

**DRAEGER MEDICAL, INC.**  
**TERMS AND CONDITIONS OF SALE**

**1. GENERAL**

**1.1 Contract Terms.** These terms and conditions apply to the purchase of Draeger Medical, Inc. ("DMI") products ("Products") by any customer ("Customer") identified on any invoice, confirmation order, purchase order, packing slip or otherwise issued by DMI for the sale of such Products by DMI to Customer (these terms and conditions, together with any of the foregoing, may hereinafter be referred to as the "Agreement"). "Products" include (i) any products manufactured by DMI directly and (ii) any products manufactured by any affiliate of DMI and offered for sale directly by DMI as part of DMI's portfolio of products. "Affiliate" shall mean any entity that (i) is owned or controlled by DMI, (ii) has an ownership interest in or controls DMI or (iii) is under common ownership/control with DMI. Unless otherwise indicated, these terms and conditions shall apply to the purchase of all DMI Products. DMI shall not be bound by, and specifically objects to, any term, condition or other provisions which are different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) which is set forth in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise of or by Customer, unless DMI specifically agrees to any such provision in a writing signed by DMI. Products may contain used, reworked or refurbished parts and components that comply with performance and reliability specifications. Customer acknowledges that this is a commercial and not a consumer transaction.

**1.2 Formation of Contract.** Customer makes an offer to purchase Products when Customer submits an order to DMI. An order is submitted when (i) Customer submits to DMI either a phone order or written order for Products, or (ii) a quotation or proposal ("Quotation") is issued for the purchase of Products and Customer either signs such Quotation or submits a purchase order or other writing to DMI for the purchase of any Products identified on such Quotation. DMI's acceptance of Customer's offer is expressly made conditional on Customer's assent to all of DMI's terms. An order shall be binding on DMI only after a credit approval and an order confirmation have been issued by DMI to Customer or DMI ships Products to Customer.

**1.3 Third Party Products.** If this Agreement includes the sale of third party products not manufactured by DMI (other than Products offered for sale directly by DMI but which may have been manufactured by a DMI affiliate as defined in Section 1.1), then Customer agrees and acknowledges that (a) Customer has made the selection of these products on its own, (b) the products are being acquired by DMI solely at the request of and for the benefit of Customer, in order to eliminate the need for Customer to issue a separate purchase order to the manufacturer of the products, (c) no representation, warranty or guarantee has been made by DMI with respect to the products, (d) the obligation of Customer to pay DMI for the products is absolute and unconditional, (f) Customer will not assert any claim against DMI with respect to the products, and will look solely to the manufacturer regarding any such claims, and (g) Customer will indemnify and hold DMI harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the products or any work or service provided by the manufacturer of the products or any other party.

**2. PRICES**

**2.1 Quotations.** Unless otherwise agreed to in writing or set forth in the quotation, all prices quoted by DMI are based on U.S. dollars F.O.B. shipping point, and include standard and customary packaging. Domestic prices apply only to purchasers located in, and who will use the Products in, the U.S. International prices apply to all purchasers located outside of, or who will use or ship or facilitate shipment of the Products outside of, the U.S. Unless otherwise stated, the quotation shall only be valid for thirty (30) days from the date of the quotation.

**2.2 Delay in Delivery or Implementation.** In the event Customer and DMI have agreed in a separate writing to a specific delivery and/or implementation schedule for Products included in certain project business of Customer, such delivery or implementation schedule may only be changed by Customer as permitted pursuant to the terms of such writing. Notwithstanding the foregoing, should the agreed delivery date be postponed by Customer, DMI shall have the right to deliver to storage at Customer's risk and expense, and payments due upon delivery shall become due when DMI is ready to deliver.

**2.3 Acceptance of Products.** All Products delivered by DMI to Customer hereunder shall be deemed to have been accepted by Customer the earlier of (i) the date Customer first uses the Products for patient use or (ii) thirty (30) days after delivery of the Products to Customer.

**3. TAXES**

**3.1** Any sales, use or manufacturer's tax which may be imposed upon the sale or use of Products, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and shall be paid by Customer.

**4. PAYMENT TERMS**

**4.1 Due Date.** Unless otherwise set forth in the quotation, the purchase price for the Products and all other amounts due hereunder are due net thirty (30) days from the date of invoice. All amounts payable hereunder are payable in U.S. dollars. Partial shipments of Product(s) shall be billed as shipped and installation/implementation shall be billed when completed in accordance with any mutually agreed upon installation/implementation schedule.

