

TERMS OF SALE

- 1. Terms of Sale.** These terms of sale are subject to any related agreement between the seller and the buyer. Absent any such agreement, this document constitutes an offer by the seller to sell the products covered by this invoice at the price, and subject to all terms, stated in this invoice. The buyer may not modify any terms of this offer, and the seller hereby objects in advance to any additional or different terms proposed by or on behalf of the buyer in any document requesting or confirming this invoice. Acceptance by the buyer of the products covered by this invoice will constitute an express waiver by the buyer of any additional or different term that it had previously proposed. Except as specifically stated herein there are no audit rights under these terms of sale.
- 2. Returns.** The buyer may only return products covered by this invoice for credit if the seller has previously authorized that return.
- 3. Adjustments.** If the buyer believes that an invoice contains any errors, it must notify the seller's customer service department no later than fifteen (15) days after the date of the invoice to have seller review such asserted errors. If the buyer wishes to make a claim for lost or damaged products covered by an invoice as a result of shipment, it must include a copy of the delivery receipt.
- 4. Security Interests.** The buyer hereby grants the seller a security interest in all products covered by an invoice as security for payment of all accounts due under said invoice. The buyer shall assist the seller in perfecting that security interest by signing at the seller's request appropriate documents (including without limitation Form UCC-1 financing statements) and cooperating with the seller (at the seller's expense) in taking any further actions reasonably necessary to perfect that security interest. The buyer's nonpayment of any amounts due under an invoice will entitle the seller to all remedies of secured creditor under the Uniform Commercial Code.
- 5. Option to Accelerate.** The seller may by written notice to the buyer demand that the buyer immediately pay all amounts due under an invoice if the seller believes in good faith that the prospect of the buyer paying those amounts has been impaired. By accepting the products covered by an invoice, the buyer is representing that it is not then insolvent within the meaning of Title 11, United States Code, or any similar federal or state law.
- 6. Taxes.** In addition to the invoiced price the buyer shall pay any tax, duty or other fee imposed on this transaction by any federal, state, or local government authority. If the seller is required to prepay any such tax, duty or other fee, the buyer will reimburse the seller the amount of that tax, duty, or other fee.
- 7. Cost Reporting.** The buyer acknowledges that it is required by law to disclose cost reports or claims for reimbursement submitted to Medicare, Medicaid, or certain other health care programs, the cost (including, but not limited to, any discounts, rebates, or any other price reductions) of any product covered by an invoice and on request, provide to the U.S. Department of Health and Human Services and any state agencies any invoices, coupons, statements, and other documentation reflecting such costs. The buyer may receive subsequent documentation under some programs reflecting adjustments or allocations to the price available hereunder. In preparing any cost reports, the buyer may be required to evaluate as a discount the value of any product listed as \$0.00 on any invoice. The buyer should not include as a discount for cost-reporting purposes the value of any item that is designated as a sample or that the buyer knows constitutes a sample, and it should not seek reimbursement for any such items. The seller recommends that the buyer retain a copy of an invoice and any other documentation provided by the seller regarding any price concessions under an invoice. The buyer may request additional information from the seller to meet the buyer's reporting or disclosure obligations by writing to the address on the reverse side.
- 8. No Resale.** The products covered by an invoice are intended for the buyer's own use in the United States and Canada are not for resale unless the buyer is the seller's authorized distributor.
- 9. Product Shortages.** The seller is not liable for delays in delivery due to product shortages, acts of nature, war, terrorism, regulatory or carrier issues, or any circumstances beyond its reasonable control.
- 10. Order Discrepancies.** The buyer must notify seller of any defect, shortage in quantity, damage, loss or seller's failure to comply with the purchase order within ten (10) days of receipt of the products.
- 11. Prescription Products.** Any product on an invoice labeled "Caution: Federal law prohibits dispensing without a prescription" is sold for such use only.
- 12. Single-Use Products.** The buyer shall ensure that units of any patented Single-Use Product that it purchases are used once and only once in delivering patient care and the seller conveys no right in such patented Single-Use Product other than the right to use those units once and only once. A "Single-Use Product", means any product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the product is to be used once and only once in delivering patient care. The seller does not grant the buyer or any other person or entity any license to reprocess, remanufacture, or reconstruct any patented Single-Use Product. In addition to other available remedies, the sale or use of any reprocessed, remanufactured or reconstructed patented Single-Use Product will be subject to available remedies for patent infringement.
- 13. Deductions or Short Payment of Invoices.** Deductions or short payments of invoices must be previously authorized by seller and require receipt of appropriate supporting documentation. Seller will not accept unauthorized deductions from payment of invoices.
- 14. Warranties.** Any warranties provided by the seller for any product covered by this invoice are as described in the package inserts accompanying units of that product on purchase. OTHER THAN AS SET FORTH IN THE PREVIOUS SENTENCE, THERE IS NO IMPLIED OR EXPRESS WARRANTY ON THE PRODUCTS COVERED BY THIS INVOICE, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.