



TERMS AND CONDITIONS OF SALE

All products (the "Products") sold by or through TyTek Medical Inc. ("TyTek Medical" or "we") to a customer (the "Customer" or "you") are furnished subject to these Terms and Conditions of Sale (hereinafter, these "Terms and Conditions"):

- 1. Price and Order Acceptance.** Prices for domestic sales are F.O.B. the place of shipment; prices for international sales are ex works (EXW Incoterms 2010). Any tax, assessment, duty, custom or other fee of any nature imposed upon the Products, their sale, transportation, delivery, use or consumption are not included and may be invoiced at any time. Prior to acceptance, the price quoted is subject to change. Once we accept an order, it may not be cancelled, except with our consent and upon terms that will indemnify us against loss or damage arising from the cancellation.
- 2. Payment and Security Interest.** All orders must be prepaid, unless you are approved for credit. All payments are to be made without setoff or reduction of any kind for any reason. Restrictive endorsements or other statements on checks will not apply to us. Commencing 30 days after invoice date, interest at the rate of 1.5% per month may be added to any unpaid portion of the invoiced amount. In order to secure payment of the purchase price and the performance of your other obligations to us, you grant us by your order a purchase money security interest in each Product and, upon our request, you will execute promptly any additional documents required by us to perfect this security interest. [Visa, Master Card, Discover and American Express] payments will be processed in your local currency. If your local currency is not supported, then payment will be processed in US Dollars. All other payment methods will be processed in US Dollars only.
- 3. Shipping.** Any schedule that we provide to you for delivery or replacement is our then current estimate. We will use reasonable efforts to meet the schedule, but do not warrant or guarantee any particular dates. Your acceptance of the Product constitutes a waiver of any claim for delay. We may select the carrier for delivery unless we agree otherwise in writing. Domestic shipments will be made F.O.B. the place of shipment. The carrier will be deemed to be your agent and you will bear all freight costs and the risk of loss or damage during transit.
- 4. International Shipping.** International shipments will be made ex works (EXW Incoterms 2010). For Products shipped internationally, manuals, instructions and safety warnings may not be in destination country languages and the Products (and accompanying materials) may not be designed in accordance with destination country standards, specifications, and labeling requirements. You are responsible for assuring that the Product can be lawfully imported to the destination country. When ordering from us, the recipient is the importer of record and must comply with all laws and regulations of the destination country. Customs policies vary widely from country to country; you should contact your local customs office for further information. When customs clearance procedures are required, it can cause delays beyond our original delivery estimates.
- 5. Returns.** No returns will be accepted beyond 30 days from the date of invoice. Opened or damaged Products cannot be returned. All returns must be pre-approved by us and received within 30 days of that approval. A Return Authorization is required for all returns. The Return Authorization must be visible on the outside of the shipping box or on the mailing label. We may refuse returned Products without a visible Return Authorization. We must receive a returned Product before a credit for it will be issued. There is a 15% processing fee on returned Products. You are responsible for shipping costs on returned Products.
- 6. Limited Warranty.** The Products are medical devices intended solely for use by appropriately trained healthcare professionals. TyTek Medical warrants that the Products are free from defects in material and workmanship and fit solely for use as medical devices for a specific purpose (as described in each Product's instructions) by trained healthcare professionals for a period of 12 months from the date the Product is shipped to you. Any use of the Product beyond its specific use (as described in each Product's instructions) or by a person not trained or legally authorized to use the Product voids this limited warranty. EXCEPT AS SET FORTH HEREIN, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS AND WE SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Warranty claims must be made in writing during the warranty period to the following address: TyTek Medical Inc., 4700 Ashwood Drive, Suite 445, Cincinnati, Ohio 45241, Attention: Warranty Claims Manager. If a Product is alleged to be defective, the Product must be returned during the warranty period to the address stated above. This warranty does not cover damage resulting from ordinary wear and tear, misuse, neglect, accident, alterations, failure to follow instructions, fire, or acts of God.
- 7. Limitation of Remedies and Liabilities.** Regardless of the type of claim against us related to the Product and/or their performance, your sole and exclusive remedy is, at our sole discretion, (a) repair or replacement of the Product or (b) refund of the price paid for the Product. For any claim of any kind against us concerning a Product (including, but not limited to, any claim that we have failed to satisfy our repair/replacement obligation), you are limited (subject to the exclusions set forth below) to recovering only your direct damages up to but not in excess of the price you paid to us for the Product. YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT LIABLE TO YOU OR YOUR CUSTOMERS, EMPLOYEES OR AGENTS, UNDER ANY CLAIM OR CIRCUMSTANCE (INCLUDING WITHOUT LIMITATION ANY CIRCUMSTANCE INVOLVING A FINDING THAT A WARRANTY OR REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE), WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT, OR OTHER LEGAL THEORY, FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUE, LOST SALES, LOST GOODWILL, OR LOSS OF USE OF ANY PRODUCT.
- 8. Inspection and Acceptance.** You agree to inspect promptly each Product upon receipt. Unless you timely notify us in writing that you reject the Product and set forth with specificity the reasons for such rejection, the Product will be deemed accepted by you within 14 days of delivery. Acceptance arising from a failure to reject timely will be final and irrevocable.
- 9. Safe Operation.** You will use, and require all persons using a Product to use, any and all proper and safe operating procedures set forth in the applicable manual and instruction sheets. You will not remove or modify any safety device or warning installed on or attached to a Product.
- 10. Regulatory Restrictions.** Our Products are medical devices subject to regulation by the US Food and Drug Administration and state and local regulatory agencies. You represent that you are a trained healthcare professional authorized to purchase the Products for medical applications, and agree to use the Products strictly in compliance with applicable regulations and the Products' manuals, instructions and safety warnings. You further agree not to share the Products with people who are unauthorized to purchase the Products under regulatory restrictions. You agree not to disassemble, repair, tamper with, modify or alter the Products nor to use it for the applications not approved by FDA as these can be unsafe and have dangerous consequences.
- 11. Indemnification.** You agree to indemnify, defend and hold us, including our shareholders, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, debt or liability (including reasonable attorneys' fees, expenses and court costs) arising from: (a) your misuse or abuse of the Products, (b) your failure to abide by all applicable laws, rules, regulations and orders that affect the Products, (c) your breach of these Terms and Conditions or (d) your omissions, misrepresentations, or negligence.
- 12. Governing Law, Forum Selection, and Limitation Period.** These Terms and Conditions, the construction of these Terms and Conditions, all rights and obligations between the parties to these Terms and Conditions, and any and all claims arising out of or relating to the subject matter of these Terms and Conditions (including all tort claims), shall be governed by the laws of the State of Ohio, U.S.A., without regard to its conflicts of law principles. The applicability of the U.N. Convention on the International Sale of Goods is hereby excluded. Any litigation or other legal proceeding of any kind based upon or in any way related to these Terms and Conditions, its subject matter, or the rights or obligations of the parties to these Terms and Conditions, will be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in Hamilton County, Ohio, U.S.A. (if the action is brought in state court) or in the Southern District of Ohio, U.S.A. (if the action is brought in federal court); provided that nothing contained herein will prevent us from bringing any action or exercising any rights against you or your property within any other state or nation. Any such proceeding must be brought within two years from the date on which the claim accrued.
- 13. Severability of Terms.** The provisions of these Terms and Conditions will be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of these Terms and Conditions, or the application thereof to any person or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (ii) the remainder of these Terms and Conditions and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

