

# CHART BIOMEDICAL DISTRIBUTION LLC

## Terms & Conditions of Sale

**1. General.** The terms and conditions contained herein, together with any additional or different terms contained in Chart BioMedical Distribution LLC's ("Seller") proposal, if any, submitted to Purchaser (which proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions) constitute the entire agreement between the parties with respect to the subject sale and supersedes all prior communications and agreements. Acceptance by Seller of Purchaser's order and Purchaser's acceptance of Seller's proposal is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, which may not be changed or waived except in a writing signed by both parties. Any additional, inconsistent or different terms and conditions contained in Purchaser's order or any other documents supplied by Purchaser are hereby expressly rejected. Unless the context otherwise requires, the term "**Equipment**" as used herein includes all goods, equipment, parts, and accessories sold to Purchaser by Seller. Unless the context otherwise indicates, the term "**Services**" as used herein shall mean labor, supervision, repair and project engineering services provided by Seller. The term "**Purchaser**" shall mean only the party issuing the order to Seller for Equipment and/or Services, regardless of the end user of the Equipment and/or Services.

**2. Payment Terms.** Unless a different payment schedule is agreed to in writing by Seller, payments for domestic sales are due net thirty (30) days. Late payments are subject to a 1.5% late charge per month, calculated per diem, and Seller's rights set forth in Section 11. Any payment returned for insufficient funds is subject to a reasonable administrative fee. Payments for export sales to be made in accordance with the specified payment schedule. If required by Seller, Purchaser will cause an irrevocable letter of credit established in favor of Seller on a bank to be designated by Seller. Costs associated with the letter of credit will be to Purchaser's account. Performance schedules are based on receipt of letter of credit within thirty (30) days of award when requested by Seller. Purchaser agrees to furnish Seller with requested credit information. Purchaser's credit limit is set at Seller's sole discretion and may be modified at any time based upon Purchaser's credit risk as determined by Seller. In the event that Purchaser's credit risk increases, Seller is entitled to modify the payment terms and require alternate payment methods.

**3. Taxes.** Federal, state, local, or value added sales and use taxes measured on the price of Equipment and Services are not included in the price and are the responsibility of Purchaser.

**4. Time Limit.** All quotations are valid for a period of thirty calendar days.

**5. Acceptance.** Acceptance of Equipment occurs at point of manufacture. Acceptance of any Services provided hereunder occurs upon completion of the Services.

**6. Limited Warranty, Exclusive Remedies and Indemnity.** Seller agrees to and shall provide to Purchaser a limited warranty and exclusive remedy statement relating to the Equipment sold hereunder ("Limited Warranty Statement"). Purchaser acknowledges receipt of the Limited Warranty Statement and agrees to its terms. Seller warrants its Services against defects in workmanship for a period of ninety days from date of their completion. *THE REMEDIES AND WARRANTIES STATED IN THE LIMITED WARRANTY STATEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES GRANTED UNDER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE AND DESIGNS, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXPRESSLY DISCLAIMED BY SELLER AND ALL*

*EQUIPMENT MANUFACTURERS.* Purchaser agrees to defend, indemnify and hold Seller harmless from any third party claims arising out of the use, sale, or lease of the Equipment or Services and from all expenses, losses and other damages resulting from Purchaser's breach of any of the terms and conditions herein.

**7. Termination.** No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by Seller of Purchaser's written notice specifying such default, Seller shall have failed to initiate and pursue correction of such specified default.

**8. Excusable Delays.** The schedule for shipment of Equipment or performance of Services will be modified for delays resulting from causes beyond Seller's reasonable control, including but not limited to, strikes, restrictions of the United States Government, or other governments having jurisdiction, delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities.

**9. Shipment.** All domestic shipments are FCA Seller's facility and all export shipments are Ex Works Seller's facility with responsibilities as defined in INCOTERMS 2000. If Seller agrees in writing to prepay transportation and insurance charges, then Purchaser will be invoiced and agrees to pay the actual cost of the same. Claims for shortages in shipment shall be deemed waived unless made in a writing received by Seller within ten (10) days after delivery. Shipment dates quoted are based on Seller's best estimate of a realistic time when shipment will be made, and are subject to change due to prior sales. Shipment dates will be confirmed on Seller's acceptance of any resulting order. Seller may make early shipment or partial shipments and invoice Purchaser accordingly.

**10. Laws, Codes and Standards.** Except as expressly stated herein, the price and schedule included herein are based on laws, codes, and standards in effect as of the date of the subject sale. If such laws, codes, and standards change and increase or decrease the cost of performing the work or impact the schedule, then Seller will advise Purchaser of the same. Purchaser and Seller shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change.

**11. Title and Risk of Loss or Damage.** Despite any agreement with respect to delivery terms or prepayment of transportation or insurance charges, the risk of loss or damage for Equipment shall pass to Purchaser upon the earlier of payment in full or completion of delivery, and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment. Purchaser shall insure the Equipment upon delivery and ensure that Seller's interest in the Equipment is noted on the insurance policy. Seller shall retain legal and beneficial title to the Equipment until all invoices for such Equipment have paid in full. In the event of late payment, Seller reserves the right to enter onto Purchaser's premises to repossess the Equipment until Purchaser has paid for such Equipment in full.

