

Annexure D

CONDITIONS OF ISSUE – OPTIONS

1. Definitions and Interpretation

1.1 Definitions

In these conditions the following expressions have the following meanings:

ASTC Settlement Rules means the settlement rules of ASX Settlement and Transfer Corporation Pty Limited.

ASX means Australian Stock Exchange Limited.

ASX Listing Rules means the listing rules of ASX except to the extent of any waiver by ASX of their application to the Company.

Bonus Issue has the meaning ascribed to it in Chapter 19 of the ASX Listing Rules.

Business Day has the meaning ascribed to it in Chapter 19 of the ASX Listing Rules.

Company means Portland Orthopaedics Limited ACN 086 839 992.

Corporations Act means *Corporations Act* 2001.

Exercise Notice has the meaning given in clause 3.1(1).

Exercise Period means, in relation to an Option, the period between the date of issue of the Option and 5.00 pm (Australian Eastern Standard Time) on the Expiry Date.

Exercise Price means, in relation to an Option, the amount of 20 cents payable on exercise of the Option.

Expiry Date means 30 November 2008.

Holder means the holder of an Option.

Option means, at any time, an option to subscribe for 1 Share issued or granted by the Company subject to these conditions.

Pro-rata Issue has the meaning ascribed to it in Chapter 19 of the ASX Listing Rules.

Register means the register of Holders of Options referred to in clause 6.1.

Share means a fully paid ordinary share in the capital of the Company.

1.2 Interpretation

In these conditions unless the context otherwise requires:

- (1) **Business Day.** If any day appointed or specified by these conditions for the payment of any money or the doing of any act or thing falls on a day that is not a Business Day, the day so appointed or specified will be deemed to be the next day which is a Business Day.

- (2) **Collective references.** Reference to any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (3) **Defined expressions.** If an expression is defined, other parts of speech or grammatical forms of the expression have a corresponding meaning.
- (4) **Gender.** Words importing any gender include all genders.
- (5) **Headings.** Headings are for ease of reference only and do not affect the interpretation of these conditions.
- (6) **Numbers.** Words importing the singular include the plural and vice versa.
- (7) **Persons.** References to persons include bodies corporate and any other entity.
- (8) **Reconstructed bodies.** References to a body which has ceased to exist or has been reconstructed, amalgamated, reconstituted or merged, or the functions of which have become exercisable by any other person or body in its place, will be taken to refer to the person or body established or constituted in its place or the person or body by which its functions have become exercisable.
- (9) **Representatives and assigns.** References to a person include the legal personal representatives, successors and assigns of that person.
- (10) **Statutory amendments.** A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- (11) **Variation.** References to these conditions or an agreement or document include the conditions, agreement or document as varied, changed or replaced from time to time.
- (12) **Writing.** References to writing include any mode of representing or reproducing words in tangible and permanently visible form.
- (13) **Dollars.** References to money is to Australian currency.
- (14) **No Limitation.** References to **including** and similar expressions are not words of limitation.

2. Entitlement on Exercise of Options

- 2.1 Subject to these conditions, each Option entitles the Holder to subscribe for and be allotted 4 Shares upon the exercise of the Option and payment to the Company of the Exercise Price.

3. Exercise Of Options

3.1 Exercise Notice

- (1) The Holder may at any time during the Exercise Period give a notice (**Exercise Notice**) to the Company requiring the Company to issue Shares on exercise of the Options.
- (2) An Exercise Notice must be in writing and must be delivered to the registered office of the Company (or such other place as the Company may notify Holders in writing) together with payment of the Exercise Price for each of the Options exercised.
- (3) An Exercise Notice of an Option received by the Company will be deemed to be a notice of the exercise of that Option as at the date of receipt.
- (4) The directors of the Company may prescribe the form of an Exercise Notice which must be given by a Holder in order to exercise an Option.

3.2 Issue of Shares

- (1) On exercise of any Options, the Company must allot to the Holder the number of Shares for which the Options are exercised at the Exercise Price.
- (2) The Company must allot the Shares within 10 Business Days of receipt of the Exercise Notice.
- (3) An Exercise Notice is only effective when the Company has received the full amount of the Exercise Price for the Options exercised in cash or cleared funds.

3.3 Uncertificated Holding Statements

- (1) The Company must send to the Holder a holding statement or other statement in respect of the Options so held and any Shares issued on exercise of those Options within the time and in accordance with the applicable provisions of the ASX Listing Rules, ASTC Settlement Rules and the constitution of the Company.
- (2) If required by the ASX Listing Rules, the Company must tell the Holder in writing of the Exercise Price and Expiry Date of the Options within the time prescribed by the ASX Listing Rules after the first holding statement or other statement is sent.

