

## TERMS & CONDITIONS OF SALE

Upon acceptance of an order for the Products (defined below) (prior to acceptance, an “Order”) by SUTTER MEDICAL TECHNOLOGIES USA, INC. a Delaware corporation located at 120 Interstate North Parkway, Suite 118, Atlanta, GA 30339, USA (“Sutter”) as provided herein, these Terms & Conditions of Sale (“Terms”) shall be a legally binding contract between the Customer (defined below) and Sutter. **Sutter rejects any additional or different terms or conditions, in any form, tendered by Customer or any third party.**

### **1. TERMS AND CONDITIONS; AMENDMENTS**

1.1 As used in these Terms, “Customer” means you or any of your affiliates whose Order for Products is accepted by Sutter. The term “Sutter” also includes affiliates of Sutter with which such an Order is placed. “Products” means laboratory, medical and surgical instruments by Sutter, as well as related services marketed, sold or provided, directly or indirectly, by or on behalf of Sutter.

1.2 If Customer purchases Products through a third-party reseller or distributor, final prices will be as agreed between Customer and the third party from whom Customer makes such purchases; provided however, that these Terms shall control any such sale and purchase of the Products as between the Customer and any third party, and shall prevail over any terms agreed between the Customer and any third party.

### **2. ORDERS, CONFIRMATION OF ORDER, CONCLUSION OF CONTRACT**

2.1 Each Order is subject to written acceptance or rejection by Sutter, in Sutter’s sole discretion. Each accepted Order will be interpreted as a single agreement, independent of any other accepted Orders. Terms of payment are within Sutter’s sole discretion as provided herein. Sutter may, in its sole discretion, condition the acceptance of any Order on the Customer furnishing it with surety or an advance payment. Sutter is not responsible for pricing, typographical or other errors in any Order, and reserves the right to reject Orders, or revoke acceptance of such Orders, arising from such errors.

2.2 Price quotations are non-binding and without obligation unless and until an Order is accepted by Sutter. Subject to these Terms, such quotations, and all information contained therein, are subject to change in Sutter’s sole discretion unless and until an Order is accepted by Sutter.

2.3 Customer shall bear the risk of faulty transmission of electronic, telegraphic, telex or telephone communications. Sutter is not obliged to confirm electronically the receipt of any communication, including an Order. Communications received by Sutter prior to 5:00PM [Atlanta, Georgia] time will be deemed received as of that business day. Any communications received after 5:00PM Atlanta, Georgia time, or on any non-business day, will be deemed received on the next business day.

2.4 Subject to these Terms, an Order is accepted only upon a written confirmation from Sutter to the Customer.

2.5 In the event Customer cancels an Order following its acceptance by Sutter Customer shall reimburse Sutter for any and all expenses and costs incurred by Sutter prior to such cancellation in connection with Sutter’s manufacture, design or development of the Products subject to such cancelled Order.

### **3. PRICES AND TERMS OF PAYMENT**

3.1 Any price lists or statements of pricing by Sutter shall be nonbinding. The price shall be sent by Sutter in the confirmation and shall exclude any and all (i) fees for packaging, loading, shipping and handling, transport, and installation; (ii) insurance charges; (iii) customs duties, fees, value added taxes or other taxes, and any other charge, fee, expense or duty imposed by a governmental authority. Customer shall be responsible for sales tax and any other taxes or governmental charges or fees associated with its purchase. Subject to a separate written agreement between Sutter and the Customer, Sutter may perform assembly, installation, repair and related services for the Products at Customer’s expense. Sutter shall not confirm the price of a Product until the relevant Order has been accepted by it subject to these Terms. Timely payment of the purchase price and all other related charges is of the essence. It is the responsibility of Customer to ensure payments are authorized and approved on time to ensure receipt of payment no later than the due date.

3.2 Sutter shall invoice client promptly and all invoices shall be due and payable in full within thirty (30) days from the date of the invoice. In no case shall Customer be entitled to offset, defer or deduct any amounts invoiced hereunder unless specifically agreed to by Sutter in writing. Payments shall be made in U.S. Dollars at Sutter’s address or such other location as designated in writing by Sutter to Customer. Payments must be made by any type of prearranged payment method.

3.3 Sutter reserves the right to charge Customer interest on overdue invoices at a rate of eighteen percent (18%) per year applied against overdue amounts, or at the maximum rate permitted by law, whichever is lower. Payment of such interest will not excuse or cure Customer's breach or default for late payment. In addition, without waiving any other rights or remedies to which it may be entitled, Sutter also shall have the right to suspend or terminate any, and to refuse additional orders from Customer until Sutter's receipt of all overdue amounts. Sutter shall have no liability to Customer for any such suspension or termination of orders or for its refusal of additional orders. Sutter further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all costs associated with collection (including reasonable attorney's fees and costs.) Sutter may accept any payment in any amount without prejudice to Sutter's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any payment or in any letter accompanying a payment or elsewhere will be construed as an accord or satisfaction.

