

TERMS AND CONDITIONS

For the purpose of this Rental/Hire Agreement, "Medical Specialties of California UK Ltd" shall mean Medical Specialties of California UK Ltd (the company), trading as Penguin Cold Caps, its owners, officers, directors, shareholders, employees, agents, representatives, licensees, cap fitters and "Hirer" shall mean the "User of the Equipment", its agents, representatives and/or employees, and if the payee is a different name to the Hirer, the payee is bound into this agreement to undertake the payment(s) obligations of the Hirer.

Hiring of the Equipment, herein "the Rental Equipment" or "Rental Equipment" or "Equipment" as described in the order form or this Rental Agreement.

It is agreed as follows:

1. INDEMNITY/HOLD HARMLESS.

The Hirer will take all necessary precautions regarding the Equipment rented, and protect all persons and property from injury or damage.

The Hirer agrees to hold harmless Medical Specialties of California UK Ltd against any and all liability, claims, judgments, attorneys' fees and costs, of every kind and nature, including, but not limited to, injuries or death to persons and damage to property, arising out of the use, maintenance, instruction, operation, possession, ownership or rental of the Equipment rented/hired, however caused, except claims or litigation arising through the sole negligence or wilful misconduct of Medical Specialties of California UK Ltd.

2. ASSUMPTION OF RISK/RELEASE-DISCHARGE OF LIABILITY.

The Hirer/User acknowledges before using Penguin Cold Caps, the Hirer/User of the Equipment must check with their qualified Medical Consultant that they can use the Equipment in its cooled state with their treatment or drug regimen. If the Hirer has Reynaud's disease or receiving the drug Oxaliplatin for their treatment or have spinal or neck injury, it is imperative that the Hirer communicates with their qualified Medical Consultant. Ultimately and for the Hirer's/Users safety, the Hirer's/Users Medical Consultant must make the final decision whether the Hirer/User can use our Equipment in its cooled state with the treatment or drug regimen.

The Hirer is fully aware and acknowledges there is a risk of injury or damage or side effects arising out of the use or operation of the Equipment rented/hired hereunder.

The Hirer is fully aware and acknowledges there is a risk of injury or damage or side effects arising out of using dry ice or a freezer with the operation of the Equipment rented/hired hereunder and hereby elects to voluntarily enter into this rental agreement and assume all of the above risks whatsoever of injury or damage.

The Hirer agrees to release and discharge Medical Specialties of California UK Ltd from any and all responsibility or liability from such injury or damage or side effects arising out of the use or operation of the Equipment, including the use of dry ice or a freezer with the operation of the Equipment.

The Hirer agrees to waive, release and discharge any and all claims for injury, side effects or damage against Medical Specialties of California UK Ltd which the Hirer otherwise may be entitled to assert.

The Hirer is fully aware and acknowledges that Medical Specialties of California UK Ltd will use its' best endeavours to ship the Equipment rented in a timely manner and fully accepts there is a risk that the Equipment might not arrive at the time requested and hereby elects to voluntarily enter into this rental agreement and assume this risk and discharge Medical Specialties of California UK Ltd from any and all responsibility or liability.

The Hirer agrees to waive, release and discharge any and all claims for any costs incurred in the purchase, hire or rental of any equipment, products, services, person(s) not purchased, hired/rented directly from Medical Specialties of California UK Ltd.

The Hirer agrees to waive, release and discharge any and all claims or damage against Medical Specialties of California UK Ltd, if incorrect information is provided by the User/Hirer in writing; email; by telephone or via the web site order form.

The Hirer further agrees to waive, release and discharge any and all claims or damage against Medical Specialties of California UK Ltd which the Hirer otherwise may be entitled to assert.

3. OPERATORS.

Operators may be furnished, directly or indirectly with our Equipment.

4. RECEIPT/INSPECTION OF EQUIPMENT.

The Hirer hires the Equipment on an "as is" basis.

The Hirer acknowledges that he/she has, or will, personally inspect the Equipment prior to its use and finds it suitable for Hirer's needs. The Hirer is to contact Medical Specialties of California UK Ltd if any of the Equipment is faulty or missing within 24 hours of the Equipment being delivered.

Hirer acknowledges receipt of all items listed in this Rental Agreement and that the Equipment is in good working order and repair and that Hirer understands (without further instructions) its proper operation and use.

