

## SUMMIT MEDICAL, LLC - TERMS AND CONDITIONS OF PURCHASES

The following terms and conditions apply to purchases of COMPANY products. Any purchase order form sent by a purchaser ("Buyer") shall be for Buyer's convenience only, and any terms or conditions contained in such purchase order form, which are inconsistent with the following, and any additional terms and conditions, shall be of no effect and shall be deemed deleted.

### Payment.

(a) Net 30 days, subject to credit approval. Past due accounts will be charged 1.5% per month on the unpaid balance. Payment shall be in United States dollars and shall be deemed made when immediately available funds are received in COMPANY's bank account. Payment by Visa or MasterCard credit cards is acceptable.

(b) For personal protective equipment (including, but not limited to, face shields) that COMPANY manufactures, payment terms are 30% prepayment, balance due at delivery.

**Prices.** Prices are F.O.B. COMPANY. Freight Prepaid and Add unless otherwise agreed. The prices for products are set forth in the applicable COMPANY price list. All prices are exclusive of all sales, use, or other taxes, shipping charges from COMPANY, insurance, customs duties, import taxes and other charges, all of which shall be paid by Buyer. Buyer is responsible for obtaining at its expense any import or other license or governmental approval to purchase the products. COMPANY shall separately invoice Buyer for all such charges paid on behalf of Buyer by COMPANY.

**Shipment.** Shipment dates quoted by COMPANY are estimated. COMPANY will use good faith efforts to ship on the dates quoted. COMPANY shall not be liable for any damage or loss caused by any failure or delay in filling an order due to strikes or other labor troubles, natural disasters, delays in delivery of parts or merchandise by COMPANY suppliers or other cause beyond the reasonable control of COMPANY. Shipments are normally shipped via UPS. Buyer may request shipment via another carrier or on an expedited basis. Buyer shall promptly upon delivery inspect all products and shall notify COMPANY of any wrong or short shipments within ten (10) days after delivery. Risk of damage or loss of the products passes on delivery of the products to the carrier, and claims for damages or losses in shipment should be made to the carrier.

**Warranty – Distributed Products.** For the products that COMPANY does not manufacture and only distributes, the specific warranty of that product is from the original manufacturer. Buyer needs to inquire with COMPANY for specifics of each distributed products warranty.

### Warranty – Manufactured Products.

(a) For the products that COMPANY manufactures other than personal protective equipment (including, but not limited to, face masks), COMPANY warrants that COMPANY's products will be free of defects in material and workmanship for a period of one (1) year from the date of shipment. In the event that a COMPANY product is defective and notice of the defect is given to COMPANY within one (1) year from the date of shipment, COMPANY will, at its option, rework or replace the defective product or credit Buyer with the purchase price paid.

**COMPANY does not warrant the COMPANY products for any use which is different than the products' intended and approved use.** THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, DAMAGE TO GOODWILL, LOSS OF TIME, INCONVENIENCE OR OTHER COMMERCIAL OR ECONOMIC LOSS. THE REMEDY STATED ABOVE IS THE EXCLUSIVE REMEDY FOR BREACH. If Buyer is purchasing products for resale, Buyer agrees not to give or make any other warranty concerning the products to any person.

(b) For personal protective equipment (including, but not limited to, face shields) that COMPANY manufactures, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE FACE SHIELD, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY

OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, USAGE OF TRADE OR OTHERWISE. If Buyer is purchasing products for resale, Buyer agrees not to give or make any other warranty concerning the products to any person.

### Returns.

(a) All sales of products by COMPANY are final. Buyer shall not have the right to return any products to COMPANY and Buyer shall not be entitled to any refund or exchange, except, subject to clauses (b) and (c) of this section, (i) with COMPANY's prior written authorization or (ii) for warranty claims described in the previous section. Call Customer Service at COMPANY prior to returning any product. For any products entitled to return and refund, a refund less shipping and handling will be given with respect to such authorized returns in accordance with the following schedule:

Returns within 30 days: Full refund

31 - 60 days: 20% restocking fee

After 60 days: Non-refundable

(b) Notwithstanding anything contained herein to the contrary, in no event shall Buyer have the right to return any products to COMPANY or be entitled to any refund or exchange for: (i) altered, damaged, obsolete and discontinued products, (ii) products that have been opened, soiled or used and (iii) all custom items, cannulas, equipment, Medela Items, LifeStat, Reinjection guns, and personal protection equipment (including, but not limited to, face masks); provided, that garments are returnable if they are UNOPENED.

(c) After inspection of returned product, COMPANY reserves the right to decline any return. If a refund is refused, the Buyer reserves the right to receive the product back at Buyer's expense.

**Product Evaluations.** Subject to the previous section, (a) default evaluation period unless otherwise agreed on in writing is 60 Days, (b) products will be billed at quoted prices if not returned within the agreed upon evaluation period, (c) Buyer is responsible for the condition of product, and (d) returned products which have been used and/or altered or damaged will be billed to Buyer.

**Vigilance.** Buyer agrees to notify COMPANY promptly of any complaints or incidents relating to the products and provide such details as are requested by COMPANY.

**Records.** Buyer agrees to keep complete and accurate records of all products resold by Buyer and in the event of a recall of any of the products to cooperate fully with COMPANY to effect the recall, including contacting its customers and communicating such information as COMPANY requests.

**Attorney's Fees.** Buyer agrees to pay COMPANY reasonable costs, expenses and attorney's fees incurred by COMPANY in enforcing Buyer's obligations or COMPANY's rights hereunder, including collecting any money due from Buyer or successfully defending against any claim made by Buyer.

**Relationship.** Buyer and COMPANY are independent contractors with respect to each other, and neither party is the agent or employee of the other or has any authority to make representations on the others' behalf or bind it in any way. Absent an express written agreement between Buyer and COMPANY, acceptance of a purchase order by COMPANY and the shipment of products there under shall not create an obligation on the part of COMPANY to accept additional purchase orders for products.

**Arbitration.** The parties will use their best efforts to amicably settle any dispute in connection with this Agreement. Failing such amicable settlement, all disputes, claims and controversies between the parties arising under or in connection with this Agreement or the making, performance or interpretation thereof will be settled by arbitration. The arbitration proceedings will be conducted in the English language at COMPANY's State under the arbitration rules of the American Arbitration Association; to the extent such rules are not inconsistent with the provisions of this arbitration provision. The arbitrator will have the right to award injunctive relief or other specific performance of this Agreement. The decision of the arbitrator will be in writing and final and binding on all parties, and may include any remedy (including injunctive relief) contemplated by this Agreement. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof.

**Governing Law.** The laws of the United States and the State of the COMPANY will govern the purchase and sale of products by COMPANY to Buyer.