

SMITHS MEDICAL ASD, INC.

DISTRIBUTOR TERMS AND CONDITIONS OF SALE (U.S.)

THE TERMS AND CONDITIONS SET OUT BELOW APPLY TO THE SALE OF EQUIPMENT, SUPPLIES, COMPONENTS, SPARE PARTS OR MATERIALS OR OTHER GOODS ("PRODUCTS") OFFERED BY SMITHS MEDICAL ASD, INC ("SMITHS MEDICAL") AND ORDERED BY THE PERSON, BUSINESS, COMPANY, OR GOVERNMENT AGENCY WHICH PURCHASES THE FROM SMITHS MEDICAL ("BUYER") SEEKING TO PURCHASE THE PRODUCTS, UNLESS MODIFIED BY A SEPARATE WRITTEN AGREEMENT BETWEEN SMITHS MEDICAL AND BUYER.

NO TERMS OR CONDITIONS SET FORTH ON, DELIVERED WITH OR CONTAINED IN THE BUYER'S PURCHASE ORDER, CONFIRMATION OF ORDER, SPECIFICATION OR OTHER DOCUMENT SHALL BE BINDING ON SMITHS MEDICAL. SMITHS MEDICAL EXPRESSLY REJECTS ANY SUCH OTHER TERMS AND CONDITIONS. ANY VARIATION TO THESE TERMS AND CONDITIONS AND ANY REPRESENTATIONS ABOUT THE PRODUCTS SHALL HAVE NO EFFECT UNLESS SET OUT IN WRITING AND SIGNED BY AUTHORISED REPRESENTATIVES OF EACH OF THE PARTIES. THE BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY STATEMENT, PROMISE OR REPRESENTATION MADE OR GIVEN BY OR ON BEHALF OF THE SMITHS MEDICAL THAT IS NOT SET HEREIN...

ANY BUYER PURCHASES OF SMITHS MEDICAL PRODUCTS FROM ANY THIRD PARTY IS AT BUYER'S SOLE RISK.

1. PRICES.

- 1.1 Unless otherwise agreed by Smiths Medical in writing, the price for the Products shall be Smiths Medical's standard distributor price in effect from time to time. Smiths Medical reserves the right to change prices without notice to Buyer. In any event, the price set forth on Smiths Medical's invoice controls.
- 1.2 Prices do not include, and Buyer will pay or reimburse Smiths Medical for, any and all taxes (other than Smiths Medical's income taxes) and other governmental fees, assessments, duties and charges that are payable as a result of this transaction or Buyer's use or resale of Products.

2. PAYMENT TERMS.

- 2.1 Payment terms are 1% 15/ Net 30.
- 2.2 Invoices are payable in full. The Buyer shall make all payments due in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. If the full payment of the purchase price is not received when due as specified, Smiths Medical reserves the right to charge interest on any unpaid balance at a rate of up to 1½% per month (or the highest rate permitted by applicable laws, if lower) from the due date.
- 2.3 Smiths Medical may suspend or cancel deliveries of ordered Products if Buyer fails to pay when due any amount owed by it to Smiths Medical for any goods or services. Smiths Medical also reserves the right to require from Buyer, at any time, satisfactory assurance of performance of Buyer's payment obligations to Smiths Medical, and refusal or failure promptly to furnish such assurance will entitle Smiths Medical to suspend or cancel further deliveries to Buyer.

3. ORDERING PROCESS; MINIMUM ORDERS; DROP SHIPMENTS.

- 3.1 The following information must be included in every purchase order:

<ul style="list-style-type: none">• Customer/Buyer name• Bill to address• Complete delivery address• Purchase order number or Product Reorder number• Requested date of delivery	<ul style="list-style-type: none">• Shipping preference• Item, quantity and unit price• Total price per line• Contact name, phone number, fax number or email address
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- 3.2 Orders may be placed as follows:

<u>Mail Orders</u>	Attention Customer Service: 5200 Upper Metro Place Ste 200, Dublin, OH 43017
<u>Phone Orders</u>	1-800-258-5361 (8:00AM–8:00PM) ET
<u>Fax Orders</u>	Attention customer service – 1-800-621-2590
<u>Email Orders</u>	info.asd@smiths-medical.com
<u>EDI Orders</u>	Contact customer service: 1-800-258-5361 (8:00AM – 8:00PM EST)

- 3.3 No order is binding on Smiths Medical unless and until Smiths Medical accepts the order by written acknowledgment or confirmation or Smiths Medical ships the order. Acceptance of purchase orders is at the discretion of the Seller
- 3.4 Any order for less than \$500.00 is subject to an additional administrative fee of \$50.00. Orders requesting drop shipments are subject to a drop ship fee of \$30.00.