5. TITLE OF EQUIPMENT.

The Hirers' right to; hire of the Equipment, begins upon; the date the Equipment leaves the Medical Specialties of California UK Ltd's depot(s) (the "Outward Hire Date"), or the date the Equipment is handed/given to the Hirer or Hirer's representative by a Company representative, employee or agent or licensee (the "Outward Hire Date"), or if the Equipment is picked-up/collected/delivered by a shipping company, e.g. FedEx, the tracking date will be used as the date the Equipment leaves the depot (the "Outward Hire Date").

The Hirers' right to hire the Equipment, terminates upon; the date the Equipment is received back at the Medical Specialties of California UK Ltd's depot(s) (the "Return Hire Date"), or the date the Equipment is handed/given back to a Company representative, employee or licensee or agent (the "Return Hire Date"), or if the Equipment is returned by a shipping company, e.g. FedEx, the tracking date will be used as the date the Equipment is returned to the depot or agent or licensee or employee (the "Return Hire Date").

The "Outward Hire Date" & the "Return Hire Date" will be considered a full 24 hour Day regardless of the time of day the Equipment is hired or returned, and the days are inclusive when calculating the rental hire period.

Title to the Equipment is and shall remain Medical Specialties of California UK Ltd.

If the Equipment is not returned and/or levied upon for any reason whatsoever, Medical Specialties of California UK Ltd may re-take the Equipment without further notice or legal process and use whatever force is reasonably necessary to do so.

The Hirer hereby agrees to indemnify, defend and hold Medical Specialties of California UK Ltd harmless from any and all claims and costs arising from such re-taking or levy.

If Equipment are levied upon, the Hirer shall notify Medical Specialties of California UK Ltd immediately.

6. RENTAL PERIOD/RATE/PAYMENT.

The rate of hire for the Rental Period is for a minimum of one month unless a shorter term is specified in the Rental Agreement or the Order Form. i.e. If the Equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period.

Rental rates for the Equipment are based upon a month at a time and are paid a month in advance.

After the first months rental all unused days are pro-rated. e.g. if the Equipment is returned before the end of the second (or consecutive months) the days hire remaining will be refunded.

The rental hire charges begin immediately upon;

the Equipment leaving Medical Specialties of California UK Ltd's depot, or the Equipment being handed/given to the Hirer or Hirer's representative by a Company representative, employee or agent.

Rental charges end upon;

return of the Equipment in an acceptable condition, to Medical Specialties of California UK Ltd, or the Equipment being handed/given back to a Company representative, employee or agent or licensee.

No allowance will be made for Saturdays, Sundays, Holidays, or time in transit, nor for any period of time the Equipment is not in actual use while in the Hirer's possession.

Hire/Rental of the Equipment begins upon the date the Equipment leaves the Medical Specialties of California UK Ltd's depot (the "Outward Hire Date"), or the date the Equipment is handed/given to the Hirer or Hirer's representative by a Company representative, employee or agent (the "Outward Hire Date"), or if the Equipment is picked-up/collected/delivered by a shipping company, e.g. FedEx. The tracking date will be used as the date the Equipment leaves the Depot (the "Outward Hire Date").

Hire/Rental of the Equipment terminates upon;

the date the Equipment is received back at the Medical Specialties of California UK Ltd's depot(s) (the "Return Hire Date"), or the date the Equipment is handed/given back to a Company representative, employee or licensee or agent (the "Return Hire Date"), or if the Equipment is returned by a shipping company, e.g. FedEx. The tracking date will be used as the date the Equipment is returned to the depot(s) (the "Return Hire Date").

The Hirer acknowledges that he/she is responsible for paying the shipping of the Equipment both ways i.e. the cost of shipping from the Depot to the Hirer's address and for the return of the Equipment from the Hirer's dwelling to Medical Specialties of California UK Ltd depot or representative. The Hirer agrees that Medical Specialties of California UK Ltd are not liable for any failed shipping charges, e.g. if delivery is attempted and the Hirer/Hirer's representative is not there/able to accept delivery of the rental Equipment.

The "Outward Hire Date" & the "Return Hire Date" will be considered a full 24 hour day regardless of the time of day the Equipment is hired or returned, and the days are inclusive when calculating the rental hire period.

