

TERMS & CONDITIONS OF SALE

**1. Acceptance** –These Terms and Conditions of Sale (“Terms”) contained herein are the complete and exclusive statement of the terms of agreement between the parties. By clicking “I accept”, and you and/or the entity you represent (“Buyer”) manifests its assent to the Terms and forms a legally binding agreement with Medical Device Components LLC (“MDC”). MDC’s sale of the goods is subject exclusively to these Terms and MDC rejects all other conflicting, inconsistent, or additional terms of Buyer. If you are accepting these Terms on behalf of a business or other entity, you represent that you have all necessary right, power, authority and authorization to bind such business or entity to these Terms, to purchase the goods and to ensure payment therefore. By accepting these Terms, Buyer certifies that it has read these Terms and accepts them in their entirety.

**2.** MDC may at any time modify these Terms or may impose new term. Except as otherwise stated herein, any modification of these Terms shall be effective immediately after it initially is posted on the MDC site. Purchases from the site after any such modification will be deemed acceptance of such modification. These Terms may not otherwise be amended except in a writing signed by Buyer and MDC.

**3. Delivery/Freight** – The promised delivery date is the best estimate possible, based on current and anticipated manufacturing and delivery schedules. MDC assumes no liability for losses or damages due to delays. MDC will extend the delivery date as a result of any delays that are the fault of Buyer. All shipments are made F.C.A. MDC’s facility (unless otherwise agreed in writing by MDC).

**4. Credit and Payment** – Payment must be made by Buyer prior to shipment. If Buyer’s payment is preapproved by Buyer’s financial institution but does not clear, MDC may cancel shipment until payment has been received. In the event the goods have already shipped, MDC will invoice Buyer for the goods. All invoices are payable in U.S. dollars within net ten (10) days. After ten (10) days, unpaid invoices will be assessed a finance charge of 1.5% of the unpaid balance per month, commencing on the 11<sup>th</sup> day.

**5. Warranty** – All goods are provided AS IS without any warranty whatsoever. MDC DOES NOT EXTEND, AND HEREBY DISCLAIMS, ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL SALES ARE FINAL AND ALL PAYMENTS ARE NON-REFUNDABLE. In particular, and without limiting the foregoing disclaimer, MDC makes no representation or warranty as to the appropriateness, suitability or performance with regard to the design and any use of the goods, whether or not known by MDC and whether used alone or in connection with other products or materials and Buyer shall not rely upon any statements by MDC employees, agents or representatives to the contrary. Buyer acknowledges that it alone has determined that the goods purchased hereunder will suitably meet the requirements of their intended use. Buyer further acknowledges that MDC does not perform any testing for biocompatibility of the goods. No legal proceeding shall be brought for any claim or action arising from these Terms or the goods more than one (1) year after the accrual of the cause of action therefor.

**6. Limitation of Liability** – MDC will not be liable to Buyer, Buyer’s customers, or to any other person or entity for any claims, losses, damages, costs, expenses or judgments arising out of or resulting in any way from these Terms or the goods supplied hereunder or sale or use thereof which exceed the purchase price of the applicable goods. MDC WILL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS, REVENUE, BUSINESS OR OPPORTUNITY, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND IRRESPECTIVE OF WHETHER MDC HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

**7. Force Majeure** – MDC is not liable for any delay in delivery, or failure to deliver, due to any cause beyond MDC’s control, including but not limited to fires, floods, strikes or other labor disputes, accidents, acts of sabotage, war, terrorism, riots, transportation delays, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof. If MDC in its sole discretion determines that MDC’s performance hereunder would result in a loss to MDC on this sale because of causes beyond MDCs control, then, MDC may cancel the shipment of goods in whole or in part without liability for any delay in the delivery of or failure to deliver the goods sold hereunder. MDC may, during any period of shortage due to any cause, prorate and allocate its supply of such materials among itself for its own consumption, its subsidiaries, affiliated companies, its accepted orders, and its customers in such a manner as MDC may deem fair and reasonable.

**8. Risk of Loss** –Buyer assumes all risk of loss or damage to the goods and MDC assumes no liability for delay, damage, or breakage after delivery has been made to the common carrier. Buyer shall make all claims for loss or damage to the applicable common carrier.

**9. Taxes and Other Charges** – The Buyer will pay, or reimburse MDC if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods covered hereby, the delivery or use thereof, or upon any act done or document, title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

**10. Waiver** – Waiver by MDC of any breach or variation of any of the Terms shall not be construed as a waiver of any other breach or variation; the failure of MDC to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. The invalidity in whole or in part of any provision of these Terms shall not affect the validity of any other provisions.

**11. No Third Party Beneficiaries** – Nothing in these Terms is intended to create any rights by persons not a party hereto and no other party will be construed to be a third party beneficiary of these Terms or otherwise have any legal or equitable rights hereunder.

**12. Confidentiality** – Neither party shall disclose to any third party, except as required by law, the substance of these Terms. All written information provided hereunder by a party to the other including, but not limited to, requirements, prices, delivery schedules, and processes, is the disclosing party’s confidential information. The receiving party shall not disclose any such information or use such information except for the purposes of performance hereunder during the term of the applicable agreement or purchase order and for a period of five (5) years thereafter, provided that the receiving party may use or disclose any information that: (i) is already known to it at the time of disclosure; (ii) becomes publicly known through no fault of the receiving party; or (iii) is disclosed to the receiving party by a third party who is free to make such disclosure.

**13. Applicable Law/Venue** – All claims arising in connection with the sale of goods or any order submitted in connection therewith or these Terms, shall be resolved by the laws of the state of Delaware, USA, without giving recognition to its choice of law principles. All disputes between MDC and Buyer must be brought exclusively in the federal and state courts located in the state of Delaware. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to these Terms or the sale of goods hereunder.

**14.** Buyer may not assign these Terms or its rights or obligations hereunder, whether by operation of law or otherwise without MDC’s prior written consent, and any such act by Buyer will be void.