



HENKEL

General Sales Conditions

1. Seller's acceptance of Buyer's order for the purchase of goods ordered hereunder (the "**Goods**") is expressly made conditional on Buyer's assent to these terms and conditions (these "**Terms**"). Buyer shall be deemed to have assented to the provisions hereof in all respects by its acceptance of any Goods shipped, or by failure to give Seller written notice of objection which is received by Seller within ten (10) days of Buyer's receipt of Goods, or receipt of Seller's Sales Confirmation (defined below), whichever is earlier. Buyer may return Goods for which it has timely objected to these Terms. Seller's commencement, performance and/or delivery shall be for Buyer's convenience only and shall not be construed as acceptance of Buyer's terms and conditions. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying invoice, order acknowledgement, EDI communications, and/or any other document delivered from Seller to Buyer along with these Terms (each, the "**Sales Confirmation**" and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral; provided, however, that in the event Seller and Buyer are parties to a separate written agreement negotiated and executed by both parties, said agreement shall control to the extent it conflicts with this Agreement, unless otherwise set forth therein. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. The Goods are offered for sale only on the terms and conditions contained herein. Prior dealings between the parties, Buyer's purchase orders or other documents shall not affect said Terms. Seller hereby objects to and shall not be bound by any oral or written agreement or other understanding, or by any change in, addition to, or waiver of any provisions hereof, unless approved in writing by an authorized representative of Seller. Additional terms may apply to sales of returnable plastic drums or equipment.

3. The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability. Seller shall not be liable for any delays, loss or damage in transit. Further, any specified delivery dates in a sales order confirmation or otherwise are estimates only and do not represent a confirmation on the delivery date for delivery for any Good or order. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller's location (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods upon Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. All deliveries made to public carriers are made subject to the terms of such carrier's bill of lading and tariffs, and the carrier shall be deemed the Buyer's agent irrespective of the terms of sale. The Seller shall have no liability whatsoever for delay in delivery. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Each of Seller's Goods or part thereof or equipment shipped hereunder shall be deemed accepted by Buyer unless written notice specifying all claimed defects, damages, shortages, or nonconformities is received by Seller within ten (10) days of delivery of said Goods.



4. Prices and terms of payment are subject to change without notice, and as to any shipment will be the then current price in effect for that Good. If the prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices. All sums shall be payable in legal tender of the USA. Acceptance by Seller of bank drafts, checks or other media of payment is subject to collection. Seller may recover for each delivery as a separate transaction, without reference to any other delivery. Payment shall be due no later than 30 days after delivery unless otherwise agreed in writing by Seller. Seller reserves the right to cancel Buyer's order in the event that Government regulations prohibit selling at the price or prices indicated herein. Any overdue payments shall bear interest at the rate of 1.5% per month or the maximum rate under the usury laws, whichever is less. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms, at law, or equity (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder or otherwise breaches these Terms. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. Buyer shall reimburse Seller for all taxes, excises or charges which Seller may be required to pay to any government or governmental authority which are hereafter levied directly upon the production, sale, transportation or use of any Good.

5. (a) Seller warrants that its Goods shall meet Seller's published specifications applicable to the Goods for the period of the Good's applicable published shelf life, or as otherwise mutually agreed upon by the parties in writing. For a period of sixty (60) days after delivery, or such other period as is mutually agreed upon by Seller and Buyer in writing (the "**Warranty Period**"), Seller agrees, at its discretion, to repair, replace or refund the cost of any Good or part thereof proved to not meet the foregoing specifications under normal use. For equipment, Seller shall provide separate warranties as applicable depending upon the nature and type of equipment. For auxiliary items furnished by Seller, the warranty is limited to that which is available by the manufacturer thereof. **EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 5(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(b) Seller's recommendations or instructions as to use of any Good, including its use alone or in combination with other products, are based upon information believed to be reliable, but Seller makes no warranty or guarantee of results and assumes no obligations or liability with respect thereto. Seller assumes no responsibility for any assembly into which a Good is incorporated as a component product or part. Buyer shall be responsible for designing and conducting all testing to determine whether any Good is appropriate for its application. Any recommendations or instructions from Seller are not intended to suggest operations that would infringe or not infringe, as the case may be, any patents belonging to third parties, and Seller assumes no liability or responsibility for infringement of any such patents. Seller may, without liability to Buyer of any kind, decline to continue deliveries of any Good, the manufacture, sale or use of which, in Seller's opinion, would infringe any such patent now or hereafter issued.