The "Outward Hire Date" as described above, is used as the first invoice date and the "Return Hire Date" is used as end of hire and closing invoice date. In the event the Equipment is hired at short notice and the Hirer/User uses the equivalent Equipment via a Representative or Licensee or a Cap Fitter the first treatment date will be used as the first rental invoice date or Outward Hire Date.

Medical Specialties of California UK Ltd may terminate hire of the Equipment at any time and re-take the Equipment without further notice in case of violation by the Hirer/User of any terms or conditions of this Rental Agreement.

The Hirer agrees to pay any collection costs and attorney fees incurred in collection of this account or any dispute arising out of this Rental Agreement.

The Hirer agrees to pay a monthly service charge on all unpaid balances.

The Hirer agrees to pay Medical Specialties of California UK Ltd a fee for environmental compliance.

The Hirer agrees that a company representative, agent, or licensee or employee may contact by telephone, email or fax to collect payments or out-standing payments owing.

The Hirer agrees to any unpaid invoice or account being deducted from the security deposit held by the Medical Specialties of California UK Ltd.

The Hirer agrees that Medical Specialties of California UK Ltd is not liable for any fees incurred by the Hirers credit or bank card provider for overseas transactions.

7. ORDINARY WEAR AND TEAR.

Hirer shall be responsible for all damage not caused from ordinary wear and tear.

"Ordinary wear and tear" shall mean only the normal deterioration of the Equipment caused by ordinary, reasonable and proper use of the Equipment.

Damage which is not "ordinary wear and tear" includes, but is not limited to: damage due to overturning, overloading or exceeding rated capacities, breakage, improper use, miss-use, abuse, lack of cleaning, dirtying of Equipment by any other material.

A cleaning charge will be made on the Equipment if returned unclean. This will be charged at \$20 per hour.

8. COMPLIANCE WITH LAWS/USE OF EQUIPMENT.

The Hirer agrees not to use or allow anyone to use the Equipment for any illegal purpose or in any illegal manner or in an unsafe manner.

Hirer agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, or country laws, ordinances and regulations which may apply to the use of the Equipment during the rental period.

The Hirer further agrees to pay all licenses, fines, fees, permits, or taxes arising from his use of the Equipment, including any subsequently determined to be due.

The Hirer shall not allow any person who is not qualified and who has not received and understands safety and operating instructions and who does not utilize all Equipment required to operate the Equipment properly.

The Hirer shall not allow any person to use or operate the Equipment when it is in need of repair or when it is in an unsafe condition or situation, modify, misuse, harm or abuse the Equipment, permit any repairs to the Equipment without Medical Specialties of California UK Ltd.'s prior written permission, or, allow a lien to be placed upon the Equipment.

The Hirer agrees (if appropriate to the Equipment) to check filters, fluid levels, clean and visually inspect the Equipment immediately before use and to immediately discontinue use and notify Medical Specialties of California UK Ltd when Equipment is found to need repair or maintenance or is not properly functioning.

The Hirer agrees if dry ice is used with the Equipment that the safety instructions and any other instructions the dry ice supplier advises or issues to the Hirer are adhered to, including safety equipment. E.G. Safety glasses and gloves.

The Hirer acknowledges that Medical Specialties of California UK Ltd has no responsibility to inspect the Equipment while it is in Hirer's possession or rental period.

9. RETURN OF EQUIPMENT.

The Hirer agrees to return to Medical Specialties of California UK Ltd the Equipment in as good condition as when received, ordinary wear and tear excepted by the Rental Agreement.

The Hirer shall be liable for all damages to or loss of the Equipment and liability incurred prior to Equipment's return to Medical Specialties of California UK Ltd.

The Hirer shall be responsible for all costs incurred by Medical Specialties of California UK Ltd for recovering and returning damaged Equipment to Medical Specialties of California UK Ltd.'s premises, depots, agents, representatives or employees.

The Hirer agrees, that if the Equipment is to be picked up/collected by Medical Specialties of California UK Ltd, they will provide a secure storage location.

The Hirer accepts all risk, including damage to and liability relative to the Equipment for a reasonable period of time until the Equipment is collected by Medical Specialties of California UK Ltd.