4. FREIGHT; DELIVERY TERMS.

- 4.1. Unless agreed otherwise in writing by Smiths Medical and Buyer, the Products shall be shipped CPT Buyer's facility (Incoterms 2010) with freight collect if applicable. Delivery shall occur and title and risk of loss shall pass to Buyer upon Smiths Medical's placement of the Products with carrier for shipment to Buyer. Case or box quantity only; Orders not meeting \$500 will be billed at actual freight charges. Orders greater than \$500 (excluding Sodasorb and Water) within contiguous USA will be shipped prepaid. Sodasorb will be billed at actual cost unless three pallets are ordered, and each pallet is of same product, then freight is prepaid. Orders for water products will ship as follows: orders of \$15,000 or more by hospital distributors will ship freight prepaid and orders of \$2,500 or more by alternate care distributors will ship freight prepaid. Distributor categories are determined by Smith Medical.
- 4.2 Products may be shipped by any carrier, route or means reasonably selected by Smiths Medical. If Buyer's order is for multiple types of Products, such Products may be shipped in lots of similar Products, as reasonably determined by Smiths Medical, and each such lot will be paid for separately. No nonconformity or defect in any lot will constitute a breach of Buyer's entire purchase order, and any lots whose conformity and condition Buyer does not dispute will be paid for in accordance with these terms and conditions, regardless of any dispute concerning other shipments or undelivered Products.
- 4.2 Special shipping requests, such as overnight deliveries via UPS or Federal Express will be billed at actual freight. For shipments to points in Alaska and Hawaii, the freight terms are "Freight Prepay and Add." International Delivery Terms are CPT or CFR Destination Port or City, as applicable (Incoterms 2010), and the freight terms are "Freight Prepay and Add."

5. CANCELLATIONS AND RETURNS.

- 5.1 Any order by Buyer may be cancelled or changed only with the written consent of Smiths Medical.
- 5.2 No Product (whether or not it is defective or nonconforming) may be returned to Smiths Medical without Smiths Medical's prior written consent. If a Product is returned without such consent, it shall thereupon become the property of Smiths Medical without obligation for refund. A Returned Goods Authorization number from Smiths Medical must accompany all returns. Contact Customer Service at 800-258-5361
- 5.3 All products, except hardware items have a 90-day return period from Invoice Date. Hardware products including pumps and fluid warming devices have a 45-day return period.
- 5.4 Products authorized to be returned for any reason other than for breach of warranty (a) are subject to a 20% restocking fee, (b) must be in full case quantity, unexpired, in original unopened packaging and saleable condition as Smiths Medical determines in its discretion, and (c) must not be discontinued products. No returns on custom products are accepted.

6. LIMITED LICENSE; REMEDIES. With respect to the Products, Smiths Medical grants Buyer a royalty free, nontransferable license (with no right to sub-license) to those of Smiths Medical's rights in patents, patent applications, copyrights, registered or unregistered designs, trade marks, service marks, brand names with claims that cover the Products or any of them ("IP Rights"), for the limited purpose of permitting the Buyer to distribute the Products to end user customers of the Products. For the avoidance of doubt, this limited license shall not extend to any Products that the Buyer purchases or obtains from any third party, or sells or conveys to any third party that is not an end user. Save as aforesaid, the Buyer acknowledges that it has no rights and will obtain no rights in the IP Rights (or any goodwill associated with such rights). If Buyer or any agent or representative of Buyer purchases or obtains Products from any third party, or sells or conveys Products to any third party that is not an end user, then, without limitation to any other rights or remedies available to Smiths Medical, such act shall constitute an infringement of Smiths Medical's IP Rights. In addition, Buyer acknowledges that Smiths Medical will incur significant damages should Buyer engage in any of the foregoing conduct, including Smiths Medical's lost sales, damage to its reputation, and other injuries, both tangible and intangible, for which Buyer will be fully liable to Smiths Medical. References to Smiths Medical in this section include its affiliated companies.

7. LIMITED WARRANTY, INSPECTION AND CLAIMS.

- 7.1 Smiths Medical warrants exclusively to Buyer that each Product sold hereunder will be free from defects in material and workmanship.

