



Applied Medical Technology, Inc.

Terms and Conditions of Sale

- 1. Acceptance and Agreement.** ALL SALES OF AMT'S GOODS ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE ("TERMS") CONTAINED HEREIN, AND UPON A PURCHASER'S ("BUYER") ASSENT THERETO. NO VARIATION OF THESE TERMS WILL BE BINDING UPON APPLIED MEDICAL TECHNOLOGY, INC. ("SELLER") UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER. ANY ADDITIONAL OR DIFFERENT TERMS, ADDITIONS OR EXCEPTIONS PROPOSED BY BUYER (WHETHER IN A PURCHASE ORDER, OTHER PRINTED FORM OR ELSEWHERE) ARE OBJECTED TO AND HEREBY REJECTED, UNLESS SUCH TERMS, OR EXCEPTIONS ARE APPROVED SPECIFICALLY BY SELLER IN WRITING BY AN AUTHORIZED REPRESENTATIVE. IN THE ABSENCE OF BUYER'S ACCEPTANCE HEREOF, SELLER'S COMMENCEMENT OF PERFORMANCE OR SELLER'S ACKNOWLEDGEMENT OF A PURCHASE ORDER SHALL BE FOR BUYER'S CONVENIENCE ONLY AND SHALL NOT BE CONSTRUED AS SELLER'S ACCEPTANCE OF ANY OF DIFFERENT OR ADDITIONAL TERMS CONTAINED IN A PURCHASE ORDER. IN ADDITION, BUYER'S ACCEPTANCE OF ANY PRODUCTS SHALL BE DEEMED TO BE AN ACCEPTANCE OF ALL OF THESE TERMS.
- 2. Changes.** Orders pursuant to these Terms may only be changed in a written agreement, signed by both parties, which sets forth the specific changes to be made and the effect, if any, that such changes may have on the price or time of delivery.
- 3. Delivery, Claims, Delays.** All sales are FOB Seller's shipping point, unless otherwise agreed to in a signed writing by Seller. Buyer shall pay shipping and freight costs, which shall be added to the invoice. Title to goods and risk of loss shall pass to Buyer upon delivery of goods to carrier. Choice of carrier and shipping method shall be at Seller's election. Upon receipt of any goods shipped hereunder, Buyer shall inspect the goods and notify Seller in writing within five (5) days after the goods have been received by Buyer of any claims for shortages, defects or damage and shall hold the defective or damaged goods for Seller's written instructions concerning disposition. If Buyer fails to notify Seller within five (5) days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the Terms and to have been irrevocably accepted by Buyer. Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including without limitation, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire,

explosion, accident, theft, vandalism, riot, acts of war, acts of labor (such as strikes or labor difficulties), lightning, floods, windstorm or acts of God, delay in transportation, routine shutdown of Seller's manufacturing facilities, equipment failure, shortage of raw materials or inability to obtain labor, fuel, materials, supplies or power at current prices.

4. **Allocation of Goods.** If Seller is unable for any reason to supply the total demands for goods specified in Buyer's order, Seller, at its sole discretion, may allocate its available supply among any or all buyers on such basis as Seller deems fair and practical without liability for any failure of performance which may result therefrom.
5. **Pricing and Payment.** All pricing is in U.S. Dollars and is determined by negotiation between the parties for a specific order and is not dependent on pricing currently offered to other buyers or offered in the past to other buyers. Seller specifically rejects most favored company pricing and makes no warranties or representations regarding pricing to Buyer, in comparison to others. Payment terms are net thirty (30) days from the date of invoice, unless otherwise stated. Unpaid balances over thirty (30) days will be subject to a one and a half percent (1.5%) monthly service charge. Buyer's obligations to pay Seller are absolute and are not subject to any factor, counterclaim, deduction, withholding, holdback, set-off or any other condition for any reason. Buyer specifically waives any right for any reason to withhold or set-off payments it owes to Seller hereunder, whether available at law, in equity or otherwise. If the financial condition of Buyer results in the insecurity of Seller, Seller in its sole discretion, may without notice to Buyer, delay or postpone deliveries of goods, and/or change the terms of payment to payment in full or in part in advance of shipment. In the event of default by Buyer in the payment of any purchase price for goods, Seller, at its sole discretion, without prejudice to any other lawful remedy, may defer delivery, cancel any contract for the sale of goods, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price. Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney, accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.
6. **Taxes and Other Charges.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer, except for taxes of Seller's income, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefor; or Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.
7. **Warranties, Limitation of Liability, Limitation of Damages.** Seller warrants that its products shall conform to the product limited warranty provided at www.appliedmedical.net/legal/warranty/. THIS WARRANTY IS EXCLUSIVE AND SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, (I) ANY IMPLIED

WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, OR WARRANTY OF QUALITY, OTHER THAN THOSE EXPRESSLY SET FORTH IN THE PRODUCT LABELING, OR (II) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. BUYER UNDERSTANDS THAT NO EMPLOYEE, OFFICER, AGENT OR REPRESENTATIVE OF SELLER IS AUTHORIZED IN ANY WAY TO MAKE ANY STATEMENT TO THE CONTRARY WHICH SHALL BE BINDING ON SELLER OR TO ASSUME FOR SELLER ANY OTHER LIABILITY IN CONNECTION WITH SELLER'S PRODUCTS. Seller's warranty shall not apply to, and Seller shall not be responsible for, any loss or damages arising in connection with the purchase or use of any product (i) which has altered in any way so as, in Seller's judgment, to affect its stability or reliability, or which has been subject to misuse, negligence or accident, or (ii) which has been subject to improper or negligent use or storage, or (iii) which has been subject to accidental damage arising from acts of God, electrical power damage, equipment malfunction, unusual stress, unreasonable operating procedures or abnormal or extreme operating conditions or (iv) which has been used otherwise than in accordance with the instructions furnished by Seller. Seller's sole and exclusive obligation and Buyer's sole and exclusive remedy with respect to products proved to Seller's satisfaction to be defective or nonconforming shall be replacement of such products without charge or refund of the purchase price, in Seller's sole discretion, upon the return of such products in accordance with Seller's instructions. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, EXEMPLARY, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, OF ANY KIND RESULTING FROM ANY USE OR FAILURE OR ACQUISITION OF THE PRODUCTS, (EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE) INCLUDING WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S GROSS NEGLIGENCE. Claims must be brought within one (1) year of the shipment date, regardless of their nature.

8. **Buyer's Use of Products.** Seller's products are intended for the use set forth in product labeling, and are not to be used for any other purposes. Buyer warrants to Seller that the products shall not be adulterated or misbranded within the meaning of the Federal, Food, Drug and Cosmetic Act. Buyer agrees to comply with instructions furnished by Seller relating to the use of the products and not misuse the products in any manner.
9. **Buyer's Representations and Indemnity.** Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph 8 (Buyer's Use of Products). Buyer also agrees that it will satisfy its responsibilities under the Safe Harbor Regulations relating to program "fraud and abuse" promulgated under the Social Security Act and Medicare and Medicaid Patient and Program Protection Act. Buyer agrees to indemnify and

hold harmless Seller, its affiliates and their respective employees, agents, successors, directors, officers, and assigns from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its directors, officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other parties, arising out of, directly or indirectly, the failure by Buyer to use Seller's products in accordance with the package labeling or the requirements of the warranty, or by reason of Buyer's failure to perform its obligations contained herein, including without limitation, the failure of Buyer to comply with applicable law. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's products which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports and tests made by Buyer or made available to Buyer by others furnishing such information to Seller. Furnishing such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

10. **Patent Disclaimer.** Seller does not warrant that the use or sale of the products described hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.
11. **Returns.** Goods may not be returned except with Seller's permission, and only in strict compliance with Seller's return shipment instructions located at www.appliedmedical.net/legal/return-policy/. Returns will not be accepted over ninety (90) days from the date of shipment.
12. **Entire Agreement; Headings.** These Terms, and any attached item as expressly stated herein, constitute the entire agreement and understanding of the parties and supersedes any previous agreement, correspondence or discussions between the parties relating to the subject matter of the order. The captions to the paragraphs hereof are not part of these Terms but are included merely for convenience of reference only and shall not affect its meaning or interpretation.
13. **Severability.** If any provision of these Terms becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, these Terms shall continue in full force and effect without such provision.
14. **Relationship of the Parties.** It is mutually understood and agreed that the relationship between the parties will be that of independent entities contracting with each other at arm's length toward an independent contractor relationship. These Terms do not, and will not be construed to create the relationship of agent, employee, partnership, joint venture or

association between the parties. Neither party will have the authority to bind the other party to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing and signed by both parties. Seller agrees not to represent itself as the agent for Buyer for any purpose to any party or to allow any of its employees to do so.

15. **References to Seller, Confidentiality.** Except to the extent required by law, Buyer shall make no reference, advertisement, or promotion regarding Seller or its operations without the prior written consent of Seller. Buyer agrees not to reveal to any person any information pertaining to Seller's business. Correspondence, source material, statistical and other data, whether provided in oral or written form, and all preliminary as well as completed work, are considered strictly confidential by Seller and shall be treated accordingly by the Buyer and Buyer shall not disclose any such information to any third person.
16. **Compliance with Laws.** Buyer shall comply with all applicable international, national, state, regional, and local laws and regulations with respect to their performance of this Agreement.
17. **Miscellaneous.** Seller's failure to strictly enforce any term or condition stated herein or exercise any right arising hereunder shall not constitute a waiver of Seller's right to enforce such terms or conditions or exercise such right thereafter. All rights and remedies with regard to this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. These terms and conditions shall be binding upon, inure to the benefit of, and be enforceable between the parties hereto, and their respective heirs, personal representatives, successors and assigns. All disputes as to the legality, interpretation, application, or performance of this order or any of its terms and conditions shall be governed by the laws of the State of Ohio, without regard to conflict of laws provisions. Buyer shall be deemed to have conclusively agreed that venue and jurisdiction for any dispute resolution hereunder shall be solely and exclusively with a court of competent jurisdiction located in Cuyahoga County, Ohio. Seller and Buyer hereby expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. AMT HEREBY DISCLAIMS ANY AND ALL COVER COSTS OR DAMAGES AS IT RELATES TO ITS FAILURE TO SUPPLY.
18. **Acceptance of Terms.** The Terms are incorporated herein and Buyer's signature hereon or Buyer's acceptance of goods pursuant hereto shall be deemed Buyer's conclusive consent and acceptance to the terms and conditions of sale contained herein.