The Hirer acknowledges and agrees that the Security Deposit will not be returned to the Hirer until the Equipment is returned and in the possession of Medical Specialties of California UK Ltd or its Representatives or Licensees or Agents. Charges will be applied if all the Equipment rented, including any damaged Equipment (if applicable) is not returned to Medical Specialties of California UK Ltd. For clarification the rental/hire charges/fees will continue until the Equipment is returned to the Medical Specialties of California UK Ltd and the Hirer will be liable for these charges/fees.

10. DISCLAIMER OF WARRANTIES.

Medical Specialties of California UK Ltd makes no warranty of merchantability or fitness for any particular use or purpose, either express or implied.

There is no warranty or representation that the Equipment is fit for Hirer's particular intended use, or that it is free of latent defects.

Medical Specialties of California UK Ltd shall not be responsible to the Hirer or any third party for any loss, damage or injury resulting from, or in any way attributable to the operation of, use of, or any failure of the Equipment.

Medical Specialties of California UK Ltd shall not be responsible for any defect or failure unknown to Medical Specialties of California UK Ltd.

The Hirer's sole remedy for any failure of or defect in the Equipment shall be termination of the rental charges at the time of failure provided that the Hirer notifies Medical Specialties of California UK Ltd immediately of such failure.

11. GUARANTEE.

Due to individual's metabolism, reactions and self-application of the Equipment, Medical Specialties of California UK Ltd cannot guarantee the User/Hirer results.

12. SUBLETTING/LOCATION OF EQUIPMENT.

The Hirer agrees not to sell, sublet, loan or assign the Equipment, without signed permission from a company representative, agent, or employee.

13. DEFAULT.

Should the Hirer in any way fail to observe or comply with any provision of this Rental/Hire Agreement, Medical Specialties of California UK Ltd may at its sole option, terminate this Rental/Hire Agreement, re-take the Equipment, declare any charges due and payable and initiate legal process to recover monies owed, and/or, pursue any other legal rights and remedies available to Medical Specialties of California UK Ltd.

Exercise of any remedy available to Medical Specialties of California UK Ltd shall not constitute an election of remedies or a waiver of any additional remedies to which Medical Specialties of California UK Ltd may be entitled.

Medical Specialties of California UK Ltd has the right to give notice by email, letter or fax, whereby Medical Specialties of California UK Ltd, will give fourteen days for the monies owed to be paid. Failure to pay outstanding monies after this period of time, the Hirer will be charged interest of 5% per month over the base rate of the central bank of the country it is hired within.

14. RETAKING OF EQUIPMENT.

If for any reason it becomes necessary for Medical Specialties of California UK Ltd to re-take the Equipment, the Hirer authorizes Medical Specialties of California UK Ltd to re-take the Equipment without further notice or further legal process and agrees that Medical Specialties of California UK Ltd shall not be liable for any claims for damage or trespass arising out of the removal of the Equipment.

15. LEGAL FEES.

In the event an attorney is retained to enforce any provision of this Rental/Hire Agreement, the prevailing party in the dispute shall be entitled to recover reasonable attorney's fees and court costs in such action, or proceeding, in an amount to be determined by the court.

16. NOTICE OF NON-WAIVER/SEVERABILITY.

Any failure of Medical Specialties of California UK Ltd to insist upon strict performance by the Hirer as regards any provision of this Rental/Hire Agreement shall not be interpreted as a waiver of Medical Specialties of California UK Ltd right to demand strict compliance with all other provisions of this Rental/Hire Agreement against the Hirer or any other person.

The provisions of this Rental/Hire Agreement shall be severable so that in the event any provision of this agreement is invalid or not enforceable, shall not affect any other provision or clause.

17. MISCELLANEOUS.

The Hirer is fully aware and acknowledges:

- (a) that the terms and conditions of this Rental/Hire Agreement shall apply to all subsequent rentals of the Equipment by the Hirer from Medical Specialties of California Ltd or via its agents, representatives or licensees or employees;
- (b) that the Terms and Conditions of this Agreement shall govern all future "delivery without signature" deliveries should the Hirer fail or be unable to sign the Rental/Hire Agreement at time of delivery;
- (c) that the Hirer is responsible for packing and returning the Equipment, to Medical Specialties of California UK Ltd nominated return address, agent, licensee representative or employee;
- (d) if financial assistance based on income is applied for with a non-profit or charitable organisation, financial statements will be shared with that entity.
- (e) that any overseas transaction the Hirer will contact their bank/credit facility to clear funds for payment and that Medical Specialties of California UK Ltd will charge a fee of £20 Pounds Sterling or U.S.\$30 for any declined payment;
- (f) that the Hirer acknowledges and agrees that the order form could not be processed without the order form being completed and the Terms & Conditions, Disclaimer & Policies being read, understood and agreed to by ticking the box on the web site page; the Hirer also acknowledges and agrees that payment cannot be processed to begin the rental if the Terms & Conditions box on the website page is not agreed to by ticking the box using a computer mouse and therefore is not allowed to use the Equipment. In the event the Hirer/User should receive the Equipment without digitally ticking and agreeing to the Terms & Conditions the Hirer/User or anyone else in receipt of the Equipment cannot/must not use the Equipment;
- (g) that the Hirer acknowledges and agrees that the Equipment means all Equipment rented inclusive of goods charged at zero cost. E.G. Velcro fastening elastic straps, keep boxes, plastic bags, thermometers.
- (h) that the Equipment is used in accordance to the received instructions and user schedule provided by Medical Specialties of California UK Ltd;
- (i) that the Hirer has watched the instructional video sited on Medical Specialties of California's UK Ltd or Penguin Cold Caps website;
- (j) that the Hirer acknowledges that the headwear or Penguin Cold Caps and the Gel Bands of the Equipment are stored in a cool room, stacked white side to white side and blue to blue side. The Caps can be stored in a freezer or other similar cold appliance when not in use, but not exceeding minus 35 degrees Celsius. *The Penguin Cold Caps (part of the Equipment) can be stored in plastic freezer bags within the freezer (one end of the plastic bag must be open/not sealed). The Caps & Gel headbands must be dried before use;*
- (k) that no alterations, additions or improvements occur to the Equipment without written or email or fax permission from Medical Specialties of California UK Ltd.;
- (l) that the Hirer is responsible for damage to the Equipment (except fair wear and tear), but in particular, a fee of U.S. \$250 (or equivalent Inland Revenue monthly exchange rate of the United Kingdom), will be charged for damage to the head-wear or individual piece of Equipment called the Penguin Cold Cap and a fee of U.S.\$40 for the individual Gel Headbands (except fair wear and tear). Charges are also applicable to other Equipment e.g. Velcro fastening elastic straps, thermometers;
- (m) that the Hirer is responsible for any Equipment lost or stolen, a fee of U.S.\$250 (or equivalent Inland Revenue monthly exchange rate of the United Kingdom), will be charged for the head-wear or individual piece of Equipment called the Penguin Cold Cap and a fee of U.S.\$40 for the individual Gel Headbands. Charges are also applicable to other Equipment e.g. Velcro fastening elastic straps; Charges will be payable to Medical Specialties of California UK Ltd;
- (n) that (if applicable), when dry ice is used, stored and transported, the dry ice suppliers' advice and safety instructions must be adhered to;
- (o) that (if applicable), when dry ice is transported in a vehicle, the proper ventilation must be adhered to in accordance with the dry ice suppliers' advice and safety instructions;
- (p) that the Hirer agrees to release and discharge Medical Specialties of California UK Ltd from any and all responsibility or liability from such injury or damage arising out of the transportation, storage and use of dry ice;

- (q) that the Hirer acknowledges and agrees that Medical Specialties of California UK Ltd is not responsible or liable, at any time, for any costs incurred in the purchase, hire or rental or service of any additional equipment or products, not purchased, hired/rented directly from Medical Specialties of California UK Ltd.. e.g. dry ice, cool boxes, thermometers.
- (r) that the Hirer acknowledges and agrees that Medical Specialties of California UK Ltd is not responsible or liable, at any time, for any costs incurred in the purchase, hire or rental of any additional person(s) or other company services that are not purchased, hired/rented, billed directly from Medical Specialties of California UK Ltd.
- (s) that the Hirer acknowledges and agrees that Medical Specialties of California UK Ltd, is not responsible or liable, at any time, for any family, friend, associate or representative's cost of time or loss of earnings.
- (t) that if a statutory cooling-off period' is applicable, the statutory regulation for that country will be used by Medical Specialties of California UK Ltd;
- (u) If a full refund is given at the discretion of the company, a U.S.\$100 handling fee will be charged and deducted when the Hirer's/Users account is finalized.

18. Law.

That the law governing this Agreement shall be that of England in the country of the United Kingdom.