

## TERMS AND CONDITIONS OF SALE

The following are terms and conditions under which our products are sold.

**1. PRICES.** Prices quoted by SELLER are subject to change without notice after thirty (30) days from the date of quotation. All prices are subject to adjustment for specifications, quantities, shipping arrangements or other terms and conditions which were not a part of the original price quotation.

**2. TAXES.** Prices are exclusive of all excise, sales, use and other applicable taxes imposed by any federal, state, or municipal or other governments in connection with the production, processing, sale, use, shipment or delivery of products by SELLER. Customer is responsible for obtaining and providing to SELLER any certificate of exemption or similar document required to exempt a sale from sales, use, or similar tax liabilities. SELLER'S PRODUCTS ARE DESIGNED PRIMARILY FOR RESALE. PURCHASER MUST NOTIFY SELLER IF PRODUCTS ARE NOT PURCHASED FOR RESALE IN ORDER THAT PROPER TAXES MAY BE ASSESSED.

**3. DELIVERY.**

A. Delivery will be made F.O.B. SELLER'S plant.

B. SELLER shall not be liable for any damages, consequential damages, or penalty for delaying in delivery or failure to give notice of delay when such delay is due to the elements or other Acts of God, acts of the purchaser, acts of civil or military authority, priorities, fires or floods, epidemics or quarantine restrictions, wars, riots, strikes, lockouts, accidents to machinery, delays in transportation, delay in delivery by SELLER'S vendors or any other cause beyond the control of SELLER and the schedule for delivery otherwise pertaining to any product shall, in such event, be considered extended by a period of time equal to the time lost because of any delay which is excusable under this clause.

C. The purchaser does hereby grant to the SELLER a security interest in the products as security for the performance by the purchaser of all its obligations here under together with the right, without liability, to repossess the products, with or without notice, in the event of default of any such obligation. Products held or stored by SELLER for the purchaser shall be at the sole risk of the purchaser, and the purchaser shall be liable for the expense to SELLER of holding or storing products at the purchaser's request. Any purchase which requires multiple deliveries shall specify the delivery schedule on the face of the order.

**4. SHIPMENT.** In the absence of specific instructions to the contrary, SELLER will select the carrier or other means of transportation and routing for shipment of its products; but by doing so, SELLER will not thereby assume any liability in connection with shipment, nor shall the carrier in any way be construed to be the carrier of SELLER. Products shall be at the purchaser's entire risk after delivery by SELLER to the carrier, and all insurance or transportation charges will be paid by the purchaser.

**5. PAYMENTS.** SELLER reserves the right without notice to change its payment terms and related credit policy. Seller further reserves the right to assign or transfer, with or without notice and/or recourse, any unpaid invoices due from purchasers. Terms are cash upon delivery, except where satisfactory open account credit is established, in which case terms are payment net thirty (30) days from the date of the invoice. SELLER reserves the right at any time to revoke any credit extended to the purchaser for any reason deemed good and sufficient by SELLER. SELLER will issue invoices on delivery in the case of all products; and if deliveries are authorized in installments, each shipment shall be invoiced and paid for when due without regard to the other scheduled deliveries. Delinquent accounts will be subject to a monthly late charge of 1.5% of the past due balance. **PURCHASER'S FAILURE TO COMPLY WITH PAYMENT TERMS, SHALL, AT SELLER'S OPTION, BE DEEMED A MATERIAL BREACH OF CONTRACT.**

**6. CANCELLATIONS AND RESCHEDULING.** Purchase orders accepted by SELLER shall be subject to cancellation terms as follows:

A. Any order for "Standard Products" may be cancelled upon no less than ninety (90) days prior written notice received by SELLER, subject to the following cancellation charges:

1. All products previously shipped to Purchaser shall be re-invoiced at the appropriate volume unit price according to SELLER'S current product catalog and

2. A "Standard Product" cancellation charge of NOT LESS THAN 10% of contract price shall be paid as liquidated damages to the SELLER.

B. Any order for "Special" or "Non Standard" products may not be cancelled or rescheduled by the Purchaser unless agreed in writing by SELLER.

**7. RETURNS.** No returns will be accepted without written approval from SELLER. For any merchandise for which a return is requested, it is the policy of the SELLER that these returns be made against a Return Material Authorization (RMA). To obtain a RMA number, the customer must contact the SELLER or its authorized representative and request the same.

**8. PATENTS AND TRADEMARKS.** No sale of any product hereunder shall be construed as granting to the purchaser any license or other right in or to any patent applicable to such product. The purchaser agrees to notify SELLER of all claims that any SELLER's product infringes upon a United States patent or trademark. If notified in writing of any action (and all prior claims relating to such action) brought against the purchaser based upon a claim that the product infringes a United States patent or based upon a claim resulting from SELLER'S failure to mark or brand any item (unless such marking or branding was omitted at the purchaser's request), seller shall have the right to defend such action at its expense and will pay the costs and damages awarded in any such action, provided that SELLER shall have had sole control of the defense of any such action and all negotiations for its settlement or compromise. In the event that a final injunction shall be obtained against the purchaser's use of the

