

GUARD MEDICAL INC. GENERAL TERMS & CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (THESE "TERMS") GOVERN THE SALE OF CERTAIN PRODUCTS SPECIFIED IN AN ORDER, AS DEFINED HEREAFTER (THE "PRODUCTS"), SOLD BY GUARD MEDICAL INC., A DELAWARE CORPORATION ("SELLER"). THESE TERMS AND THE ORDER ARE COLLECTIVELY REFERRED TO HEREIN AS THE "AGREEMENT."

1 AGREEMENT

- (a) **Entire Agreement.** The Agreement, including any attachments, exhibits or other documents that explicitly incorporate these Terms therein by reference, constitutes the entire agreement between Seller and the purchaser of the Products (the "Buyer") and may not be modified except in writing signed by a duly authorized representative of each of Seller and Buyer. Except as explicitly set forth in a writing signed by a duly authorized representative of each of Seller and Buyer, the Agreement merges and supersedes all prior discussions, agreements, and understandings of every and any nature among them. Seller and Buyer are each sometimes referred to herein as a "Party" and collectively as the "Parties."
- (b) **Orders and Order Acceptance.** Buyer's submission to Seller of a purchase order, order confirmation, or acceptance of Seller's sales quotation ("Quotation"), as applicable (each, an "Order"), shall be deemed as Buyer's acceptance of the terms and conditions of the Agreement. Any Order placed by Buyer is subject to Seller's written acceptance, which may be transmitted to Buyer via fax or email ("Order Acknowledgment"). Acceptance of or payment for any of the Products by or on behalf of Buyer shall also be deemed to constitute Buyer's acceptance of all of the terms and conditions of the Agreement.
- (c) **Precedence.** To the extent that any terms and conditions contained in a Quotation, Order, Order Acknowledgment, or other related document conflict with these Terms, these Terms shall take precedence unless such document (i) specifically describes the conflict (ii) states that the language in such document controls, and (iii) is duly executed by the Parties.

2 PURCHASE AND SALE

- (a) **Purchase and Sale.** Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the Products in accordance with the terms and conditions of the Agreement.
- (b) **Purchase Price.** The purchase price for the Products covered by these Terms are those set forth in the Quotation, if applicable, or as set forth on Seller's then-current standard price list applicable to Buyer.
- (c) **Final Sale.** All sales are final. No Product may be returned to Seller without Seller's prior written authorization. Shipping charges on all authorized returns are the sole obligation of Buyer.

3 PAYMENT TERMS

- (a) **Payments.** Unless otherwise agreed in a writing signed by the Seller, all payments are due and payable in full by Buyer no later than 30 days from the date of Seller's invoice. Payment may be made by BillPay, ACH or wire transfer. All invoices that are not paid within such 30-day period are subject to interest at the lesser of 1.5% per month and the maximum interest allowed by applicable law.
- (b) **Cost of Delivery, Taxes and Other Charges.** Buyer shall pay the costs of delivery of the Products, including all applicable shipping, freight and processing charges unless otherwise agreed in writing. Buyer shall also pay all sales, use, excise or similar taxes, or other charges, which are imposed on the sale. Buyer agrees to indemnify, defend and hold Seller and its affiliates harmless from any liability, cost or expense, including reasonable attorneys' fees, of Seller or its affiliates by reason of Buyer's failure to pay any such taxes.
- (c) **Buyer's Credit.** Seller may, but shall not be obligated to, grant credit terms to Buyer. Seller reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to an Order, and Seller may require cash payments in advance or security satisfactory to Seller.
- (d) **Notice of Payment Dispute.** If Buyer intends to dispute any amount due under or related to the Agreement, Buyer must notify Seller in writing within 15 days prior to the date such payment is originally due. Buyer waives its right to dispute such amounts or to participate in any legal action involving a dispute of such amounts if not reported within such period.
- (e) **No Set-Off, Security Interest.** Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior written approval. Seller retains a security interest in the Products until paid for in full by Buyer.

