

## **1. Scope; Order of Precedence**

**1.1 Applicability.** These Terms & Conditions of Sale (“Terms”) govern all purchases of CooperSurgical (“Company”) medical devices (collectively, “Products”) placed by business customers (“Customer”) in the absence of an executed written agreement signed by Company and Customer covering the same subject matter.

**1.2 Order of Precedence.** If Customer and Company have a signed written agreement covering the Products, that agreement controls; otherwise, these Terms shall govern. Any Customer terms (PO, portal click-wrap, or otherwise) are objected to and rejected and do not apply unless expressly accepted in a writing signed by an authorized Company officer.

**1.3 Acceptance.** By placing an order and/or taking delivery, Customer accepts these Terms.

## **2. Orders, Pricing, and Payment**

**2.1 Orders.** All orders are subject to Company acceptance. Company may reject or cancel any order at its discretion (e.g., supply constraints, regulatory reasons, sanctions restrictions, suspected diversion).

**2.2 Pricing.** Prices are as listed at checkout exclusive of taxes, shipping, insurance, duties, and customs. Company may correct pricing errors.

**2.3 Taxes.** Customer is responsible for all applicable sales, use, excise, VAT/GST, import duties and similar taxes. Customer must provide valid exemption certificates prior to order acceptance.

**2.4 Payment Terms.** Company will invoice Customer for the purchase price for the Products and all other amounts payable by Customer under this Agreement. Customer shall pay each invoice within net 30 days from the date of that invoice.

**2.5 Late Payment; Suspension.** Overdue amounts accrue interest at the lesser of [1.5%] per month or the maximum allowed by law. Company may suspend or cancel orders/shipments and withhold support for non-payment.

## **3. Delivery, Title, and Risk of Loss**

**3.1 Delivery Terms.** Company will ship the Products to Customer or its affiliated provider, or any Authorized Distributor, F.O.B. origin, freight prepaid and added to Company’s invoice to Customer. If the parties agree that Company will ship the Products by a carrier, or through a freight management program, selected by Customer, Company will charge a handling fee. Estimated ship dates are non-binding and Company is not liable for delays. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from Buyer, Seller will obtain transportation on Buyer’s behalf and for Buyer’s account. Products are subject to availability.

## **4. Inspection, Acceptance, and Returns**

**4.1 Inspection.** Customer must inspect upon receipt and notify Company of shortages or visible damage within five (5) business days.

**4.2 Consumables and Opened Packages.** Opened, used, contaminated, or temperature-controlled Products (including sterile Products with broken seals) are non-returnable, except per Company RMA instructions for confirmed non-conformity.

**4.3 Recalls and Field Actions.** Customer agrees to Cooperate fully with any recall or field corrective action, including downstream customer notification and Product retrieval.

## **5. Regulatory and Medical Use**

**5.1 Regulated Products.** Customer will use, store, and dispose of Products in compliance with applicable laws and regulations, labeling, IFU, and UDI requirements.

**5.2 No Medical Advice.** The Site content and Product documentation do not provide medical advice. Clinical decisions are the sole responsibility of qualified healthcare professionals.

**5.3 Training and Competency.** Customer is responsible for ensuring qualified personnel use the Products and complete any required training or competency assessments.

**5.4 Adverse Events.** Customer will promptly report adverse events and Product complaints to Company per the IFU and applicable pharmacovigilance/techno vigilance requirements.

**5.5 No Off-Label Promotion.** Company does not authorize off-label use. Customer assumes all risks associated with off-label use.

## **6. Warranty**

6.1 Company warrants to Customer that each unit of the Products will be free from defects in materials and workmanship for one year from the date of purchase, or, if earlier, (i) the expiration date printed on its package or (ii) the single use of a single-use Product.

6.2 If a Product fails to conform to the foregoing warranty, Company will as its sole and exclusive liability for that non-conformance under any theory of liability, including warranty, contract, tort or other claim of liability, repair or, at Company's sole discretion, replace that Product free of charge.

6.3 To return a Product to Company, Customer must comply with Company's Returned Goods Policy. Company's current returned goods policy, subject to change from time to time, is set out herein. Customer will not have any remedy if a Company Product does not conform to the warranty for that Product unless that Product is returned to Company in accordance with that Returned Goods Policy. Company will ship returned Products that it repaired or replaced under warranty to Customer at Company's expense F.O.B. Customer's facility. Under all other circumstances, Company will ship returned Products to Customer at Customer's expense F.O.B. Company's facility.

6.4 Company's warranties do not cover damage caused by misuse, improper care, improper use of chemicals or cleaning methods, loss, theft, servicing or sharpening by non-authorized personnel or negligent or intentional conduct on the part of the owner or user of the Product. Company's warranties do not cover normal wear and tear or general maintenance, including cleaning and sharpening services required as a result of normal use. Any modifications or changes to a Product will void that Product's warranty.

