

MILBOTIXSMARTSOCKS®DISCOVERYSTANDARD CONDITIONS OF SALE

1. Definitions

1.1 In these Conditions

“the Company” means Milbotix Ltd of 21 Hailey Ave, Chipping Norton OX7 5JG.

“the Contract” means the contract for the sale of the Products to the Customer, which is subject to these Conditions.

“the Customer” means the person, firm or company placing an order with the Company.

“the Products” means SmartSocks®DISCOVERY and associated web and mobile applications (“App”) including the socks with Sensors built in (“Socks”) and the associated software which facilitates use of the App (“Software”).

“Order” means the Customer’s Order for the Products (detailing type, quantity and price) made by the Customer by online submission to the Company’s webshop or via a purchase order or email.

“the Sensors” means the sensors attached to and/or sown into the Socks which detect and upload the wearer’s data as detailed in the Specifications;

“the Specifications” means the specifications for the Products supplied by the Company to the Customer which can be found at <https://milbotix.com/wp-content/uploads/DIGITAL-Milbotix-Datasheet-Discovery-Specifications.pdf>

2. General

2.1 These Conditions apply to any agreement between the Company and the Customer for the sale and purchase of the Products. All other terms, conditions and warranties whether written or verbal, expressed or implied, statutory or otherwise, including (without limitation) the Customer’s standard terms of business (if any) are to the fullest extent permitted by law excluded save to the extent provided in these Conditions or in any written document forming part of the Contract and signed on behalf of both parties by their duly authorised representatives or in any variations expressly specified in the Company’s order acknowledgement letter.

2.2 By making an Order after receiving these Conditions, the Customer acknowledges that these Conditions shall prevail over any conditions inconsistent herewith purported to be imposed by the Customer or any previous course of dealing between the Company and the Customer save to the extent of any variations referred to in Section 2.1.

3. Publications and Representation

3.1 All descriptions and illustrations contained in the Company’s related materials present a general idea of the Products described in them but do not form part of the Contract unless specifically incorporated therein as provided for in Section 2.1.

3.2 The Customer acknowledges that in entering into the Contract, it has not relied on and the Company shall not be liable for any written or oral representations made by or on behalf of the Company save as set forth in writing by the Company’s duly authorised representatives and expressly included in the Contract.

4. Quotations, Orders and Acceptance

4.1 Any quotations issued by the Company do not constitute offers and the Company reserves the right to withdraw or revise such quotations at any time prior to accepting an Order.

4.2 The Company’s acceptance of an Order shall be effective only where confirmation has been sent via the online SmartSocks® webshop or by email.

4.3 Once accepted, an Order may only be varied with the Company’s prior written consent.

5. Software

5.1 The Customer is granted a non-exclusive licence (with no right to assign or sub-license) to use the Software to collect and analyse data from wearers of the Socks. That data shall be uploaded and available in anonymised form for use by the Company in future research.

5.2 The Company shall be in no manner liable for any failure of the Software to perform caused by intermittent or lost connectivity for reasons beyond its control.

5.3 In ordering Products and accessing the Software the Customer may make personal data available to the Company. Such personal data shall be processed by the Company according to its privacy policy which can be found <https://milbotix.com/privacy/>

5.4 For 12 months from the date of log-in to the web, the Customer may use the Company’s support service to address issues and answer questions regarding the Software and the Sensors. The Company shall use reasonable endeavours to address any problems as soon as reasonably possible. Support shall be available 9am-5pm (UK time) on email support@milbotix.com

6. Cancellation of Orders

Orders may be cancelled up to 14 days after date of Order Acceptance.

7. Prices and Payment

7.1 All Products will be charged at prices current at the time of Order.

7.2 All prices quoted are exclusive of VAT or any other applicable sales tax, and any transportation or customs fees which shall be payable in addition.

7.3 Payment must be made in full in advance of despatch of the Socks and Logging into the App.

8. Delivery

8.1 The Company shall give the Customer notice of the estimated delivery date for the Socks and shall arrange delivery to the Customer’s premises.