4 SHIPPING AND DELIVERY

- (a) **Shipment Date.** Any date of shipment in the Agreement or any related document is approximate only. Buyer shall be deemed to have accepted a Product delivered by Seller under the Agreement three (3) days after the delivery of the Product to Buyer, except for any product not accepted in accordance with clause (c) below.
- (b) **Transfer of Products; Risk of Loss.** Seller shall retain the right and title to the Products sold to Buyer until Seller is paid in full for the Products. Buyer shall obtain the right and title to the Products upon payment to Seller of the purchase price and any delivery, taxes, excise or other charges for such Products. The risk of loss, including, but not limited to, the risk of theft, damage or destruction of the Products shall transfer to Buyer F.O.B. Seller's shipment point.
- (c) **Inspection.** Buyer shall inspect the Products promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, expiration date and packaging defects). Failure by Buyer to provide Seller with written notice of any claim for non-conformity within 10 days from the date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all such claims with respect to such Products.

5 BUYER'S REPRESENTATIONS

- (a) Buyer represents and warrants that all information included in the Order is accurate and complete, including but not limited to the shipment address and billing address indicated therein.
- (b) Buyer represents and warrants that the signatory on the Order has the requisite authority to enter into the Agreement.
- (c) Buyer represents and warrants that it intends to use the Products for their designed, intended, and authorized use only.

6 BUYER'S INDEMNITY.

Buyer shall indemnify and hold harmless Seller from and against claims, loss, damages, costs, and expenses arising from or related to: (i) any misrepresentation or breach of any representation or warranty made by Buyer contained in the Agreement or (ii) the breach of any covenant or agreement made by Buyer contained in the Agreement.

7 LIMITED WARRANTY

- (a) **Warranty Scope.** Seller expressly warrants to Buyer that, for a period of six (6) months from the date of shipment by Seller to Buyer (the "Warranty Period"), the Products will be reasonably free of defects in materials and workmanship. This limited product warranty (this "Limited Warranty") is subject to the exclusions set forth in the Agreement and applicable law. This Limited Warranty is exclusively for the benefit of Buyer and cannot be transferred or assigned. Any attempted transfer or assignment of this Limited Warranty shall be null and void ab initio.
- (b) **Remedies.** Seller will, at its option, replace any Product without charge, or refund the cost of any Product, if the Product fails or does not perform as warranted solely due to a manufacturing defect within the Warranty Period, subject to the exclusions set forth in the Agreement (any such Product, a "Defective Product"). Seller's obligation to replace any Defective Product hereunder shall be limited to replacement of only the specific Product or Products that fail or do not perform as warranted due to a manufacturing defect. Any replacement Product shall remain subject to the original Warranty Period for the Product replaced, and any such replacement shall not extend such original Warranty Period in any manner or start a new Warranty Period.
To be eligible for warranty coverage hereunder, Buyer must submit to Seller during the Warranty Period and promptly after any Product failure or non-performance, proof-of-purchase of the alleged Defective Product and a description of the alleged defect. Seller will provide to Buyer the address to which such Product must be returned, shipping prepaid by Buyer. To the extent permitted under applicable law, no claim for breach of warranty, or any other claim, in contract, tort or otherwise, arising out of or related to the Products may be commenced more than one (1) year following the shipment date of the Products from Seller to Buyer or the accrual of the claim, whichever occurs first.
- (c) **Disclaimer of Warranties.** The Products must be stored, handled and used in accordance with instructions provided by Seller, and this Limited Warranty is conditioned upon compliance with all such instructions. Copies of Seller's instruction manual are available from Seller at the address listed below. This Limited Warranty does not cover defects caused by: (i) non-compliance with Seller's instruction manual; (ii) exposure to physical abuse, thermal abuse or shock (e.g. excessive heat or cold) or misuse; (iii) improper storage, handling and/or use of the Product; (iv) damage not resulting from manufacturing defects that occur after the Product is shipped by Seller to Buyer, including damages resulting from shipping, accidents, tampering, vandalism or acts of God; or (v) unreasonable or unintended use of the Product.
OTHER THAN THE LIMITED WARRANTY AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO WARRANTY IN CONNECTION WITH THE PRODUCTS, EXPRESS OR IMPLIED, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PRODUCTS SOLD BY SELLER ARE SOLD ONLY TO THE SPECIFICATIONS SPECIFICALLY SET FORTH BY SELLER IN WRITING. SELLER'S SOLE OBLIGATION UNDER THIS LIMITED WARRANTY SHALL BE REPLACEMENT OF NON-CONFORMING PRODUCTS, OR AT THE OPTION OF SELLER, RETURN OF THE PRODUCTS AND A REFUND OF THE PURCHASE PRICE FOR SUCH PRODUCTS. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE PRODUCTS, WHETHER USED SINGULARLY OR IN COMBINATION WITH ANY OTHER PRODUCTS OR SUBSTANCES.
- (d) **Contact Information.** Any question concerning this Limited Warranty should be addressed to:

- 8 LIMITATION OF LIABILITY.** No claim by Buyer of any kind shall be greater in amount than the purchase price received by Seller for the Products in respect to which damages are claimed. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, STATUTORY, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, LOSS OF REVENUES, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, EVEN IF SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN, IN CONNECTION WITH, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, USE OR LOSS OF USE OF THE PRODUCTS SOLD HEREUNDER, OR FOR ANY LIABILITY OF BUYER TO ANY THIRD PARTY WITH RESPECT THERETO.
- 9 EXPIRATION, TERMINATION AND REMEDIES**
- (a) Expiration. Unless earlier terminated as provided hereafter, the Agreement will expire at the end of the Warranty Period.
- (b) Suspension or Termination by Seller. Seller may terminate or suspend performance under the Agreement upon written notice to Buyer (a "Termination Notice") for non-payment of the purchase price for Products which are more than 30 days past due. The date on which the Buyer receives the Termination Notice shall be considered the termination date.
- (c) Buyer's Obligations Following Termination or Expiration. Buyer shall pay to Seller in connection with any termination or expiration of the Agreement, the purchase price, shipping costs, late fees, and any other applicable fees for all conforming Products received by Buyer prior to the termination or expiration date, as the case may be.
- (d) Survival. The obligations set forth in Sections 3-6, 7(c), 7(d) and 8-19 shall survive any expiration or termination of the Agreement.
- 10 INTELLECTUAL PROPERTY.** All intellectual property rights in and to each Product made available to the Buyer and any related specifications, documentation or other materials, including, but not limited to, all related copyrights, patents, trademarks, and other intellectual property rights, will be solely and exclusively owned by Seller ("Seller's IP Rights"). Buyer does not and will not have or acquire any ownership of Seller's IP Rights through the purchase of any Product. Any use, reproduction, or exploitation of Seller's intellectual property, wholly or partly, by any means or with any support, without Seller's prior written consent, is expressly forbidden and shall constitute an act of infringement, with both criminal and civil penalties. Seller reserves the right to discontinue deliveries of any Product, the manufacture, sale or use of which would, in Seller's opinion, infringe upon any patent, trademark or design now or hereinafter issued, registered, or existing and under which Seller is not licensed.
- 11 FORCE MAJEURE**
- (a) Excused Performance. If the manufacture, transfer or receipt by either Party of any Products required hereunder is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the Party so affected and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "Excusable Delay"), such Party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither Party shall be liable to the other Party for default or delay in performing hereunder, except with respect to Buyer's payment obligations hereunder.
- (b) Notice. The Party subject to an Excusable Delay shall immediately give written notice to the other Party of any event or occurrence that is likely to delay or actually delays performance under the Agreement. Such notice shall include all relevant information with respect to such Excusable Delay, including the possible duration and impact.
- (c) Mitigation. Each Party, at its expense, shall use its best efforts to mitigate any adverse effects or costs to the other Party due to any actual or likely Excusable Delay of the first Party, including the implementation of a contingency plan.
- 12 ASSIGNMENT.** The provisions of the Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither Party may assign the Agreement nor any of its obligations thereunder without the other Party's written consent, which consent shall not be unreasonable withheld or delayed. Any attempted assignment without such consent shall be void ab initio.
- 13 CONFIDENTIALITY.** Each Party shall treat the terms of the Agreement and the other Party's written, proprietary business information as confidential if marked as confidential or proprietary. The receiving Party shall have no obligations with respect to any information which (a) is or becomes within the public domain through no act of the receiving Party in breach of the Agreement, (b) was in the possession of the receiving Party prior to its disclosure or transfer and the receiving Party can so prove, (c) is independently developed by the receiving Party and the receiving Party can so prove, or (d) is received from another source without any restriction on use or disclosure.