3.4 If, after Sutter's acceptance of an Order, Sutter detects a material change in the Customer's financial condition, Sutter, in its sole discretion, may make the sale of Products and/or the provision of any related services dependent on the Customer providing a security deposit or guarantee in an amount determined by Sutter. Sutter's performance of any agreement with the Customer, including pursuant to these Terms, shall be suspended until such time as the Customer pays the security deposit or provides the guarantee. If Customer is unable to provide such a security deposit or guarantee within the timeframe set out by Sutter, Sutter may, in its sole discretion and without further liability to the Customer, cancel any or all of the Customer's outstanding Orders or other agreements.

3.5 Sutter may revoke its acceptance of any Order in the event necessary export or import permits are not granted, or if any other necessary approval or permits, governmental or otherwise, for the Order cannot be obtained.

3.6 In the event the Customer has an unpaid balance with Sutter, any payments from the Customer shall be credited to (i) first, any costs associated with enforcing Sutter's payment rights; (ii) second, to any interest charged hereunder; and (iii) third, to the outstanding balance.

#### **4. DELIVERY, DELIVERY PERIOD AND DELAY IN DELIVERY**

4.1 The Products shall be made available to the Customer FOB, Free On Broad, at Sutter's place of business. Such Products shall be delivered by Sutter to the Customer via Sutter's or its agent's vehicles or the vehicles of third-party contractors. Sutter and Customer may agree, in a separate written agreement, on different delivery terms.

4.2 Delivery dates and times, as well as the dates and times of dispatch from Sutter's facility, are estimates only, unless such delivery dates and times are the subject of a separate written agreement between Sutter and the Customer. If, following commercially reasonable efforts, Sutter is unable to deliver or dispatch the applicable Products by the applicable delivery or dispatch dates, such failure shall not constitute a breach of these Terms, and Sutter may request a reasonable extension in which to affect such dispatch or delivery. Notwithstanding anything to the contrary herein, delivery times may be extended by Sutter, in its sole discretion, in the event of any late payment by Customer or any defect in the content, timing or contents of any document to be provided by the Customer to Sutter. Delivery times are subject to the timely, accurate and sufficient delivery by Sutter's suppliers, and in the event of a delivery delay caused by such supplier, Sutter shall have no liability to Customer but will immediately notify the Customer of such delay.

4.3 Sutter shall not be liable to Customer for any failure to perform any of its obligations under these Terms during any period in which such performance is delayed by circumstances beyond its reasonable control, such as supply shortages, supplier delays, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority ("Force Majeure"). In such event, however, Sutter will promptly provide Customer with written notice of the Force Majeure. Sutter's time for performance will be excused for the duration of the Force Majeure event.

#### **5. TRANSFER OF RISK, DELAYED ACCEPTANCE**

5.1 Title to, and risk of loss for the Products passes to Customer upon delivery to Customer or Customer's carrier. If delivery is delayed because of Customer or Customer's carrier, risk shall pass to Customer when the goods are ready for shipment and should have shipped.

5.2 Customer shall inspect the Products promptly upon their arrival at Customer's premises. Customer shall inspect to determine that (i) the Products, and the quantities thereof, delivered are as specified in the relevant Order and (ii) the Products are undamaged. The Products shall be deemed accepted by the Customer if no written rejection or other notice of nonconformity is delivered to Sutter, in writing, by the Customer within five (5) days of delivery of the Products.

5.3 Customer hereby grants a security interest in the Collateral (defined below) to Sutter to secure the payment and performance of the Obligations listed below. The Collateral shall consist of all now owned and hereafter acquired and wherever located Goods, as defined in Article 9 of the Uniform Commercial Code as enacted in Delaware, which are Products acquired by the Customer from Sutter, and all proceeds (cash and non-cash) from the foregoing. The Obligations shall consist of: (i) all of Customer's present and future indebtedness and obligations to Sutter; (ii) all amounts

owed under any modifications, additional advances, renewals, extensions or substitutions of any of the foregoing obligations; (iii) all costs associated with Sutter's exercise of its rights hereunder; and (iv) any of the foregoing that may arise after the filing of a petition by or against Customer under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise. Any capitalized term used in this Section 5.3, and not otherwise defined in these Terms, shall have the meaning given to it in Article 9 of the Delaware Uniform Commercial Code. Customer agrees to execute and deliver to Sutter any and all documents necessary to perfect Sutter's security interest, including all financing statements.