**4.2 Late Payments.** A service charge of 1% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Customer's outstanding balance which is not paid within thirty (30) days after invoice date, which charge shall be determined and compounded on a daily basis from the due date until the date paid. Payment of such service charge shall not excuse or cure Customer's breach or default for late payment. In addition, in the event that Customer fails to make any payment to DMI within this thirty (30) day period, including but not limited to any payment under any service contract or other agreement with DMI, then DMI shall no obligation to continue performance under any agreement with Customer.

**4.3 Payment of Lesser Amount.** If Customer pays, or DMI otherwise receives, a lesser amount than the full amount due under this Agreement, such payment or receipt shall not constitute or be construed other than as on account of the earliest amount due DMI. DMI may accept any check or payment in any amount without prejudice to DMI's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment elsewhere shall constitute or be construed as an accord or satisfaction.

**4.4 Failure of Customer to Pay.** At DMI's election upon Customer's failure to pay when due any amount required to be paid to DMI under this Agreement: (a) the entire amount of any indebtedness and obligation due DMI under this Agreement and interest thereon shall become immediately due and payable without notice, demand or grace period; (b) Customer shall put DMI in possession of the Products upon demand; (c) DMI may enter upon the premises where the Products are located and take possession of the Products without notice or demand and without legal proceedings; (c) Customer shall assemble the Products and make them available to DMI at a place designated by DMI; (d) DMI may sell or dispose of all or any portion of the Products and apply the proceeds thereof against any amounts due DMI under this Agreement (Customer agrees that a period of ten (10) days from the time notice is sent to Customer shall be a reasonable period of notification of sale or other disposition of the Products by or for DMI); and (e) Customer shall pay any deficiency remaining after collection of or realization by DMI on the Products. Further, Customer shall pay all costs and expenses incurred by DMI (i) in connection with the restoration of any Products which are returned to DMI pursuant to this paragraph and which are damaged or nonfunctional and (ii) in enforcing the terms of this Agreement against Customer (including, without limitation, reasonable attorneys' fees, court costs and other legal expenses).

**5. EXPORT TERMS**

**5.1** Unless other arrangements have been made, payment on export orders shall be made by irrevocable confirmed letter of credit, payable in U.S. dollars against DMI's invoice and standard shipping documents. Such letter of credit shall be in an amount equal to the full purchase price of the Products and shall be established in a U.S. bank acceptable to DMI. Customer shall procure all necessary permits and

licenses for shipment and compliance with any governmental regulations concerning control of final destination products.

5.2 Customer shall not, directly or indirectly, violate any U.S. law, regulation or treaty, or any other international treaty or agreement, relating the export or reexport of any Product or associated technical data, to which the U.S. adheres or with which the U.S. complies. Customer shall defend, indemnify and hold DMI harmless from any claim, damage, liability or expense (including but not limited to reasonable attorneys' fees) arising out of or in connection with any violation of the preceding sentence. If Customer purchases a Product at the domestic price and exports such Product to a third party for export outside the U.S., Customer shall pay to DMI the difference between the domestic price and the international retail price of such Product pursuant to the payment terms set forth herein. Customer shall deliver to DMI, upon DMI's request, written assurance regarding compliance with this section in form and substance acceptable to DMI.

## 6. DELIVERY, RISK OF LOSS

6.1 **Delivery Date.** Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Customer's order by DMI. DMI shall make every reasonable effort to meet the delivery date(s) quoted or acknowledged, but shall not be liable for any failure to meet such date(s).

6.2 **Risk of Loss, Title.** Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession of the Products to common carrier, F.O.B. shipping point, whereupon title to and risk of loss to the Products shall pass to Customer. All freight charges and other transportation, packing, and insurance costs, custom duties and other similar charges shall be the sole responsibility of Customer unless otherwise agree to in writing by DMI. In the event of any loss or damage to any of the Products during shipment, Customer should make claim against the carrier.

## 7. SECURITY INTEREST/FILING

7.1 From the F.O.B. point, DMI shall have a purchase money security interest in the Products (and all accessories and replacements thereto and all proceeds thereof) until payment in full by Customer and satisfaction of all obligations hereunder. Customer agrees that an original or a photocopy of this Agreement (including all attachments and amendments hereto) may be filed by DMI as a Uniform Commercial Code financing statement. Customer further represents and covenants that (a) Customer will keep the Products in good repair and working order until the purchase price has been paid in full, (b) Customer will promptly pay all taxes and assessments upon the Products or use thereof, and (c) Customer will not attempt to transfer any interest in the Products until the purchase price has been paid in full.

## 8. CHANGES, CANCELLATION AND RETURN AND REPAIR

8.1 Orders accepted by DMI pursuant to Section 1.2 above are not subject to change except upon written agreement of the parties.