3.4 Ranking of Shares Allotted on Exercise

Shares allotted upon exercise of Options will rank equally in all respects with all other issued Shares from the date of allotment and will be held subject to the constitution of the Company.

3.5 Lapse

- (1) Any Option which has not been exercised by 5.00 pm (Australian Eastern Standard Time) on the Expiry Date will lapse.
- (2) An Exercise Notice is not effective if it is received by the Company after the expiration of the Exercise Period.

4. Quotation of Shares

- 4.1 If Shares in the Company are quoted on ASX at the time of exercise of the Options, the Company will make application to ASX for the number of Shares issued upon exercise of Options within 10 Business Days of the allotment of those Shares.

5. New, Bonus and Pro-Rata Issues

5.1 General

- (1) A Holder cannot participate in a new issue of securities in the Company without first exercising the Options. However, the Company will ensure that, for the purposes of determining entitlements to any such issue, the record date will be at least 10 Business Days after the issue is announced. This will give Holders the opportunity to exercise their Options prior to the date for the determination of entitlements to participate in that new issue.
- (2) Holders who exercise their Options before the applicable record date for the new issue will be entitled to participate in that new issue.
- (3) Except as expressly set out in these conditions, a Holder does not have any right to change the Exercise Price of an Option or the number of Shares over which an Option can be exercised.

5.2 Bonus Issues

If there is a Bonus Issue to the holders of Shares in the Company then the number of Shares over which each Option is exercisable will be increased by the number of Shares which the Holder would have received under the Bonus Issue if the Option had been exercised before the record date for the Bonus Issue.

5.3 Reconstructions of Capital

In the event of any reorganisation including subdivision, consolidation, reduction, return or cancellation of the issued capital of the Company on or prior to the Expiry Date, the rights of a Holder will be changed to the extent necessary to comply with the applicable ASX Listing Rules governing reorganisations in force at the time of the reorganisation.

6. Maintenance of Register and Transfers of Options

6.1 Register of Holders of Options

- (1) The Company will keep and maintain, or cause to be kept and maintained, a register of Holders of Options.
- (2) The Company must ensure that the Register is maintained in compliance with the Corporations Act and all other applicable rules and requirements.

6.2 Transfers of Options

- (1) Subject to the constitution of the Company, ASX Listing Rules and ASTC Settlement Rules, all Options are transferable.

- (2) Subject to clause 7.2, the provisions of the constitution of the Company relating to a transfer of Shares apply, with necessary alterations, to a transfer of Options.

7. Miscellaneous

7.1 Severance

- (1) If a provision of these conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable then the provision must, as far as possible, be interpreted as narrowly as possible to ensure that it is not illegal, invalid or unenforceable.
- (2) If any provision or part of it cannot be so interpreted, then the provision or its part is taken to be void and severable. The remaining provisions of these conditions are not affected or impaired in any way.

7.2 Holders bound by Constitution

A Holder is bound by these conditions and the constitution of the Company insofar as the constitution relates to or governs the Options.

7.3 Waiver and Variation

- (1) Subject to the ASX Listing Rules, ASTC Settlement Rules and the constitution of the Company, the directors of the Company may by resolution:
 - (a) waive strict compliance with any of these conditions; or
 - (b) add to, vary or otherwise change any of these conditions for any reason including to ensure compliance with the ASX Listing Rules either generally in relation to all Holders or as they apply to a particular Holder.
- (2) Any waiver, addition, variation or other change under clause 7.3(1) must not be made unless:
 - (a) any Holder effected by the waiver, addition, variation or other change so consents in writing; or
 - (b) the directors of the Company reasonably consider that the waiver, addition, variation or other change is required to ensure compliance with the ASX Listing Rules or any law or requirement binding on the Company or does not adversely affect a Holder's rights under these conditions.

7.4 Notice of Expiry

The Company must send a Holder before the Expiry Date of the Options any notice required by Appendix 6A.6 of the ASX Listing Rules to be sent to Holders.

7.5 Governing law

- (1) These conditions are to be construed according to and is governed by the laws of New South Wales, Australia.

- (2) Each of the Company and the Holder submits to the exclusive jurisdiction of the courts in and of New South Wales in relation to any dispute arising under these conditions.