## **6. CONDITION OF GOODS, REPORTING OF DEFECTS, LIMITED WARRANTY**

### **6.1 LIMITED WARRANTY.**

(a) **SUTTER WARRANTS THAT FOR A PERIOD OF ONE (1) YEAR FROM DELIVERY OF THE PRODUCTS, THE PRODUCTS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP AND SHALL SUBSTANTIALLY CONFORM TO THE WRITTEN DESCRIPTION OF THE PRODUCTS AS PROVIDED BY SUTTER. SUTTER'S SOLE RESPONSIBILITY UNDER THIS PRODUCT WARRANTY IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS, AT ITS SOLE OPTION.**

(b) The Limited Warranty set forth in Section 6.1(a) shall not apply unless each of the following is satisfied: (i) Customer notifies Sutter in writing of the alleged defect or failure immediately upon Customer becoming aware thereof, and in any event, within one (1) year from the delivery date of the applicable Products; (ii) Customer establishes to Sutter's satisfaction that there is a defect or failure in the Products and such defect or failure is not the result of misuse by the Customer or any end user; (iii) to the extent practicable, Customer promptly returns the Products to Sutter for inspection, examination or testing or otherwise permits the Company to have reasonable access to Customer's premises or the Products in order to inspect, examine and test the Products; and (iv) there is not any failure by the Customer to maintain the Products in accordance with any instruction given by Sutter.

(c) If Sutter elects to replace the Products, Customer shall make all such reasonable arrangements as may be necessary for the purpose of delivering the defective Products to Sutter. If Sutter elects to repair the Products and such repairs are performed at Customer's premises, then Customer shall permit Sutter to have such reasonable access to the applicable Products which are defective.

**6.2 WARRANTY DISCLAIMERS. EXCEPT FOR SECTION 6.1, SUTTER MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT.**

**6.3 VOIDED WARRANTIES. THE LIMITED WARRANTIES CONTAINED HEREIN DO NOT COVER DAMAGE FROM EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, USAGE NOT IN ACCORDANCE WITH PRODUCT INSTRUCTIONS, NORMAL WEAR AND TEAR, FAILURE TO REGULARLY MAINTAIN THE PRODUCT, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS.**

**6.4 LIMITATION OF LIABILITY. SUTTER WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUTTER SHALL NOT HAVE LIABILITY FOR THE FOLLOWING: (I) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (II) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION; OR (III) BUSINESS INTERRUPTION OR DOWNTIME. SUTTER'S TOTAL LIABILITY FOR THE PRODUCTS IN EACH ORDER SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID, AS OF THE DATE OF THE CLAIM, TO SUTTER BY CUSTOMER IN SUCH ORDER. THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER FOR COMMERCIAL OR PERSONAL INJURY, AND WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SUTTER'S SALE OF PRODUCTS TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.**

**6.5 EXCLUSIONS. NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT SUTTER'S LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. NEVERTHELESS, UNLESS OTHERWISE NOTED, SUTTER'S LIABILITY WILL BE LIMITED AS NOTED ABOVE AND/OR TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

## **7. INTELLECTUAL PROPERTY**

All right, title and interest in any intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in the Products or related materials, shall belong solely and exclusively to Sutter, and no license to such

intellectual property is granted hereunder. Customer shall not use or disclose, directly or indirectly, any confidential or proprietary information of Sutter without the written consent of Sutter.

## **8. TERMINATION**

Notwithstanding anything to the contrary herein, Sutter may terminate the Terms upon notice to the Customer in the event of any material breach of these Terms by Customer that is not cured within fifteen (15) days of receipt of written notice of breach by Customer from Sutter, the insolvency of the Customer, the filing of a petition in bankruptcy by or against the Customer, the appointment of a receiver for the Customer or the Customer's property, the execution of an assignment by the Customer of all or substantially all of its assets for the benefit of its creditors, the conviction of the Customer or any principal or manager of the Customer for any crime that might adversely affect the ownership or operation of Customer's business or any attempted assignment of these Terms without Sutter's written consent. Sections 6, 9, 10.6 and 10.8 (together with all other provisions of these Terms that may reasonably be interpreted or construed as surviving termination or expiration of these Terms) will survive any termination or expiration of these Terms. Within twenty (20) days of any termination pursuant to this Section 8, Customer shall pay to Sutter any sums owed by Customer to Sutter for the sale of Products. With the exception of the foregoing, neither party will have any liability (e.g., for any claim of damages, loss of revenue, profit or compensation for anticipated sales or for any costs, expenses, expenditures, investments or other commitment made in reliance upon or otherwise in connection with these Terms) to the other on account of any termination in accordance with this Section 8.