8.2 Products delivered by DMI are not returnable by Customer except as follows:

All Products to be returned must have prior authorization by DMI and a valid Return Material Authorization ("RMA") number must appear on the shipping label, packing slip, purchase order, and any other related paperwork. Products received without such authorization will be refused at DMI's receiving dock and returned immediately to the customer. When requesting authorization to return material, the following information must be provided:

1. Customer purchase order number and date.
2. DMI sales order number and shipping date.
3. Quantity, DMI Product number, and description of material to be returned.
4. Reason for return.
5. Contact DMI at 800-4-Dräger for RMA number

The following are the only accepted reasons for return of material:

1. Breach of warranty (covers Products within their applicable warranty period).
2. Customer order error.
3. DMI order or shipping error.

Products returned due to breach of warranty are subject to the terms of the DMI warranty. Products to be returned that are not under warranty must have been purchased within thirty (30) days of request for return, returned within fourteen (14) days after request, and approved for return as stated previously. Products must be unused and in DMI shipping containers. Returned Products, with the exception of returns of Products under warranty or due to DMI error, are subject to a twenty percent (20%) restocking charge.

The following non-warranty Products are not eligible for return:

1. Sterile material, unless shipped in error by DMI.
2. Products that have been used.
3. Specially ordered or produced items.
4. Products that have been altered or abused by Customer.
5. Products that are known to be contaminated with communicable diseases.

Upon receipt of authorized returned Products, an inspection of the Products will be conducted by DMI and appropriate action taken. DMI's decision regarding disposition of returned Products is final. All Products to be returned (including any in need of factory repair) shall be shipped, freight and insurance prepaid, to the following address unless otherwise advised by DMI:

DrägerService®  
3124 Commerce Drive  
Telford, PA 18969  
(Include Return Material Authorization Number.)

Products in need of factory repair must have prior authorization by DMI before return. A valid RMA number must appear on the shipping label, packing slip, purchase order, and other related paperwork in order to expedite repair. When requesting a RMA number, the following information must be provided:

1. Customer purchase order.
2. Quantity and description of Product to be returned.
3. Reason for repair.

It is the responsibility of Customer to disinfect, pack, insure, and ship equipment to DMI at Customer's sole expense.

8.3 DMI shall have the right to change the manufacture and/or design of its Products if, in the judgment of DMI, such change does not alter the general function of the Products.

## 9. FORCE MAJEURE

9.1 DMI will make every effort to complete shipment, and installation where indicated, but shall not be liable for any loss or damage for delay in delivery, inability to install or any other failure to perform due to causes beyond DMI's reasonable control, including, without limitation, acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil disturbance, fire or other casualty, strike or labor dispute or unavailability of labor, raw materials, power or supplies. Should such a delay occur, DMI may reasonably extend delivery or production schedules, or, at its option, cancel the order in whole or in part without liability other than to return any unearned deposit of prepayment.

## 10. WARRANTY

10.1 DMI warrants that the Products manufactured by DMI and sold hereunder shall be free from defects in material or workmanship under normal use and service for the warranty period. Unless otherwise set forth in a separate warranty statement covering the Products to be provided by DMI, the warranty period shall commence on the date that the Products are delivered to Customer and shall continue for twelve (12) consecutive months except for the following: (a) Used/refurbished DMI Products are warranted for a period of ninety (90) days from the delivery date, (b) Oxygen sensor capsule part number 6850645 is warranted for 12 months from date of delivery, (c) Oxygen sensor capsule part number 6850930 is warranted for six (6) months from the date of delivery, (d) All other sensors, accessories, complementary products and spare parts are warranted for ninety (90) days from date of delivery, (e) Factory repairs and service exchange replacements are warranted for ninety (90) days from the date of delivery, (f) Expendable/disposable/consumable goods are warranted at time of delivery only, and (g) Information systems/software will operate in all material respects in conformity with DMI's published specifications, under normal use, for a period of ninety (90) days from installation. DMI makes no warranty for any Products other than Products

expressly covered under the terms of this Agreement and Customer's sole warranty therefore, if any, is the original manufacturer's warranty, which DMI agrees to pass on to Customer, as applicable.