- 7.2 Smiths Medical will have the right at its expense to inspect and have returned any Product claimed by Buyer to not conform to this limited warranty, Smiths Medical's sole obligation and Buyer's exclusive remedy for any breach of the limited warranty will be the repair or replacement, at Smiths Medical's option, of the defective Product. Any replacement or repaired Product will be covered by the limited warranty only for the remainder of the original warranty period. If Smiths Medical determines that such repair or replacement is not economical or feasible or such remedy fails of its essential purpose, Buyer's exclusive alternate remedy and Smiths Medical's sole obligation for any such breach will be the return to Buyer of the purchase price paid to Smiths Medical for the Product, in which case Smiths Medical may repossess the Product.
- 7.3 The limited warranty will apply only if (a) the delivered Product is not altered or damaged and is properly installed, stored, handled, maintained and used in accordance with the Product's normal usage and any Smiths Medical published instructions; (b) Buyer obtains the Product only from Smiths Medical or an authorized Smiths Medical distributor; and (c) Buyer notifies Smiths Medical of the defect in writing not more than one year after its delivery to Buyer and not more than 30 days after Buyer first learns of the defect.
- 7.4 Buyer will promptly inspect all Products delivered to it. Any claim against Smiths Medical under the limited warranty or otherwise for shortages or for damages to or defects in the delivered Products that are observable in a reasonable visual inspection will be deemed waived unless the claim is made in writing to Smiths Medical within 30 days after such delivery.
- 7.5 EXCEPT FOR THIS EXPRESS LIMITED WARRANTY AND SMITHS MEDICAL'S STATUTORY WARRANTY OF GOOD TITLE, SMITHS MEDICAL MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS COVERED HEREBY INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR (SUBJECT TO PARAGRAPH 9) NONINFRINGEMENT. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF SMITHS MEDICAL IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SMITHS MEDICAL EXCEPT TO THE EXTENT SPECIFICALLY STATED HEREIN.
- 7.6 SMITHS MEDICAL FURTHER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT THAT BUYER PURCHASES OR OBTAINS FROM THIRD PARTY, OR SELLS OR CONVEYS TO A THIRD PARTY OTHER THAN AN END USER. THE POSSESSION AND USE OF ANY SUCH UNAUTHORIZED PRODUCT IS WITHOUT WARRANTY OF ANY KIND.

8. LIMITS ON LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPHS 8 AND 11, IN NO EVENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, (A) WILL SMITHS MEDICAL BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SELECTION, ORDERING, PURCHASE USE, RESALE OR DISTRIBUTION OF THE PRODUCTS COVERED HEREBY, OR OTHERWISE, EVEN IF SMITHS MEDICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR (B) WILL SMITHS MEDICAL'S TOTAL LIABILITY TO BUYER AND ANY THIRD PARTIES WITH RESPECT TO ANY SPECIFIC PRODUCT AND ANY RELATED SERVICES EXCEED THE PURCHASE PRICE TO SMITHS MEDICAL FOR THAT PRODUCT AND SUCH SERVICES. SUCH DAMAGES THAT SMITHS MEDICAL WILL NOT BE LIABLE FOR INCLUDE, BUT ARE NOT LIMITED TO: LOSS OF PROFITS, SAVINGS OR REVENUE; LOSS OF USE OF A PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE GOODS, EQUIPMENT, FACILITIES OR SERVICES; DOWNTIME; AND, EXCEPT AS PROVIDED IN PARAGRAPH 11, THE CLAIMS OF THIRD PARTIES INCLUDING BUYER'S CUSTOMERS.

9. FORCE MAJEURE AND SHORTAGES. Smiths Medical will not be liable for loss or damage of any kind resulting from any delay in delivery or failure to supply ordered Products or otherwise to carry out its obligations under this agreement due to causes beyond its control, and no such event will relieve Buyer of its obligations to make payments for other deliveries under this agreement. Smiths Medical reserves the right, in its sole judgment and without liability to Buyer, reasonably to allocate its available production capacity and Product inventories as may be necessary or equitable in the event of any shortages of production capacity or Products at any time.