**12. Installation and Field Service.** Installation of Equipment furnished hereunder shall be by Purchaser, unless otherwise agreed to in a writing signed by Seller's duly authorized representative. Field service will be provided on a per diem basis upon written authorization by Purchaser and at Seller's rates in effect when such Services are provided.

**13. Cancellation.** Cancellation of any order must be by written notice to Seller and will be subject to Seller's cancellation charges, including without limitation all costs incurred through the date of cancellation, cost to process such cancellation, plus a reasonable profit.

**14. Intellectual Property; Confidentiality.** Purchaser shall defend, indemnify and hold Seller harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of patents, copyrights or trademarks arising from Seller's compliance with Purchaser's designs, specifications or instructions. Unless otherwise agreed to in a writing signed by Seller's duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Equipment and Services made by Seller or Purchaser shall exclusively remain with Seller. Any design, manufacturing drawings or other information submitted to Purchaser shall remain the exclusive property of Seller. Purchaser shall not, without Seller's prior written consent, copy nor disclose such information to any person. The information, drawings, plans, standards, and specifications furnished by Seller were developed at Seller's expense and may not, without Seller's prior written consent, be used nor disclosed by Purchaser for any purpose other than to install,

own, operate, and maintain the subject Equipment. If Seller's Equipment is held to infringe a United States patent in effect as of the date of this agreement, then Seller may at its option procure for Purchaser the right to use the Equipment; modify or replace it with non-infringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Purchaser. The foregoing is Seller's entire liability on patent infringements. Purchaser shall keep confidential and shall not without the prior written consent of Seller disclose to any third party any technical or commercial information which Purchaser has acquired from Seller as a result of discussion, negotiations or other communications relating to the Equipment, Services or this order.

**15. Assignment.** This agreement may not be transferred or assigned by operation of law or otherwise by Purchaser, without the prior express written consent of Seller. Any transfer or assignment of any rights, duties or obligations without Seller's consent shall be void. Seller may transfer or assign, by operation of law or otherwise, this Agreement without the consent of Purchaser.

**16. Export Sales.** In no event shall Seller be required to export or deliver any technical information, data or Equipment if such export or delivery is then prohibited or restricted by any law or regulation of the U.S. Government or any other applicable governmental agency of any country having jurisdiction, and in such cases, Seller's obligations under such order shall be terminated at Seller's option, and Seller shall be entitled to reasonable termination charges for the termination of the order. All orders hereunder are subject to applicable governmental laws, regulations and rules of the Government of the United States, including departments, agencies and subdivisions thereof, and of the country in which the Equipment to be sold will be installed, used, or performed. Purchaser accepts all responsibility for exporting any Equipment sold hereunder outside of the United States, and shall cause the end user to accept such responsibility and will be responsible for filing any documents required by the U.S. or other government agencies. Purchaser shall be the exporter of record and shall secure all licenses necessary for exportation. Purchaser agrees not to export any Equipment, technical information or data of Seller without full compliance with applicable U.S. laws and shall cause the end user to comply with such laws. Purchaser warrants and represents that it is in full compliance with all applicable laws. Specifically, Purchaser shall not export or re-export any Equipment, components thereof or technical data supplied by Seller to a prohibited person, to a prohibited country, or for a prohibited use under the U.S. export laws.

**17. Limitation of Liability.** *TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL SELLER, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO PURCHASER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. SELLER'S LIABILITY FOR ANY SUCH CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR PERFORMANCE OF ANY SERVICES COVERED BY THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID TO SELLER BY PURCHASER FOR THE SPECIFIC EQUIPMENT OR PART THEREOF OR FOR THE SERVICES GIVING RISE TO THE CLAIM.*

**18. Governing Law.** This agreement and any claim, controversy or dispute arising under or related to the agreement, the relationship of the parties, and the interpretation and enforcement of the rights and duties of the parties will be governed exclusively by the laws of the State of Indiana, excluding its conflicts of laws. Purchaser agrees that all causes of action under this agreement shall expire unless brought in court of law located in the State of Indiana, to which Purchaser does hereby consent to the jurisdiction of the same, within one year of the date of the occurrence of the event giving rise to any such claim. The parties agree that the UN Convention on Contracts for the International Sale of Goods shall not apply.

**19. Headings.** The headings used throughout are for convenience only and shall be given no legal effect. Fax copies shall be given the full force and effect as an original.

**20. Entire Agreement; Severability; Third Parties.** These terms and conditions constitutes the complete and exclusive agreement between Seller and Purchaser and, except for the Limited Warranty Statement, there are no agreements, understandings, restrictions, warranties, or representations between Seller and Purchaser other than those set forth herein or herein provided for. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect. No term or condition is intended for the benefit of any third party, and Seller and Purchaser do not intend any term or condition to be enforceable by a third party, including any end user of Equipment or Services.

(REV 11/09)