10.2 No warranty extended by DMI shall apply to any Products: (a) which have been damaged by accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 9 hereof or by Customer's failure to operate the Products in accordance with the manufacturer's instructions or to maintain the recommended operating environment and line conditions; (b) which are defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Products by Customer or any third party or due to the attachment and/or use of non-DMI supplied equipment without DMI's prior written approval; (c) which failed due to causes from within non-DMI supplied equipment; and/or (d) which have been damaged from the use of operating or cleaning supplies or consumable parts not approved by DMI. DMI's obligation under this warranty is limited to the repair or replacement of or credit for, at DMI's option, defective parts. DMI may effectuate such repair at Customer's facility, and Customer shall furnish DMI safe and sufficient access for such repair. Repair or replacement may be with parts or products that are new, used or refurbished. Repairs or replacements shall not interrupt, extend or prolong the term of the warranty. Customer shall, upon DMI's request, return the non-complying Product or part to DMI pursuant to the terms of Section 8 above. Customer shall pay DMI its normal charges for service and parts for any inspection, repair or replacement that is not, in DMI's sole judgment, required by noncompliance with the warranty set forth in this Section 10. DMI's warranty does not apply to consumable materials, except as specifically stated in writing, nor to products or parts supplied by Customer.

10.3 This warranty is made on condition that immediate written notice of any noncompliance be given to DMI and DMI's inspection reveals that the Customer's claim is valid under the terms of the warranty (i.e. that the noncompliance is due to traceable defects in original materials and/or workmanship).

10.4 Warranty service will be provided without charge during DMI's regular working hours (8:00am – 5:00pm), Monday through Friday, except DMI's recognized holidays. If Customer requires that service be performed other than during these times, such service can be made available at an additional charge, at DMI's then current rates.

**DMI MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN OR THAT WHICH MAY BE PROVIDED IN A SEPARATE WARRANTY COVERING THE APPLICABLE PRODUCT. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS AND ANY DEFECT, DEFICIENCY OR NONCOMFORMITY IN ANY PRODUCT, SERVICE OR OTHER ITEM FURNISHED UNDER THIS AGREEMENT.**

#### **11. LIMITATION OF LIABILITY**

11.1 In no event shall DMI's liability hereunder exceed the actual loss or damage sustained by Customer, up to the purchase price of the Products.

11.2 **DMI SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, LOSS OF STORED, TRANSMITTED OR RECORDED DATA, OR FOR ANY INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS.** This provision does not affect third party claims for personal injury arising as a result of DMI's negligence or product defect. **THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.**

#### **12. INSTALLATION – ADDITIONAL CHARGES**

12.1 **General.** Unless otherwise expressly stipulated in writing, the Products covered hereby shall be installed by and at the expense of Customer.

12.2 **Installation by DMI.** If DMI specifies it will install the Products, the following applies: subject to fulfillment of obligations set forth in 12.4 below, DMI shall install the Products covered hereby and connect the same to the requisite safety switches and power lines to be installed by Customer. Except as otherwise specified below, if such installation and connection are performed by DMI technical personnel, prices shown include the cost thereof, provided that the installation and connection can be performed within the Continental United States and during normal business hours. Any overtime charges or other special expenses shall be additional charges to the prices shown.

12.3 **Trade Unions.** If a trade union, or unions, prevents DMI from performing the above work, Customer shall make all required arrangements with the trade union, or unions, to permit DMI to complete said work. Moreover, any additional cost related to such labor disputes shall be paid by Customer and DMI's obligations under such circumstances will be limited to providing engineering supervision of installation and connection of DMI equipment to existing wiring.

12.4 **Customer's Obligations.** Customer shall, at its expense, provide all proper and necessary labor and materials for plumbing service, carpentry work, conduit wiring, and other preparations required for such installation and connection. All such labor and materials shall be completed and available at the time of delivery of the Products by DMI. Additionally, Customer shall provide free access to the premises of installation and, if necessary, safe and secure space thereon for storage of Products and equipment prior to installation by DMI. If any special work of any type must be performed in order to comply with requirements of any governmental authority, including procurement of special certificates, permits and approvals, the same shall be performed or procured by Customer at Customer's expense. Customer shall provide a suitable environment for the Products and shall ensure, at its sole cost and expense, that its premises are free of asbestos, hazardous conditions and any concealed dangerous and that all site requirements are met. In the event that DMI is requested to supervise the installation of the Products, it remains the Customer's responsibility to comply with local regulations.

12.5 **Completion of Installation.** Installation shall be complete upon the conclusion of final calibration and checkout under DMI standard procedures to verify that the Products meet applicable written performance specifications. Notwithstanding the foregoing, first use of the Products by Customer, its agents or employees for any purpose after delivery shall constitute completion of installation.

