

Aspero Medical, Inc. Standard Terms and Conditions of Sale

ALL SALES MADE BY ASPERO MEDICAL, INC. (“**SELLER**”) TO THE BUYER (“**BUYER**”), (THE “**PARTIES**”) FOR ITEMS LISTED IN THE APPLICABLE WRITTEN SALES QUOTATION ISSUED BY SELLER TO BUYER, OR IN THE EVENT NO QUOTATION IS ISSUED, LISTED IN SELLER’S THEN-CURRENT PRICE LIST APPLICABLE TO BUYER AND IDENTIFIED IN BUYER’S PURCHASE ORDER (THE “**PRODUCTS**”) ARE EXPRESSLY CONDITIONED ON BUYER’S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS (THESE “**TERMS AND CONDITIONS**”). THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER AND SUPERSEDE ALL PREVIOUS NEGOTIATIONS, DISCUSSIONS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. SELLER WILL NOT BE BOUND BY ANY TERMS OF BUYER’S PURCHASE ORDER OR OTHER DOCUMENT THAT ARE ADDITIONAL OR INCONSISTENT WITH THESE TERMS AND CONDITIONS, AND ALL SUCH TERMS SHALL BE EXCLUDED. THESE TERMS AND CONDITIONS MAY ONLY BE AMENDED OR WAIVED BY A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

1. Terms and Conditions. All purchase order acceptances shall be conditioned upon Buyer’s unqualified acceptance of these Terms and Conditions set forth herein.

2. Order and Acceptance. All orders for Products shall be made by written purchase order. All purchase orders will reference these Terms and Conditions. No order shall be binding upon Seller until accepted by Seller in writing, and Seller shall have no liability to Buyer with respect to purchase orders that are not accepted. Buyer shall submit purchase orders to Seller in accordance with Seller’s then current lead times.

3. Delivery, Shipping, Risk of Loss. Seller will use reasonable efforts to deliver Products at the times specified in Seller’s acceptance of Buyer’s purchase order, provided, however, that all delivery dates are estimates only and deliveries may be in installments. All Products delivered hereunder will be suitably packed for shipment in Seller’s standard containers, marked for shipment to Buyer’s address specified in Buyer’s purchase order, and shipped FCA Seller’s facility or Seller’s fulfillment center (“**Shipping Point**”), at which time risk of loss from any casualty and title pass to Buyer. All freight, insurance and other shipping expenses from the Shipping Point will be borne by Buyer.

4. Acceptance of Products. Buyer shall accept or reject Products within five (5) days after receipt for failure to substantially conform to the specifications set forth in the original Product labeling. If Buyer fails to notify Seller in writing of its rejection and reasons therefore within such period, Buyer will be conclusively deemed to have irrevocably accepted the Products, except as set forth in Section 11 below.

5. Price. Prices for Products shall be Seller’s standard list price unless otherwise designated by Seller (“**Purchase Price**”). Seller has the right to revise Purchase Prices upon advance written notice to Buyer. Price changes will apply to all purchase orders received after the effective date of the price revision.

Each PARTY represents and warrants that it shall comply with all applicable federal and state laws and regulations, including, without limitation, the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, any applicable “exceptions” or “safe harbors” under the Federal Anti-Kickback Statute with respect to the Quote and Purchase Order, and any state laws comparable to the Federal Anti-Kickback Statute.

6. Payment Terms. Payment terms shall be net thirty (30) days after the date of Seller’s invoice. Buyer will make payments in United States dollars by check or wire transfer to an account designated by Seller. Any invoiced amount not paid when due shall be subject to a service charge equal to the lesser of one percent (1%) per month or the maximum rate permitted by law. If Seller undertakes collection or enforcement efforts, Buyer shall be liable for all costs thereof, including attorney’s fees.

7. Taxes. In addition to the Purchase Price, Buyer will be responsible for payment of all taxes (including without limitation, withholding, excise, sales, value-added, and use taxes) and customs duties paid or payable, however designated, levied, or based, but exclusive of taxes based on Seller’s net income, unless Buyer provides a certificate of tax exemption to Seller.

8. Substitutions and Modifications. Seller will have the right to make substitutions and modifications in the specifications or composition of Products or protocols related to Products sold by Seller provided that such substitutions or modifications will not materially affect overall Product performance.

9. Ownership, No Implied License. Seller retains all proprietary rights in and to all designs, engineering details, and other technology and information pertaining to the Products. The sale of Products ordered hereunder does not grant to, convey or confer upon Buyer or Buyer’s customers, or upon anyone claiming under Buyer, a license, express or implied, under any patent right, copyright, or other intellectual property right of Seller covering or relating to any use other than is consistent with the labeling or instructions for use (“**IFU**”) thereof.

10. Confidentiality. “Confidential Information” shall include any information disclosed by Seller, or its agents, to the Buyer, and shall specifically include any patents and inventions, other intellectual property, sales, pricing (not in the public domain), marketing, or customer lists. Confidential Information does not include any information that is publicly available or becomes publicly available through no breach of Buyer or its employees or agents. Buyer shall maintain the Confidential Information in strictest confidence and take all reasonable precautions to protect such information (including, without limitation, all precautions the Buyer employs with respect to its most confidential matters) and shall take all steps reasonably necessary to maintain the confidential nature of same.