6.5 THE WARRANTIES IN THIS SECTION ARE IN LIEU OF, AND COMPANY HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO COMPANY'S PRODUCTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO TERMS, CONDITIONS, UNDERSTANDINGS OR AGREEMENTS PURPORTING TO MODIFY THE TERMS OF THIS WARRANTY SHALL HAVE ANY LEGAL EFFECT UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED OFFICER OF COMPANY.

6.6 COMPANY SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR LOST PROFITS, DAMAGES FROM LOSS OF USE OR LOST DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER ITS WARRANTIES OR OTHERWISE FOR ANY CLAIM RELATED TO COMPANY'S PRODUCTS,

EVEN IF COMPANY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF THOSE DAMAGES.

## **7. Indemnification**

**7.1** Customer shall indemnify, defend and hold harmless Company, its Affiliates, and their shareholders, directors, officers, employees, agents and representatives ("Company Indemnified Parties") from and against any and all Losses to the extent arising out of, or in any way related to, (i) any breach of Customer's representations, warranties, covenants or agreements set out in this Agreement, (ii) the negligence or willful misconduct of Customer (or its Affiliates or any of their affiliated providers, directors, officers, employees, agents and representatives) or (iii) Customer's (or its Affiliates' or any of their affiliated providers', directors', officers', employees', agents' and representatives') failure to comply with all applicable Laws.

## **8. Anti-Diversion, Trade Compliance, and Sanctions**

**8.1 No Resale or Diversion.** Customer shall not resell, transfer, or export the Products, other than to its affiliated providers located in the same country.

## **9. Confidentiality and Intellectual Property**

**9.1 Confidentiality.** All information disclosed by Company to Customer that Company identifies in writing as "confidential" or "proprietary" or that Customer reasonably should understand is confidential (by its nature, from context or otherwise), including the Prices and this Agreement (including the terms set out in this Agreement), is received by Customer in confidence and Customer will not reproduce or use that information or transmit or disclose it to any Person without the prior written consent of Company, except as required by Law.

**9.2 IP Ownership.** Company retains all IP rights in Products, software, documentation, and improvements. No rights are granted except as expressly stated.

## **10. Compliance; Ethics**

**10.1** It is the intent of the parties to establish a business relationship that complies with the Anti-Kickback Statute, as set out at 42 U.S.C. § 1320a-7b(b), including the requirements of 42 U.S.C. § 1320a-7b(b)(3)(A) and the safe harbour regulations regarding discounts or other reductions in price set out at 42 C.F.R. § 1001.952(h). Customer may receive discounts or other reductions in price in connection with its purchase of Products under this Agreement. Customer shall: (1) fully and accurately disclose the amount of all such discounts and rebates under this Agreement in cost reports or claims for reimbursement, including, in the United States, to federal health care programs (including Medicare and Medicaid), and, in all jurisdictions, to any healthcare or third party payor programs requiring such disclosure; and (2) retain related documentation provided by Company and provide it to applicable authorities to the extent required by applicable Law, including, in the United States, providing it to the Department of Health and Human Services and state agencies upon request, in each case, in accordance with all applicable Laws.

## **11. Compliance with Laws; Complaint Reporting**

**11.1** Company will manufacture, handle, store, package and supply the Products in compliance with all applicable legal requirements in the United States, including requirements of the United States Food & Drug Administration (“FDA”).

**11.2** Customer will not modify the Products in any way. If Customer receives any communication that alleges, or Customer otherwise becomes aware of, any deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of the Products, Customer shall promptly report those alleged deficiencies to Company.

## **12. Force Majeure**

Neither party will be liable for any failure or delay in performing its obligations (other than payment obligations) to the extent caused by events beyond the reasonable control of the affected party, whether or not foreseeable, including but not limited to: acts of God; extreme weather; natural disasters; fire; flood; earthquake; epidemic, pandemic, public health emergency, or quarantine; war, terrorism, civil unrest, or sabotage; labor disputes or strikes (not limited to the affected Party’s workforce); embargoes; trade sanctions; export controls; governmental orders, regulatory actions, inspections, holds, or seizures (including those by FDA, EU MDR/Competent Authorities, MHRA, or other regulators); raw material shortages; energy shortages; utility failures; transportation or logistics failures; carrier constraints; port closures; supply chain disruptions; cyber incidents or outages; ransomware; and failures or delays of suppliers, sub-suppliers, contract manufacturers, testing labs, sterilizers, or logistics providers (each, a “**Force Majeure Event**”).

