

SunTech Medical - Invoice Terms and Conditions of Sale (the “Agreement”)

ALL SALES BY **SUNTECH MEDICAL** (“Seller”) UNLESS COVERED BY A PRIOR EXISTING WRITTEN CONTRACT SIGNED BY SELLER, ARE SUBJECT ONLY TO THE FOLLOWING TERMS AND CONDITIONS. ANY TERMS IN CUSTOMER’S PURCHASE ORDER OR ANY OTHER CUSTOMER DOCUMENT WHICH ARE IN ADDITION TO, OR ARE DIFFERENT OR CONTRARY TO THESE TERMS, ARE HEREBY REJECTED.

Pricing, Freight, Taxes. Except as expressly set forth on the face hereof, the following shall apply: All prices are exclusive of freight. Seller will select a carrier and arrange shipment. Prices do not include customs duties or sales, use, excise or other similar taxes. All such taxes and any personal property taxes or other similar taxes assessable on Products after delivery to the carrier shall be paid by the Customer.

Payment Terms. If an open account is granted (which is subject to Seller’s continuing approval), payment is due within thirty (30) days after shipment date. Seller may change such terms of sale at any time upon prior notice to Customer. If, by the terms of sale, credit is extended to Customer, Seller reserves the right to revoke credit if Customer fails to pay for any goods previously delivered as due or if in the judgment of the Seller there has been a material adverse change in Customer’s financial condition and thereupon Seller shall have the right to demand payment or other assurance which it deems adequate before shipment of any further goods. Seller reserves the right to charge interest on delinquent accounts at the lesser of the rate of 18% per annum or the highest rate permitted by applicable law. Customer agrees to pay all costs of collection including reasonable attorney’s fees.

Retention of Title. Ownership of the Goods shall pass to the Purchaser when the Company receives the Price in full in cleared funds. Until title in the Goods passes to the Purchaser, the Purchaser shall: hold the Goods as the Company’s agent; keep the Goods separate from those belonging to the Purchaser and third parties and properly stored, insured and identified as the Company’s property; permit the Company to enter the premises where the Goods are stored at any time during normal working hours to take possession of such Goods; and the Company shall have a lien over any of the Purchaser’s assets in its possession or control.

Delivery & Risk of Loss. Products are shipped FCA/FOB, Morrisville, USA. Times between order and delivery of Product may vary. Seller shall not be responsible for any loss or liability suffered by Customer as a result of failure or delay in the delivery of Products.

Minimum Order Policy. All sales hereunder shall be subject to Seller’s Minimum Order as in effect from time to time.

WARRANTY. Seller warrants that its Products purchased hereunder shall, at the time of shipment, conform to Seller’s stated specifications and shall be free from defects in materials and workmanship. Seller’s sole liability and obligation under this warranty shall be to replace/repair any product that fails to conform to this warranty. Seller may, at its option, issue a credit to Customer in the amount of the price hereunder of any Product that does not conform to this warranty in lieu of replacement of such Product. NO Product shall be returned to Seller except in accordance with Seller’s Return Goods Policy as in effect from time to time, which is specifically incorporated herein by reference. Seller may change its return goods policy upon ninety (90) days notice to customer. This warranty, together with any express written warranty that seller may issue, is the sole and exclusive warranty as to the products, extends only to the initial purchaser, and is expressly in lieu of any other warranty, oral or implied, including implied warranty of merchantability or fitness for a particular purpose.

Limitation of Liability. In no event shall seller be liable to customer or any other person for procurement costs, lost profits, business interruption, loss of use, or incidental, special, indirect, or consequential damages of any nature even if seller has been advised of the possibility thereof. These include damages related to, arising out of, or in connection with the sale, delivery, installation, use, loss of use, repair, possession, transportation, disposal or performance of the products, including all additions to and replacements of the products. In no event shall seller’s liability arising in connection with any product(s) sold or to be sold hereunder (whether such liability arises from a claim under contract, warranty, tort, or otherwise) exceed the actual amount paid by customer to seller for the product(s) involved in such claim.

Patent Indemnity. Seller warrants that the sale of goods pursuant to this Agreement, except goods made in compliance with specifications supplied by Customer, is not an infringement of any valid U.S. patent; provided, however, that seller’s liability hereunder shall be limited to not more than the purchase price of any shipment(s) found to infringe. This warranty is given upon the condition of Customer’s prompt notification to Seller when any such infringement is alleged or threatened and, if Seller is affected, that Customer permit Seller complete control of the defense and settlement of any such allegation of threat of infringement. Seller does not warrant that any use of goods sold hereunder by Customer or any purchaser from or through Customer, in combination or not in combination with other material, is not an infringement of any patent of any country. Customer shall indemnify Seller for any and all expenses, direct or indirect, arising when any patent infringement is alleged or threatened because of goods made in compliance with specifications supplied by Customer. This section states seller’s sole and exclusive liability for any claim of any third party by way of infringement or the like.

Product Markings. Customer shall not remove or alter any tags, labels, or identifying markings of any kind placed on any Products by Seller.

Software/Firmware. Title and all ownership and intellectual property rights to any software and/or firmware included in the Products acquired by Customer remain with Seller (or the licensor of software to Seller, as applicable) and do not pass to Customer. Seller hereby grants to Customer a non-exclusive license to use such software/firmware in connection with Customer’s use of the Products. Customer may not reproduce, reverse engineer or disclose to any third party any portion of such software/firmware, and may transfer it only in conjunction with a transfer of the Product and subject to these same restrictions.

Assignment. Customer shall not assign this Agreement in whole or in part, or subcontract its obligations hereunder, without the prior written consent of the Seller. All terms, agreements, covenants and rights contained herein shall inure to the benefit of, and be binding on any permitted assignee.

Excusable Delays. If the performance of any obligation, except payment of moneys due, is prevented, delayed, restricted, or interfered with in any way by reason of any Act of God, act of terrorism (whether actual or threatened), fire, flood, explosion, failure of machinery, strikes, lockouts, or labor trouble, supply of fuel, power, materials, containers or transportation, or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the party to whom the performance is due, shall be excused from such performance to the extent of such interference. Each party shall use reasonable efforts to remove or resolve such interference with performance as promptly as reasonably possible.

Severability. In the event that any portion of this Agreement should, for any reason, be held by a court of competent jurisdiction to be illegal, invalid, unenforceable, or contrary to public policy, then the remainder of this Agreement shall remain in full force and effect.

General. No representation, promise, waiver, amendment, or modification of these terms and conditions shall be binding unless in writing signed by an authorized representative of Seller. This Agreement shall be governed by the laws of The State of North Carolina (excluding those addressing choice of law). The parties hereto hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts of The State of North Carolina for resolution of any dispute related to or arising out of this Agreement. Acceptance by Customer of the Products shall constitute acceptance of all the terms and conditions contained herein. Products sold and delivered within the United States are intended for domestic use only. The captions herein are for convenience only and do not modify or explain any of the terms of this Agreement.

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