

# Terms & Conditions

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ALL SALES BY BERTEC® CORPORATION ("Seller"), UNLESS COVERED BY A PREVIOUSLY EXISTING WRITTEN CONTRACT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER, ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS EXCLUSIVELY. ANY TERMS IN CUSTOMER'S PURCHASE ORDER OR ANY OTHER CUSTOMER DOCUMENT WHICH ARE IN ADDITION TO, OR ARE DIFFERENT OR CONTRARY TO THESE TERMS, ARE HEREBY REJECTED.

- Pricing, Freight, Taxes.** Except as expressly set forth on the face hereof, the following terms will apply with respect to all of the goods described on the face of this Purchase Order ("Products"): (i) all prices are exclusive of freight; (ii) Seller will select a carrier and arrange for shipment; (iii) Customer shall be liable for the payment of fees for export, customs duties, tariffs, special packaging or sales, use, excise, value-added taxes, services, or any similar transaction or consumption taxes ("Taxes"), and/or any personal property taxes or other similar taxes assessable on the Products after delivery to the carrier.
- Payment Terms.** Provided that Customer establishes and maintains an open account or other credit facility to Seller's satisfaction and within the credit limits established by Seller, the invoiced amount is due within thirty (30) days after shipment date. All invoiced amounts are payable in U.S.A Dollars by wire transfer or checks drawn on a U.S. financial institution. Seller may change such terms of sale at any time upon prior notice to Customer. If, by the terms of sale, credit is extended to Customer, Seller reserves the right to revoke credit if Customer fails to pay for any goods previously delivered when payment is due or if in the judgment of the Seller there has been a material adverse change in Customer's financial condition and thereupon Seller shall have the right to demand payment or other assurance which it deems adequate before shipment of any further goods. Accounts outstanding for more than 30 days will be subject to a monthly service charge at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is less. Customer agrees to pay all costs of collection including reasonable attorney's fees.
- Title and Shipment.** All deliveries are F.O. B. point of shipment, Columbus, Ohio. Delivery/Transfer of Title: (i) delivery will be complete upon delivery of the goods to a common carrier at the F.O.B. point of shipment; and (ii) title to the goods ordered will pass to the Customer upon delivery of the goods by Seller to the common carrier. Freight and insurance will be added to invoice as a separate line item. Seller shall arrange for and select the method and route of shipment. Unless otherwise specified, the goods will be shipped in standard commercial packaging. When special or export packaging is requested, or in Seller's opinion, required under the circumstances, the costs of such packaging, upon written notice to the Customer if not set forth on the invoice, will be separately invoiced for payment by the Customer.
- Delivery and Risk of Loss.** Times between order and delivery of Products may vary. Seller will use reasonable commercial efforts to meet estimated delivery times. Seller shall not be responsible for any amount, loss, damage, penalty, or liability suffered by Customer as a result of delay in or failure to deliver the Products. In the event of loss or damage of Product shipped, Customer shall notify Seller within 10 days of delivery and Seller shall provide the Customer with replacement product at no charge, and Seller will be authorized to collect any payment from the insurer.
- Inspection and Rejection of Products.** Customer agrees to inspect all Products upon delivery and must reject non-conforming goods as provided herein. Any rejection of non-conforming Products must be made immediately by the Customer after delivery at the place of destination and rejection must be made in writing within ten (10) days after delivery at the place of destination. Such notification of rejection shall identify each and every alleged non-conformity of the Products and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Products. If Customer fails to give such notice, or if Customer uses the Products in any manner inconsistent herewith or the rights of Seller, the Products shall be deemed to conform with the terms of any order or agreement to purchase in all respects and Customer shall be bound to accept and pay for the Products in accordance with the terms hereof. ALL PRODUCTS RETURNED BY CUSTOMER TO SELLER MUST BE IN THE ORIGINAL SELLER'S OR MANUFACTURER'S PACKAGING AS SHIPPED TO CUSTOMER. RETURNED PRODUCTS IN ANY CONTAINER OR PACKAGING OTHER THAN THAT ORIGINALLY SHIPPED TO CUSTOMER WILL NOT BE ACCEPTED BY SELLER.
- WARRANTY.** Seller's Warranty is set forth in the Bertec Limited Product Warranty.
- Limitation of Liability.** In no event shall Seller be liable to Customer it's officers, directors, agents, customers, or any other person who may have a claim directly or indirectly against Customer for procurement costs, lost profits, business interruption, loss of use, or incidental, special, indirect, or consequential damages of any nature even if Seller has been advised of the possibility thereof ("Excluded Damages"). The aforementioned Excluded Damages include, but are not limited to, damages related to, arising out of, or in connection with the sale, delivery, installation, use, loss of use, repair, possession, transportation, disposal or performance of the Products, including all additions to and replacements of the Products. In no event shall Seller's liability arising in connection with any Product(s) sold or to be sold hereunder (whether such liability arises from a claim under contract, warranty, tort, or otherwise) exceed the actual amount paid by Customer to Seller for the Product(s).
- Bankruptcy.** If Customer (i) becomes bankrupt or insolvent, (ii) compounds with its creditors, (iii) commences to be wound up, or (iv) suffers a receiver to be appointed, Seller may by notice in writing cancel the Purchase Order Contract and Acceptance contract without judicial intervention or declaration of default by Customer and without prejudice to any right or remedy that may have accrued or may accrue thereafter.
- Product Markings.** Customer shall not remove or alter any tags, labels, or identifying markings of any kind placed on any Products by Seller.
- Software/Firmware.** The terms of the non-exclusive license ("License") granted by Seller to Customer for the Products is set forth in a separate document.
- Assignment.** Unless authorized by Seller in writing, Customer may not assign the Agreement(s) in whole or in part, or subcontract its obligations hereunder, without the prior written consent of the Seller. All terms, agreements, covenants and rights contained herein shall inure to the benefit of, and be binding on any permitted assignee.