10. INFRINGEMENT. Smiths Medical agrees to defend Buyer against, and pay any damages awarded against Buyer and direct expenses, including attorneys' fees, reasonably incurred by Buyer (but excluding any lost revenues, lost profits or other consequential economic damages of Buyer) as a result of, any action brought against Buyer, if and to the extent the action is based on a valid claim that any Product delivered to Buyer under this agreement infringes another person's patent or trademark. Smiths Medical's obligations under this paragraph will be conditioned upon Buyer promptly notifying Smiths Medical in writing of the existence of any such action, giving Smiths Medical full authority to conduct the defense and settlement of the action, at Smiths Medical's expense and with counsel of Smiths Medical's selection, and cooperating fully with Smiths Medical and such counsel. If any Product becomes, or in Smiths Medical's opinion is likely to become, the subject of an action for such infringement, Smiths Medical may procure for Buyer the right to continue using the Product or replace or modify it to make it noninfringing, provided such replacement or modification does not affect the performance or value of the Product to Buyer in a materially adverse manner. Alternatively, Smiths Medical may return to Buyer the purchase price paid to Smiths Medical for such Product, in which case Smiths Medical may at its

expense repossess the Product. Smiths Medical will not have liability for, and Buyer will indemnify and defend Smiths Medical against, any claims, damages, losses, expenses (including attorneys' fees) and liabilities resulting from any infringement of proprietary rights of third parties arising from Smiths Medical's compliance with Buyer's design or specifications for a Product or Buyer's use or combination of the Product with any material or process not acquired from Smiths Medical if the infringement would not have resulted from use of the Product without such material or process. The foregoing states Smiths Medical's entire liability with respect to any infringement of patents, trademarks or other proprietary rights relating to the Products.

11. ASSIGNMENT. Any assignment of Buyer's rights or obligations hereunder will be void without Smiths Medical's prior written consent.

12. MODIFICATION. These terms and conditions may be amended or terminated at any time by Smiths Medical. Further, Smiths Medical reserves the right to modify or discontinue any of its Products at any time.

13. THIRD PARTY BENEFICIARIES. Nothing in these terms and conditions is intended to benefit any person other than the Buyer and Smiths Medical.

14. GOVERNING LAW AND JURISDICTION. This agreement, and any claims or disputes related to this agreement, will be governed by the laws of the state of Minnesota. Such laws shall exclude conflict of law provisions and, with respect to a U.S. state, the U.N. Convention on Contracts for the International Sale of Goods. All actions or proceedings under or relating to this agreement will be resolved in a state, federal or comparable court located in Minnesota; provided, however, that in Smiths Medical's discretion such an action may be heard in some other place designated by it if necessary to acquire jurisdiction over third persons so that the dispute can be resolved in one action. Buyer hereby agrees to appear in any such action, consents to the jurisdiction of such courts and waives any objections it might have as to venue in any such court. Both parties hereby expressly and knowingly waive their rights to a trial by jury.

15. DISCOUNTS AND REBATES. Buyer is not entitled to any discounts, rebates or other reductions in price without a separate written agreement with Smiths Medical specifying the terms of such discounts or rebates, and Buyer shall not offer any discount or rebate to any customer for, on behalf of, in the name of, or as agent for Smiths Medical. Smiths Medical intends that any discounts or rebates provided by Smiths Medical either to the Buyer or to any customer of Buyer will comply with 42 U.S.C. Section 1320a-7b(b)(3)(A) and 42 C.F.R. § 1001.952(h).

16. DISTRIBUTOR QUALITY STANDARDS.

16.1 Buyer shall comply with all laws and regulations applicable to the storage, handling and distribution of the Goods, including, but not limited to those applicable to the export and import of the Goods and the registration or licensing of the Goods prior to sale.

16.2 Buyer shall not resell or distribute the Goods outside the Territory except as authorized by the Seller or to the extent that such restriction is not permitted under applicable law.

16.3 With respect to any Goods held for resale or distribution by Buyer, Buyer shall implement quality management systems and protocols as follows:

(a) Buyer shall, at its own expense, obtain and maintain any and all licenses, permits registrations, approvals and the like necessary to permit Buyer to lawfully sell, distribute and deliver Products in the Territory.