11. Limited Warranty. For Products purchased hereunder, Seller warrants to Buyer that the Products are free from defects in workmanship and materials and conform in all material respects to the specifications set forth in the original Product labeling and for the shelf life set forth thereon. The warranties provided hereunder are contingent upon use of the Products in accordance with the IFU, in an application or individual for which it was intended and does not apply to any Product that is subjected to unusual physical or electrical stress, misuse, neglect, improper testing or storage, modification, used under improper protocol. Seller makes no warranty against any failure or defect, material or otherwise, of the Product related to, caused by, or exacerbated by any actions of Buyer, its employees, contracts or any other end user.

12. Limited Remedy. Seller's entire liability and Buyer's exclusive remedy is limited to replacement of Products or refund of the Purchase Price at Seller's sole option. Buyer agrees that to obtain any remedy (a) Buyer must promptly notify Seller in writing upon discovery that the Products failed to conform to these Terms and Conditions with a detailed explanation of any alleged deficiencies, (b) Buyer must return the Products to Seller, and (c) Seller shall determine by examination of the returned Products that such alleged deficiencies actually exist and were not caused by accident, neglect, misuse, alteration by or of Buyer.

13. Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY STATED IN SECTION 11, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND THE SELLER SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No oral or written information or advice given by Seller or its employees will create a warranty or in any way increase the scope of the limited warranties set forth herein, and Buyer may not rely on any such information or advice.

14. Intellectual Property Indemnification. Seller shall have the right and agrees that it will, at its own expense, defend and/or settle all suits or proceedings instituted against Buyer to the extent based on any claim that the Products sold hereunder constitute an infringement of any U.S. patent or copyright and Seller will pay damages finally awarded against Buyer in such suits or proceedings--provided, however, that Buyer (i) gives immediate written notice to Seller of such suits or proceedings, (ii) gives Seller through its counsel sole control over the defense and/or settlement of the same and (iii) gives Seller all needed information, assistance, and authority to enable Seller to do so.

Notwithstanding the above, Seller shall not be obligated to indemnify or be liable for costs and damages if the infringement arises out of (a) Buyer's contributory infringement; (b) the combination or incorporation of one or more Products with any other products or components, or (c) any use for a purpose or application for which the Product is not indicated. Seller's obligations hereunder shall not apply to any infringement occurring after Buyer has received notice of such proceeding or other communication alleging the infringement unless Seller has given written permission for such continuing use.

If the Products are enjoined or Seller reasonably believes the Products may infringe any U.S. patent or copyright, Seller, within a reasonable time, may, at its option, either (x) secure for Buyer the right to continue using the Products by procuring for the Buyer a license, or by some other means, or (y) at Seller's own expense, replace the Products with non-infringing products, or (z) remove the enjoined Products and refund Buyer the sums paid by Buyer therefor. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREFOR.

15. Buyer Indemnification. Buyer shall defend, indemnify, and hold harmless Seller from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any third party claims, suits, or proceedings arising out of or relating to the use of the Products, unless proximately caused by the sole gross negligence or willful misconduct of Seller. The provisions of this Section 15 shall not limit Seller's obligations pursuant to Section 14.

16. Insurance. Buyer shall procure and maintain in force commercial general liability insurance including property damage, bodily injury, products liability and contractual liability to cover Buyer and Seller for any liability related to the use of Seller's Products.

17. Limitation of Liability. Seller's liability and Buyer's remedies arising out of or related to sale of the Products, shall not exceed the Purchase Price paid by Buyer for the Products giving rise to such liability. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR BUSINESS OPPORTUNITIES OR ANY OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR RELIANCE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. THESE LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

20. Security Interest. Seller reserves a purchase money security interest in Products sold and the proceeds thereof, in the amount of the Purchase Price. In the event of default by Buyer in any of its obligations to Seller, Seller will have the right to repossess the Products sold hereunder without liability to Buyer. On request of Seller, Buyer will execute financing statements and other instruments that Seller may request to perfect Seller's security interest.

21. Miscellaneous. These Terms and Conditions contain the entire agreement and understanding between the parties on the subject of the sale of the Products. No representations or statements, other than those expressly set forth herein, were relied upon by the parties in entering into these Terms and Conditions. No modification or waiver of, addition to, or deletion from, these Terms and Conditions shall be effective unless reduced to writing and signed by duly authorized representatives of the parties hereto. The parties acknowledge that the broad applicability of the Products may make them useful in applications for which they were not expressly designed and which may involve dangers to human health or safety such as using Products for an individual other than the one which such Products were intended. These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of Delaware, U.S.A. without reference to conflicts of law principles. Failure or delay by either party in exercising any right hereunder shall not operate as, or be deemed a waiver of such right or of any other right hereunder, except for violations which, after discussion and mutual agreement by the parties, are waived in writing. Except for payment obligations, neither party shall be liable for damages for any delay arising out of causes beyond their reasonable control, including without limitation acts of God, labor disputes, riots, wars, component shortages. If any provision of these Terms and Conditions is held to be invalid or unenforceable, the remainder of these Terms and Conditions shall continue in full force and effect and will be interpreted to reflect the original intent of the parties.