product or any of its parts by reason or infringement of a United States patent, or in SELLER'S opinion that product is likely to become the subject of a claim of infringement as a United States patent, SELLER will at its option and its expense, either procure for the purchaser the right to continue using the product, replace or modify the same so it becomes non-infringing, or grant the purchaser a credit for such product as depreciated and accept its return. The depreciation in such event shall be an equal amount per year over the lifetime of the product as established by SELLER. SELLER shall not have any liability to the purchaser under any provisions of this clause of any patent infringement, trademark infringement, or claim thereof as based upon the use of the product in combination with equipment or devices not made by SELLER or in a manner for which the product was not designed. No costs or expenses shall be incurred for the account of SELLER without the written consent of SELLER. The foregoing states the entire liability of SELLER with respect to infringement of patents by the equipment or any patent thereof or by their operation.

**9. WARRANTY.** ALL SELLER PRODUCTS ARE WARRANTED AGAINST DEFECTS IN WORKMANSHIP AND MATERIALS UNDER NORMAL USE AND SERVICE FOR ONE YEAR FROM THE DATE OF THEIR SHIPMENT BY SELLER EXCEPT THAT COMPONENTS OR SUBASSEMBLIES OBTAINED FROM OTHERS ARE WARRANTED ONLY TO THE EXTENT OF THE ORIGINAL MANUFACTURER'S WARRANTY. IF ANY, THIS WARRANTY DOES NOT EXTEND TO ANY PRODUCTS WHICH HAVE BEEN SUBJECT TO MISUSE, NEGLIGENCE, ACCIDENT OR IMPROPER INSTALLATION OR APPLICATION, OR WHICH HAVE BEEN REPAIRED OR ALTERED BY OTHERS. SELLER'S SOLE LIABILITY AND THE PURCHASER'S SOLE REMEDY UNDER THIS WARRANTY IS LIMITED TO REPAIRING OR REPLACING OR GIVING CREDIT FOR DEFECTIVE PARTS, AT THE SELLER'S DISCRETION. SELLER DOES NOT WARRANT THAT THE MODULES ARE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. SELLER IS NOT LIABLE FOR ANY CONSEQUENTIAL DAMAGES RESULTING FROM FAILURE OF ITS PRODUCTS, AND THE SOLE LIABILITY OF SELLER IS TO REPAIR OR ADJUST FOR THE ORIGINAL PURCHASER ANY DEFECTS IN MATERIAL OR WORKMANSHIP IN THE MODULES OR REPLACE FOR THE ORIGINAL PURCHASER ANY MODULES WHICH CONTAINED ANY DEFECTS IN MATERIALS OR WORKMANSHIP. (THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS SHALL NOT EXTEND THE WARRANTY PERIOD. THIS WARRANTY DOES NOT APPLY TO COMPONENTS WHICH ARE NORMALLY CONSUMED IN OPERATION). THE FOREGOING WARRANTY AND REMEDY ARE IN LIEU OF ALL OTHER REMEDIES AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10. DISCLAIMER FOR LIFE SUPPORT APPLICATIONS.**

A. Standard SELLER'S products are not designed, intended, or authorized for use as components in systems intended for surgical implant into the body, in other applications intended to support or sustain life, or for any other application in which the failure of the SELLER'S product could create a situation where personal injury or death may occur.

B. Should BUYER purchase or use SELLER'S products for any such unintended or unauthorized application BUYER agrees to indemnify and hold SELLER, and its officers, employees, subsidiaries, affiliated, and distributors harmless against all claims, costs, damages and expenses, and reasonable attorney's fees arising out of, directly or indirectly, any claims of personal injury or death associated with such unauthorized use, even if such claim alleges that SELLER was negligent regarding the design or manufacture of the part.

**11. SUBSTITUTIONS AND MODIFICATIONS THEREOF.** SELLER reserves the right to make substitutions and/or modifications of products designed by SELLER provided that substitutions or modifications will not materially affect the performance of such products. Such modifications and substitutions will in no way release condition of payment or change liability to conditions of delivery.

**12. CONTRACT.** All purchases are subject to acceptance by SELLER in writing signed by an authorized agent of SELLER, and any contract made hereunder shall be governed by and be construed in accordance with the laws of the State of New Hampshire. This contract is not assignable by the purchaser and any attempt to assign any rights, duties, or obligations hereunder will be void. All rights and remedies of SELLER, whether evidenced hereby or by any other contract or instrument, shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any terms of this contract, and the other party does not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion and shall not constitute a waiver of same.

**13. MODIFICATION.** The foregoing terms and conditions shall prevail and govern SELLER'S sale of products notwithstanding any variation from the terms and conditions of any order submitted by the purchaser for any products sold hereunder. Deviations from these terms and conditions are not valid unless confirmed in writing by an authorized AGENT of SELLER.

**14. MINIMUM CHARGES.** Any order received by SELLER will be subject to a minimum net billing of \$100. A minimum out-of-warranty charge will be imposed on any returned shipments at \$25 per shipment.

**15. FAIR LABOR STANDARDS ACT.** SELLER hereby certifies that the goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of Regulations Orders of the US Department of Labor under Section 14 thereof.