(b) Buyer shall maintain true, accurate, complete and current records relating to its purchases, sales and dispositions, logistics procedures, quality systems, and storage relating to Products. For each sale, transfer or conveyance of Products, Buyer shall collect and maintain the following information:

- i. Product Traceability, including
 - a. Customer/Transferee Name and Full Address
 - b. Buyers Internal End User Number
 - c. Invoice Number and Date
 - d. Shipping Date
 - e. Quantity and Unit of Measure
 - f. Smiths Medical Item Number
- ii. Storage and environmental conditions
- iii. Subdistributor management (including agreements), if applicable
- iv. Product inspection and quality control
- v. Customer complaints and complaint management
- vi. Field action and recall management
- vii. Corrective and preventative actions
- viii. Management of nonconforming and returned products

- ix. Quality system
- x. Product training, if applicable

Buyer shall maintain such records for the greater of five (5) years or such other period required by applicable local, state, region, territory, government or country requirements under laws and regulations in effect and as amended during the term of this Agreement. In connection with any regulatory or compliance matter, quality systems review, audit any government agency or notified body, or any quality audit pursuant to clause (g) below, or otherwise as required by law, Buyer shall furnish copies of any distributor records requested by Smiths Medical either to Smiths Medical or its auditors, as applicable, within ten (10) business days of such request. Smiths Medical shall not use any such records for the purpose of soliciting the purchase of Products by any Buyer customer directly from Smiths Medical.

In the event that Buyer sells, transfers or conveys Products to any subdistributor or other third party prior to sale or distribution of the Products to the end user, Buyer shall cause such subdistributor or other third party to maintain the records listed above for the applicable period and to make copies of such records available to Smiths Medical as described.

- (c) Buyer shall maintain environmental controls for the storage and transportation of products in compliance with all Product labelling and any written instructions from Smiths Medical.
- (d) Buyer shall ensure that inventory is managed rotated so that delivery of Products with the shortest remaining useful life is shipped first.
- (e) Buyer shall not make any changes to any Products, including Product labelling and packaging, without the prior written authorization of Smiths Medical.
- (f) If Buyer receives any Product complaints or otherwise becomes aware of any Product defect or non-conformity, Buyer shall notify Smiths Medical within five (5) business days of receiving the complaint learning of such information. In the event of a recall or corrective action, regardless of whether it is required by any regulatory agency or voluntarily undertaken by Smiths Medical, Buyer shall cooperate with the reasonable requests of Smiths Medical with respect to the notification of customers and end users and the collection, shipment and storage of any returned Products. Smiths Medical shall reimburse Buyer for any reasonable, directly incurred out-of-pocket costs payable to any third party in connection with providing such cooperation.
- (g) Smiths Medical has the right to conduct audits at Buyers facilities upon reasonable notice to assess compliance to agreements, regulatory requirements and quality standards. Supplier shall provide access to books, records, and other documentation and facilities as part of these assessments.
- (h) In the event that Buyer sells, transfers or conveys Products to any subdistributor or other third party prior to sale or distribution of the Products to the end user, Buyer shall cause such subdistributor or other third party to cooperate with any such audit by Smiths Medical as well

17. COMPLIANCE WITH LAWS AND REGULATIONS.

- 17.1 Buyer will comply with all federal, state and local laws, regulations and ordinances applicable to its business and activities and will indemnify Smiths Medical for any and all claims, damages, penalties, assessments and liabilities imposed on Smiths Medical relating to or resulting from Buyer's failure to comply with such applicable laws, regulations and ordinances.
- 17.2 Without limiting the scope of section 17.1, Buyer shall fully comply with the US Foreign Corrupt Practices Act and other laws prohibiting bribery and corruption in connection with any transaction relating to this Buyer's purchase of Products.
- 17.3 Buyer is not authorized to export Products from the US without Smiths Medical's prior authorization. In any event, and without regard to whether Smiths Medical has given such authorization, Buyer shall fully comply with laws and regulations governing the export of goods from the US, including those administered by the US Department of Commerce and the US Department of State.
- 17.4 Smiths Medical may from time to time request certification of Buyer's compliance with any such laws described above. Buyer's failure to provide such certification shall be a material breach of this Agreement.

18. CODE OF BUSINESS ETHICS. Smiths Medical is committed to conducting its business ethically and lawfully. To that end Smiths Medical, through its ultimate parent company, Smiths Group plc, maintains a Code of Corporate Responsibility and Business Ethics and mechanisms for reporting unethical or unlawful conduct. Smiths Medical expects that Buyer also will conduct its business ethically and lawfully. If Buyer has cause to believe that Smiths Medical or any employee or agent of Smiths Medical has behaved unethically or unlawfully under, or in connection with these terms and conditions Buyer is encouraged to report such behavior to Smiths Medical or to Smiths Group plc. Smiths Group plc's Code of Corporate Responsibility and Business Ethics and mechanisms for making such reports are available on www.smiths-group.com.