8.2 The Company will use reasonable efforts to maintain delivery dates but such delivery dates shall not be of the essence of the Contract and the Company shall not be liable for failure to deliver the Socks by such date. Each Order and the corresponding delivery shall constitute a separate Contract under these Conditions and the Company’s failure to make any delivery in full, on time or at all shall not vitiate the Contract as a whole.

9. Non-Delivery and Return

9.1 Liability for non-delivery of the Socks will not be accepted by the Company unless it is notified in writing within 3 working days of the date of despatch of the invoice by the Company.

9.2 The Customer shall inspect the Socks immediately on delivery. Any defects in them apparent when they arrive must be reported in writing to the Company and the Socks posted back to the Company within 3 working days of delivery. If the Customer does not give notice within such period the Socks shall be conclusively presumed to have been accepted by the Customer.

9.3 If the Company accepts the Customer’s claim under Section 9.2 above it shall replace the Socks in question.

9.4 Within 14 days of delivery the Customer may in any event return the Products for a full refund provided no one has opened and used the Socks, they and their packaging are undamaged, and the App has not been logged into.

10. Title

The legal and equitable ownership of any consignment of the Socks and risk in them shall pass to the Customer on delivery.

11. Warranty

11.1 The Company warrants for the periods specified in Section 11.2 (“Warranty Period”) that the Sensors shall comply with the applicable Specifications. Should the Company receive written notice of any failure of the Products to conform with the Specifications within the Warranty Period which is proved to the Company’s satisfaction to be the result of defective material or workmanship and not caused by fair wear and tear, damage in transit or after delivery or accident, the Company subject to Section 11.2 below will replace or repair such Products after they have been returned to it free of charge.

11.2 The aforesaid warranty shall last for 12 months from LOGIN to the web app but shall not apply if the damage or defect in question has arisen in whole or part because of any breach of the User Manual sent with the Products.

11.3 The aforesaid warranty, shall not apply to the Socks themselves but only the Sensor and battery charging base and shall not apply to any direct or indirect or consequential liability, loss, injury or damage (other than death or personal injury caused by the Company's negligence) arising through any such failure or defect, shall not be affected by any technical advice or assistance given by the Company concerning the installation or operation of the Products, and is for the original application only.

11.4 SECTIONS 11.1-11.3 SET OUT THE COMPANY'S ENTIRE LIABILITY FOR BREACH OF WARRANTY.

12. Liability – THE CUSTOMER'S ATTENTION IS EXPRESSLY DRAWN TO THIS SECTION.

12.1 THE OBLIGATIONS OF THE COMPANY UNDER SECTIONS 9 AND 11 ARE UNDERTAKEN BY THE COMPANY AND SHALL BE ACCEPTED BY THE CUSTOMER IN LIEU OF AND TO THE EXCLUSION OF ALL CONDITIONS AND WARRANTIES WHETHER EXPRESSED, IMPLIED, STATUTORY (SAVE AS PROVIDED IN SECTION 12.2) OR OTHERWISE. SAVE AS PROVIDED IN SECTION 12.2 BELOW THE LIABILITY OF THE COMPANY FOR LOSS OR DAMAGE INCLUDING CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE TO THE CUSTOMER (INCLUDING WITHOUT LIMITATION LOSS UNDER CURRENT AND FUTURE CONTRACTS, LOSS OF BUSINESS AND DISASTER RECOVERY COSTS) SHALL NOT IN ANY EVENT EXCEED THE INVOICE PRICE OF THE PRODUCTS IN CONNECTION WITH WHICH SUCH LIABILITY ARISES WHETHER SUCH LIABILITY ARISES IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE HOWSOEVER AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OCCURRING.

12.2 The limitation of liability referred to in Section 12.1 shall not apply so as to exclude or restrict the Company's liability for death or personal injury resulting from the negligence of the Company, its servants or agents, or in any other manner precluded by law.

