in respect of the Products and Subscription Products:
 - 5.5.1 delivery of the Products and Subscription Products shall be deemed to have been completed on the last delivery attempt by the courier; and
 - 5.5.2 the courier (or Careium) shall store the Products and Subscription Products until actual delivery takes place and the Customer shall be responsible for all related costs and expenses (including insurance), if any.
- 5.6 Careium may deliver the Products and Subscription Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6 Quality

- 6.1 Careium warrants that:
 - 6.1.1 on delivery, the Products shall comply with all applicable laws and regulations; and
 - 6.1.2 for a period of 24 months from the date of delivery (**Warranty Period**), the Products shall:
 - a) conform in all material respects with the Specification;
 - b) be free from material defects in design, material and workmanship;

- c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- d) be fit for any purpose held out by Careium.

6.2 Subject to clause 6.3 and the Customer reasonably cooperating with Careium in relation to such matters, if:

- 6.2.1 the Customer gives notice in writing to Careium during the Warranty Period and within seven days of discovery that some or all of the Products do not comply with the warranty set out in clause 6.1;
- 6.2.2 Careium is given a reasonable opportunity to examine such Products (which may include troubleshooting and support by its work hours service desk); and
- 6.2.3 the Customer (if asked to do so by Careium) returns such Products with all applicable parts to Careium's place of business at the Customer's cost,

Careium shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. The Customer acknowledges that if it does not comply with clause 6.2.3, it may not receive a full refund or replacement of the Products.

6.3 Careium shall not be liable for the Products' failure to comply with the warranty set out in clause 6.1 if:

- 6.3.1 the Customer makes any further use of such Products after giving notice in accordance with clause 6.2;
- 6.3.2 any additional damage occurs due to the improper packaging of the Products by the Customer when returning the same to Careium;
- 6.3.3 the defect arises because the Customer fails to follow Careium's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- 6.3.4 the defect arises as a result of Careium following any drawing, design or specification supplied by the Customer;
- 6.3.5 the defect arises as a result of excessive voltage, power surges, storm damage, liquid damage, device misuse, device poor condition or vandalism;
- 6.3.6 the Customer alters or repairs such Products without the written consent of Careium;
- 6.3.7 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
- 6.3.8 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, Careium shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Products supplied by Careium.

6.7 If any issues arise with the Products outside of the Warranty Period, Careium may choose to repair or replace such Products (at its sole discretion) subject to the Customer paying any applicable fees, to be agreed at the relevant time.

7 Title and risk

7.1 The risk in the Products and Subscription Products shall pass to the Customer on delivery.

- 7.2 Title to the Products shall not pass to the Customer until the earlier of:
- 7.2.1 Careium receiving payment in full (in cash or cleared funds) for the Products and any other goods that Careium has supplied to the Customer; and
 - 7.2.2 the Customer reselling the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Products has passed to the Customer, the Customer shall:
- 7.3.1 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Careium's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 7.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 7.3.4 notify Careium immediately if it becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4; and
 - 7.3.5 give Careium such information as Careium may reasonably require from time to time relating to:
 - a) the Products; and
 - b) the ongoing financial position of the Customer.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Products (and use the Subscription Products) in the ordinary course of its business (but not otherwise) before Careium receives payment for the Products. However, if the Customer resells the Products before that time:
- 7.4.1 it does so as principal and not as Careium's agent; and
 - 7.4.2 title to the Products shall pass from Careium to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 At any time before title to the Products passes to the Customer, Careium may:
- 7.5.1 by notice in writing, terminate the Customer's right under clause 7.4 to resell the Products or use them in the ordinary course of its business; and
 - 7.5.2 require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

8 Price and payment

- 8.1 Unless stated otherwise in the Accompanying Documents, this clause 8 shall apply in relation to the payment of the Charges.
- 8.2 The price of the Products and Subscription Products shall be the price set out in the Order or, if no price is quoted, the price set out in Careium's published price list in force as at the date of delivery.
- 8.3 The Charges exclude:
- 8.3.1 amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Careium at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 8.3.2 the costs and charges of packaging, insurance and transport of the Products and Subscription Products, which shall be invoiced to the Customer.
- 8.4 Careium may invoice the Customer for the:

- 8.4.1 Products on or at any time after the completion of delivery; and
- 8.4.2 Subscription Products:
 - a) for any upfront payments, on or around delivery;
 - b) for any further advance payments, prior to the start of the relevant period; and
 - c) otherwise, monthly in arrears.
- 8.5 The Customer shall pay each invoice submitted by Careium:
 - 8.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Careium and confirmed in writing to the Customer; and
 - 8.5.2 in full and in cleared funds to a bank account nominated in writing by Careium, andtime for payment shall be of the essence of the Contract.
- 8.6 If the Customer fails to make a payment due to Careium under the Contract by the due date, then, without limiting Careium's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9 Limitation of liability**
- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 9.2.1 death or personal injury caused by negligence;
 - 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.2.4 defective products under the Consumer Protection Act 1987.
- 9.3 Subject to clause 9.2, Careium's total liability to the Customer under this Contract shall not exceed 150% of the total Charges paid and / or payable by the Customer under this Contract.
- 9.4 Subject to clause 9.2, the following types of loss are wholly excluded:
 - 9.4.1 loss of profits;
 - 9.4.2 loss of sales or business;
 - 9.4.3 loss of agreements or contracts;
 - 9.4.4 loss of anticipated savings;
 - 9.4.5 loss of use or corruption of software, data or information;
 - 9.4.6 loss of or damage to goodwill; and
 - 9.4.7 indirect or consequential loss.

10 Termination

- 10.1 Without limiting its other rights or remedies, Careium may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Customer being notified in writing to do so;
 - 10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 10.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.2 Without limiting its other rights or remedies, Careium may suspend provision of the Products and Subscription Products under the Contract or any other contract between the Customer and Careium if the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4, or Careium reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, Careium may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to Careium all of Careium's outstanding unpaid invoices and interest and, in respect of Products and Subscription Products supplied but for which no invoice has been submitted, Careium shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5 Unless agreed otherwise, on termination or expiry of the Subscription Period, the Customer shall immediately deliver to Careium all Subscription Products. If the Supplier fails to do so, Careium may enter the Customer's premises and take possession of them. Until they have been returned or delivered, the Customer shall be solely responsible for their safe keeping, will be liable for any fees in retaining the same and will not use them for any purpose not connected with the Contract.
- 10.6 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11 Data Protection

The parties acknowledge that it is not envisaged that Careium will process personal data (as defined in the UK GDPR) pursuant to this Contract. However, if and to the extent that Careium processes personal data pursuant to this Contract, it shall do so in line with the Privacy Notice.

12 Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

13 General

13.1 Assignment and other dealings

13.1.1 Careium may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Careium.

13.2 Confidentiality

13.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.2.

13.2.2 Each party may disclose the other party's confidential information:

- a) to its employees, officers, representatives, contractors, subcontractors or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisors to whom it discloses the other party's confidential information comply with this clause 13.2; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.3 Entire agreement

13.3.1 The Contract constitutes the entire agreement between the parties.

13.3.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

13.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5 **Waiver.** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

13.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.7 Notices

13.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b) sent by email to the email addresses set out in the Accompanying Documents.

13.7.2 Any notice shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address;

- b) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or
- c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

13.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.8 **Third party rights.**

13.8.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

LAST UPDATED 15 JANUARY 2024.