## **9. INDEMNIFICATION**

In addition to the terms of Section 2.4, Customer shall reimburse, indemnify and hold harmless Sutter and its directors and officers to the full extent permitted by applicable law, from and against any and all loss, liability, claim, damage, cost and expense whatsoever, including legal fees and expenses, arising directly or indirectly from any acts or omissions of Customer relating to the Products, or any breach of Sutter's proprietary rights as provided herein.

## **10. JURISDICTION, APPLICABLE LAW, MISCELLANEOUS**

10.1 All notices and other communications given hereunder will be given in writing and will be personally delivered, sent by electronic facsimile transmission, electronic mail, recognized overnight delivery service that guarantees next day delivery ("Overnight Delivery") or mailed registered or certified mail, return receipt requested, postage prepaid. The parties agree that notices or other communications that are sent in accordance herewith (i) by personal delivery, electronic facsimile transmission or via electronic mail, will be deemed received on the first business day thereafter, (ii) by Overnight Delivery, will be deemed received on the first business day thereafter, and (iii) by U.S. mail, will be deemed received three (3) business days immediately following the date sent. Either party may from time to time change such address by giving the other party notice of such change.

10.2 Customer shall not (by contract, operation of law or otherwise) assign any right or interest in these Terms without the prior written consent of Sutter. No such assignment shall relieve the Customer from any of its obligations hereunder, and these Terms will be binding upon and inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns.

10.3 These Terms constitute the entire agreement between Customer and Sutter with respect to its subject matter and supersede all prior oral and written understandings, communications, or agreements between Customer and Sutter, and as between Customer and any third party to the extent such directly relate to the Products. Should the parties also be subject to a Distribution Agreement then that Agreement shall control and shall supplement the terms hereof. The failure of a party to insist upon or enforce strict performance of any of the provisions of these or to exercise any of its rights or remedies under these Terms will not be construed as a waiver or relinquishment to any extent of such party's rights to assert or rely upon such provision, right or remedy in that or any other instance; rather the same will be and remain in full force and effect. No amendment, waiver or discharge of any provision of these Terms will be effective unless made in writing that specifically identifies these Terms and the provision intended to be amended, waived or discharged and signed by Sutter and the Customer.

10.4 These Terms will be interpreted, construed and enforced in accordance with the laws of the State of Delaware without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or the transactions contemplated hereby.

10.5 The parties agree to submit all claims arising from or relating to these Terms to arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), then in effect. If the matter in dispute exceeds \$100,000, the matter shall be considered by a panel of three (3) arbitrators. Each party shall appoint one arbitrator within fifteen (15) days of receipt of the notice of the party requesting arbitration and the arbitrators so selected shall, within fifteen (15) days of their appointment, then select a third arbitrator. Upon failure of a party(ies) to appoint an arbitrator (or of the arbitrators selected to appoint a third arbitrator) as

contemplated in the foregoing sentence, the AAA shall appoint an arbitrator. If the matter in dispute is less than \$100,000, the matter shall be considered by a single arbitrator. The parties shall mutually agree to the single arbitrator, or if the parties are unable to so agree on an arbitrator within twenty (20) days following a request for arbitration by either party, the arbitrator shall be selected by the AAA. The decision of the arbitrator(s) (by majority vote if there are three arbitrators) shall be binding upon all parties and non-appealable. If there are three (3) arbitrators, each party shall bear the cost of its appointed arbitrator and the cost of the third arbitrator shall be borne by the non-prevailing party. If there is a single arbitrator, the non-prevailing party shall bear the cost of the arbitrator. Each party shall bear all of its own witness fees and attorneys' fees. The arbitration proceeding shall occur at the AAA Offices in Atlanta, Georgia, unless another location is chosen by mutual agreement of the parties. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any dispute hereunder. Notwithstanding anything to the contrary in this Section 10.6, in the event that Sutter successfully brings a claim hereunder, it shall be entitled to an award of reasonable attorneys' fees and any costs incurred in such action, in addition to any other damages or relief awarded.

10.6 If any provision of these Terms shall be held by any court of competent jurisdiction or other tribunal to be invalid, illegal or unenforceable under applicable law, then such provision shall be deemed reformed or omitted to the extent determined by such court. In any event, the remainder of these Terms shall remain valid and enforceable.

10.7 No provision of these Terms shall be deemed to create an association, trust, partnership, joint venture or other legal relationship between Sutter and Customer, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such entities. Neither party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of the other party except as specified herein.

10.8 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUTTER SHALL NOT BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN THE EARLIER OF ONE YEAR AFTER THE EXPIRATION OR TERMINATION OF THESE TERMS OR ONE YEAR AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

10.9 Sutter reserves the right to update these Terms at any time; however, Customer's rights and obligations shall be as provided in the version of these Terms in effect as of Sutter's acceptance of the relevant Order.

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