12.3 The Customer shall only use the Products and supply the Socks for the purposes authorised in the Specification. The Customer shall be solely responsible for instructing wearers in correct use of the Socks and for compliance with any relevant legal, regulatory or ethical requirements on connection with use of the Products, including without limitation in connection with processing the personal data of wearers of the Socks. The Customer should also note the disclaimer in Appendix 1 below and should draw wearers' attention to it.

12.4 The Customer shall indemnify and keep indemnified the Company against all claims, proceedings, losses and expenses arising out of or in connection with the use of the Products, unless the aforesaid are incurred due to the Company's negligence or a breach of the warranty in Section 11.

12.5 The Customer undertakes not to give or make any warranties, representations, assurances or advice, whether written or verbal, in connection with the Products save for those expressly authorised in writing by the Company ("Unauthorised Representations"). The Customer shall indemnify the Company against any loss or liability which the Company incurs due to the Customer making any Unauthorised Representations or any third party acting in reliance on the same.

13. Intellectual Property Rights

The Customer shall promptly notify the Company in writing if it becomes aware of:

13.1 any infringement or alleged infringement by any third party of the rights in any intellectual property contained in or relating to the Products; or

13.2 any allegation by any third party that the sale, use or exploitation of the Products infringes any intellectual property rights of any third party;

and subsequently supply to the Company such detailed information concerning the same as is available to it and extend such co-operation as the Company shall reasonably request (at the Company's expense) in countering it.

14. Force Majeure

The Company shall not be liable to the Customer for any failure to perform or delay in performing any of its obligations under the Contract caused by factors beyond the Company's reasonable control and no such failure or delay shall be deemed for any purpose to constitute a breach of the Contract.

15. Notices

Notices under the Contract are to be served in writing and may be served by email to the email addresses in the Contract or registered post to the recipient's address as it appears in the Contract. Notices served by email shall be deemed received 1 business day after transmission and notices served by post shall be deemed to have been received 2 business days after despatch (in the case of internal UK post) and 6 business days after despatch (in the case of air mail).

16. Validity

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of these Conditions and the remainder of the provisions in question shall not be affected thereby.

17. Third Party Rights

Nothing in this Agreement should be construed as conferring rights on any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18. No Waiver

No waiver or indulgence by the Company in exercising any right, remedy, power or privilege under the Contract shall either be or be deemed to be a waiver of or in any way prejudice any such right, remedy, power or privilege. No single or partial exercise of any right, remedy, power or privilege shall preclude or restrict the further exercise or enforcement of any such right, remedy, power or privilege.

19. Assignment

The Customer shall not assign, transfer, delegate or subcontract any of its rights and obligations under the Contract save to the extent necessary to wearers of Socks to take part in its research. The Company shall be entitled to assign, transfer, delegate or subcontract its rights and obligations under the Contract.

20. Law and Jurisdiction

20.1 Any controversy or claim of whatsoever nature arising out of or relating in any manner whatsoever to the Contract or any breach of any terms of the Contract shall be governed by and construed in all respects in accordance with the laws of England.

20.2 Each party hereby irrevocably acknowledges and agrees that the Courts of England shall have exclusive jurisdiction to resolve any controversy or claim of whatsoever nature arising out of or relating in any manner to the Contract, any terms of the Contract or any breach of the Contract or any such terms provided that the Company may apply for an injunction or other interim relief and enforce awarded it by the Courts of England in any court of competent jurisdiction. The place of performance is England.

APPENDIX 1 – DISCLAIMER

1. The Socks and App are not intended for use as medical devices or to replace medical devices. They do not and are not intended to diagnose, treat, prevent, alleviate or monitor disease, injury or disability or investigate, replace or modify the anatomy or any physiological process. They must not be used for any such purpose. They are meant for research use only to collect physiological data for use in research into aspects of human health, aging and neurological diseases.

The Company strongly recommends that wearers carefully monitor their use of the Socks and the App. If any concerns, discomfort or risk of injury arise, wearers should immediately cease using the Socks and the App and contact the Company as soon as possible at contact@milbotix.com.