- 14 COMPLIANCE WITH LAWS; EXPORT LAWS.** Buyer and Seller shall comply with all applicable international, national, state, regional and local laws and regulations with respect to their performance of the Agreement. Buyer agrees to adhere to all applicable U.S. export laws and regulations with respect to the Products.
- 15 GOVERNING LAW.** These Terms shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York. The Parties irrevocably agree that all actions to enforce an arbitrator's decision pursuant to Section 14 of these Terms shall be instituted and litigated only in federal, state or local courts sitting in the State of New York, New York County, and each Party hereby consents to the exclusive jurisdiction and venue of such courts and waives any objection based on forum non conveniens.
- 16 ARBITRATION.** Except as provided in Section 13 hereof, in the event that there shall be a dispute among the Parties arising out of or relating to the Agreement, or the breach thereof, the Parties agree that such dispute shall be resolved by final and binding arbitration in New York, New York, administered by the American Arbitration Association (the "AAA"), in accordance with AAA's Commercial Arbitration Rules, to which shall be added the provisions of the Federal Rules of Civil Procedure relating to the Production of Evidence, and the Parties agree that the arbitrators may impose sanctions in their discretion to enforce compliance with discovery and other obligations. Such arbitration shall be presided over by a single arbitrator. If Seller, on the one hand, and Buyer, on the other hand, do not agree on the arbitrator within fifteen (15) days after a Party requests arbitration, the arbitrator shall be selected by Seller and Buyer from a list of five (5) potential arbitrators provided by the AAA. Such list shall be provided within twenty-five (25) days of the request of either Party for arbitration. The Party requesting arbitration shall delete one name from the list. The other Party shall delete one name from the list. This process shall then be repeated in the same order, and the last remaining person on the list shall be the arbitrator. This selection process shall take place within the five (5) days following both Parties' receipt of the list of five (5) potential arbitrators. Hearings in the arbitration proceedings shall commence within twenty (20) days of the selection of the arbitrator or as soon thereafter as the arbitrator is available. The arbitrator shall deliver his or her opinion within twenty (20) days after the completion of the arbitration hearings. The arbitrator's decision shall be final and binding upon the Parties. The arbitrator shall have the power to grant temporary, preliminary and permanent relief, including without limitation, injunctive relief and specific performance. Unless otherwise ordered by the arbitrator pursuant to these Terms, the arbitrator's fees and expenses shall be shared equally by the Parties.
- 17 WAIVERS AND AMENDMENTS.**
- (a) Either Party's failure to insist on the performance by the other Party of any term or failure to exercise any right or remedy reserved in the Agreement, or either Party's waiver of any breach or default under the Agreement by the other Party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- (b) No term or provision under the Agreement may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Parties.
- 18 SEVERABILITY.** If any term or provision of the Agreement is found to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision thereof or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify the applicable terms or provisions of the Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by the Agreement be consummated as originally contemplated to the greatest extent possible.
- 19 COUNTERPARTS; EFFECTIVENESS.** Any Order or other documents forming part of the Agreement which require signatures of one or more of the Parties may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to such document by facsimile or in electronic ("pdf" or "tif") format shall be as effective as delivery of a manually executed counterpart.