12. *Excusable Delays.* If the performance of any obligation, except payment of moneys due, is prevented, delayed, restricted, or interfered with in any way by reason of any Act of God, act of terrorism (whether actual or threatened), fire, flood, explosion, failure of machinery, strikes, lockouts, or labor trouble, supply of fuel, power, materials, containers or transportation, or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the party to whom the performance is due, shall be excused from such performance to the extent of such interference. Each party shall use reasonable efforts to remove or resolve such interference with performance as promptly as reasonably possible.
13. *Severability.* In the event that any portion of this agreement should, for any reason, be held by a court of competent jurisdiction to be illegal, invalid, unenforceable, or contrary to public policy, then the remainder of this agreement shall remain in full force and effect.
14. *General.* No representation, promise, waiver, amendment, or modification of these terms and conditions shall be binding unless in writing signed by an authorized representative of Seller. This agreement and any other agreement relating to the Products shall be governed by the laws of the State of Ohio (excluding those addressing choice of law). The parties hereto hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts of the State of Ohio for resolution of any dispute related to or arising out of this Agreement. Acceptance by Customer of the Products shall constitute acceptance of all the terms and conditions contained herein. Products sold and delivered within the United States are intended for domestic use only. The captions herein are for convenience only and do not modify or explain any of the terms of this Agreement.
15. *Notification of Discount.* Customer's price paid to Seller for goods or services hereunder, or Seller's provision of goods or services to Customer, particularly pursuant to any promotional Program or provision of goods or services to Customer, particularly pursuant to any promotional Program or other discount, may constitute a "discount or other reduction in price" for purposes of the federal anti-kickback statute, 42 USC 1320a-7b(b). To the extent required by the statute or by the discount safe harbor regulations at 42 CFR 1001.952(g) - (h), a Customer will be solely responsible for fully and accurately reporting in applicable cost reports and providing information upon request to Medicare, Medicaid and other federal health care programs on all discounts or other price reductions provided under this agreement. Consistent with the discount safe harbors, Seller will inform a Customer of the price reduction of any items purchased or any free items it provides to a hospital as part of any similar program and also will inform a Customer of the price discounts related to the purchase of Seller's Products or services.
16. *Customer Responsibilities.* In order for Seller to perform its obligations under this agreement (including warranty obligations), Customer agrees to
  - a. Provide and maintain a suitable, safe and hazard-free location and environment for the Seller's Products and services in material compliance with any written requirements provided by Seller, perform Seller recommended routine maintenance and operator adjustments, and Seller products are used by, qualified personnel in accordance with applicable user documentation;
  - b. Ensure satisfactory power source quality and grounding for all Product;
  - c. Establish and maintain physical and data security, backup and disaster recovery plans for any data, images, software or equipment according to Seller's technical requirements.; and
  - d. Obtain and maintain all licenses, permits, and other approvals necessary for installation, use, disposal, and recycling (each as applicable) of Products provided under this agreement.
17. *Installation.* Seller installation services provided or identified in its Purchase Order Acceptance will be performed in accordance with applicable Seller installation procedures. Customer will prepare the location for the installation consistent with Seller's specifications and applicable Federal, State, and local laws, regulations and codes.
18. *Amendment, Waiver.* This agreement may be amended only in writing signed by both parties. Any failure to enforce any provision of this agreement is not a waiver of that provision or of either party's right to later enforce each and every provision.
19. *Contract Formation.* Seller's Quotation is subject to withdrawal at any time before the issuance of Seller's Purchase Order Acceptance. Customer's acceptance of Seller's Quotation is complete and binding on the Customer upon the delivery of Customer's Purchase Order to Seller. Upon Seller's issuance of a Purchase Order Acceptance, the related terms and conditions issued with the Quotation shall constitute the entire agreement relating to the Products and services. The parties agree that they have not relied on any oral or written terms, conditions, representations or warranties outside those expressly stated or incorporated by reference in this agreement. No agreement or understating, oral or written, in any way purporting to modify these terms and conditions or the Quotation, whether contained in Customer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by an authorized representative of Seller. Customer is hereby notified of Seller's objection to any terms inconsistent with Seller's Purchase Order Acceptance and to any other terms proposed by Customer. Neither Seller's subsequent failure to notify Customer, nor the delivery of the Products or services, shall constitute an agreement by Seller to any such additional terms prepared by Customer.



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