## **13. Termination; Suspension**

Company may, in its sole discretion suspend performance or terminate any order if Customer breaches these Terms, becomes insolvent, or exhibits credit risk. Customer remains liable for amounts due and for restocking of any cancelled orders already in process.

## **14. Publicity; Use of Marks**

Customer shall not use Company names, logos, or trademarks without prior written consent and shall not make public statements about Product performance or approvals inconsistent with labeling.

## **15. Notices**

Notices must be in writing and delivered to Company at:

CooperSurgical, Inc.

75 Corporate Drive

Trumbull, Connecticut 06611

Attn: Legal Department

## **16. Assignment**

Customer may not assign or transfer orders or rights under these Terms without Company's prior written consent. Company may assign to affiliates or in connection with a corporate transaction.

## **17. Governing Law; Disputes**

- 17.1 **Governing Law.** The validity, interpretation, construction and performance of this Agreement, and all matters related to Company's supply of Products to Customer, shall be governed by the Laws of the State of New York, without giving effect to any choice or conflict of law provision or rule, whether in the State of New York or any other jurisdiction, that would cause the Laws of any jurisdiction other than the State of New York to apply.
- 17.2 **JURISDICTION AND VENUE.** THE NEW YORK STATE AND UNITED STATES FEDERAL COURTS SITTING IN NEW YORK COUNTY, NEW YORK, AND ANY OTHER COURT IN WHICH AN ACTION IS BROUGHT AGAINST A PARTY BY A THIRD PERSON ASSERTING A CLAIM AGAINST WHICH THE DEFENDANT IS ENTITLED UNDER THIS AGREEMENT TO BE INDEMNIFIED, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL ACTIONS, SUITS AND PROCEEDINGS ARISING OUT OF, BASED UPON OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS, AND EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH ACTION OR PROCEEDING OR FOR RECOGNITION OF ANY JUDGMENT AND (II) WAIVES (A) ANY OBJECTION TO THE LAYING OF VENUE OF, AND (B) ANY DEFENSE BASED ON AN INCONVENIENT FORUM IN, ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.
- 17.3 **JURY TRIAL WAIVER.** EACH PARTY HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BASED UPON, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS.

**18. Injunctive Relief.** Company may seek injunctive or equitable relief in court to protect its Confidential Information and IP.

## **19. Entire Agreement; Changes; Waiver; Severability**

**19.1 Entire Agreement.** Subject to section 1.2 above, these Terms contain the entire agreement between the parties with respect to the Products and supersede any previous communications, representations whether verbal or written, with respect to that subject matter. Any provision of any purchase order or other document used by customer that is additional to or inconsistent with any provision of these Terms shall be void and of no effect whatsoever, unless the parties explicitly agree to that provision.

**19.2 Changes.** Company may update these Terms periodically without providing prior notification to Customer. Orders are governed by the Terms in effect at the time of order acceptance.

**19.3 Waiver.** Except as otherwise expressly permitted by these Terms, no modification of these Terms shall be deemed effective unless in writing and signed by each of the parties hereto. Any waiver of a breach of any provision(s) of these Terms shall not be deemed effective unless in writing and signed by the Party against whom enforcement of the waiver is sought.

**19.4 Severability.** The parties hereto want this Agreement to be enforced to the fullest extent permissible under applicable Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, that provision, as to that jurisdiction, shall be

ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction. Notwithstanding the foregoing, if that provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in that jurisdiction, it shall, as to that jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### Returned Goods Policy

1. Products will be accepted for return for the following reasons:

- If shipment was made without Customer's authorization or order
- If incorrect Products were shipped
- If defective Products are covered by Company's applicable warranty

2. To return Products, you must contact a Customer Service Representative by telephone (1.800.243.2974 or 1.203.601.5200) for a Returned Merchandise Authorization (RMA) number. Products will not be accepted without an RMA number. Please have the following information:

- Reason you wish to return the Products
- Quantity, description, part number, serial number of the Products
- Date of Receipt of Order
- Customer's Purchase Order and the Company Invoice Number

All used instruments must be cleaned and sterilized prior to being shipped for return.

3. Shipment must be sent prepaid by Customer. Freight collect shipments will not be accepted, and Products will be returned to sender.

4. If Customer intends to return equipment ordered in error, the following restocking charges and terms will apply:

- 25 percent within 60 days from date of shipment
- Goods must be returned unused, in the original carton, and in
- marketable condition
- Refurbishing and replacement charges will be added to the
- restocking charges for damaged or missing items
- No return after 60 days
- No refund on sterile, single-use disposable Products

Send all Returns to: CooperSurgical, Inc.

15100 Heritage Pky, Fort Worth, TX 76177