#### **13. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS**

13.1 **Infringement by DMI.** DMI warrants that the Products manufactured by DMI and sold hereunder do not infringe any U.S. patent or copyright. If Customer receives a claim that any such Product, or parts thereof, infringe upon the rights of others under any U.S. patent and copyright, Customer shall notify DMI immediately in writing. As to all infringement claims relating to Products or parts manufactured by DMI:

(a) Customer shall give DMI information, assistance and exclusive authority to evaluate, defend and settle such claims.

(b) DMI shall then, at its own expense, defend and/or settle such claims, procure for Customer the right to use the Products, or remove or modify them to avoid infringement. If none of these alternatives are available on terms reasonable to DMI, then Customer shall return the Products to DMI and DMI shall refund to Customer the purchase price paid by Customer less reasonable depreciation for Customer's use of the Products.

13.2 **Infringement by Customer.** If some or all of the Products sold hereunder are made by DMI pursuant to drawings or specifications furnished by Customer, or if Customer modifies or combines, operates or uses the Products other than as specified by DMI or with any product, data, software apparatus or program not provided or approved by DMI, then the indemnity obligation of DMI under Section 13.1 shall be null and void and should a claim be made that such Products infringe the rights of any third party under patent, trademark or otherwise, then Customer shall indemnify and hold DMI harmless against any liability or expense, including reasonable attorneys' fees, incurred by DMI in connection therewith.

**14. SOFTWARE LICENSE**

14.1 Any drawings, data, designs, software programs or other information (collectively, the "Product Software") supplied by DMI to Customer in connection with the sale of the Products are not included in the sale of the Products to Customer, shall remain DMI's property and shall at all times be held in confidence by Customer. Product Software includes any and all copies of (i) software programs consisting of a series of statements or instructions to be used directly or indirectly in a programmable controller or computer to bring about a certain result and (ii) databases consisting of systemized collections of data to be used or referenced directly or indirectly by a programmed controller or computer. Customer shall have a license to use the Product Software in the ordinary course of business and for the purpose and in the manner for which the Product Software was designed and produced subject to the terms of this Agreement. Customer will not translate, modify, reverse engineer, disassemble, decompile, or create derivative works based on any of the Product Software or to permit any third party to do so. The Product Software may not be copied or transferred to another party or made commercially available in any other device, without DMI's prior written consent. Protocols may be used to communicate with a device produced by another manufacturer, provided that manufacturer has been licensed by DMI to use said protocol.

14.2 For all goods purchased hereunder which utilize Product Software for their operation, such Product Software shall be licensed to Customer under the terms of Section 14.1 of this Agreement and any DMI Software License Schedule which may be attached hereto.

14.3 Diagnostic/maintenance software is not included under this Section 14 but is available under a separate license agreement and may be subject to a licensing fee.

**15. ENGINEERING CHANGES**

15.1 DMI makes no representation that engineering changes which may be announced in the future will be suitable for use on, or in connection with, the Products.

**16. ASSIGNMENT**

16.1 Customer may not assign any rights or obligations under this Agreement without the prior written consent of DMI and any attempt to do so shall be void. DMI may assign any of its rights and obligations under this Agreement without notice to or consent of Customer. This Agreement shall inure to and be binding on the parties and their respective successors, permitted assigns and legal representatives.

**17. DAMAGES, COSTS AND FEES**

17.1 In the event any dispute or difference is brought arising from or relating to this Agreement or the breach, termination or validity thereof, the prevailing party shall NOT be entitled to recover from the other party any punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees incurred, together with such other costs and expenses as may be allowed by law.

**18. MODIFICATION**

18.1 This Agreement may not be changed, modified or amended except in writing signed by duly authorized representatives of the parties.

**19. GOVERNING LAW**

19.1 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

**20. INTEGRATION**

20.1 These terms and conditions including any attachments or other documents incorporated by reference herein, constitute the entire agreement and the complete and exclusive statement of agreement with respect to the subject matter hereof, and supersede any and all prior agreements, understandings and communications between the parties with respect to the Products.

**21. SEVERABILITY; HEADINGS**

21.1 No provision of this Agreement which may be deemed unenforceable will in any way invalidate any other portion or provision of this Agreement. Section headings are for reference only and will have no substantive effect.

**22. WAIVER**

22.1 No failure and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

**23. NOTICES**

23.1 Any notice or other communication under this Agreement shall be deemed properly given if given in writing and delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the face of the invoice or confirmation or purchase order to which these terms and conditions are attached. Either party may from time to time change such address by giving the other party notice of such change in accordance with this section.

**24. RIGHTS CUMULATIVE**

24.1 The rights and remedies afforded to DMI under this Agreement are in addition to, and do not in any way limit, any other rights or remedies afforded to DMI by any other agreement, by law or otherwise.