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 5(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT**



OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 5(a) unless: (i) Buyer gives written notice of the nonconformance, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or should have discovered the nonconformance; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods do not conform to the specifications.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 5(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the nonconformance arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 5(d) and Section 5(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the nonconforming part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 5(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 5(A).

6. (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE NONCONFORMING GOODS.

(c) Failure to make a claim within thirty (30) days of receipt of the Goods shall be deemed to constitute a satisfactory performance by Seller and a waiver of all claims by Buyer.

7. Buyer assumes full responsibility for and liability arising out of unloading, discharge, storage handling and use of any Good or Good container alone or in combination with other substances; compliance or non-compliance with any laws or regulations relating thereto, and damage to or destruction of returnable containers from any cause whatsoever after delivery to Buyer and until their return to Seller in good condition. If applicable, carboys, steel drums and other returnable containers are returnable and remain the property of Seller, with Seller reserving full recapture rights. If a deposit is paid with respect to a returnable container, credit in such amount will be allowed for each such container returned to Seller (f.o.b. Seller's shipping point).

8. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce),



or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, including without limitation raw materials on terms acceptable to Seller, shortage of materials or equipment, or telecommunication breakdown or power outage. If any such contingencies occur, Seller may, without liability to Buyer of any kind, keep its available supply of any Good for its own uses or distribute it among its customers upon such basis and in such manner as Seller deems fair and practicable. At the option of either party the total quantity to be delivered shall be reduced by the quantity not delivered on account of such cause.

9. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

10. Seller's weights shall govern, except in case of proven error.

11. Any notice will be sufficiently given when duly mailed, addressed to Seller or to Buyer at their respective addresses appearing herein, or to such other address for either party as that party may designate by written notice.

12. This Agreement shall bind the respective successors and assigns of the parties hereto, but none of Buyer's rights or obligations hereunder shall be assigned without Seller's prior written consent.

13. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Prices of certain products offered by Seller may include royalty for use thereof in operations covered by patents owned by Seller or under which Seller is licensed with the right to grant sub-licenses. Licenses to use such products at the established royalty rate and unrestricted as to the source of materials used are available from Seller.

15. Seller certifies that in the production of Goods Seller has complied with the provisions of the Fair Labor Standards Act of 1938, as amended. To the best of Seller's knowledge the Goods comply as applicable with the Occupational Safety and Health Act of 1970 and the Toxic Substances Control Act of 1976 currently in effect. Seller's liability hereunder is limited to that stated in Clause 6(a) above.

16. Buyer agrees to comply with all applicable federal, state and local laws, rules and regulations relating to its business and/or the use of the Goods.

17. Buyer shall indemnify, defend, and hold harmless Seller and Seller's owners, officers, directors, employees, agents, subsidiaries, affiliates, and contractors (collectively, the "Seller Indemnitees") from and against any and all liabilities, claims, costs, fees, damages, losses, and expenses (including without limitation reasonable attorneys' fees and court costs) (collectively, "Losses") which a Seller Indemnitee may incur or suffer as the result of (i) Buyer's failure or omission to comply with the terms of this Agreement, including without limitation Section 16 hereof, and (ii) any actual or alleged infringement of any patents, copyrights or trademarks arising from the manufacture or sale of products in accordance with patterns, designs, specifications, drawings, directions, technical information, or data furnished to Seller by Buyer.



18. In the event Buyer uses or attempts to use the Goods in medical applications, Buyer acknowledges and agrees that: (a) the Goods are manufactured under normal industrial conditions, which may not satisfy the requirements applicable to products manufactured for certain medical applications. It is the sole responsibility of persons contemplating medical uses of the Goods to comply with all applicable laws, rules, regulations, codes and standards, including but not limited to the U.S. Federal Food, Drug and Cosmetic Act and regulations of the Food and Drug Administration.

(b) Unless specified in writing by Seller, the Goods have not been designed, manufactured, tested or qualified for use in certain medical applications (including life support systems) and Seller has not sought or received any rulings from the FDA or any other federal, state, or local government agency as to the safety, effectiveness or appropriateness of its products for such applications. Persons intending to evaluate or to use the Goods for medical purposes must rely on their own medical and legal judgment without any representation on Seller's part. Buyer waives any and all claims against Seller in connection with the use of the Goods in medical applications.

(c) Buyer will indemnify, defend, and hold harmless the Seller Indemnitees from and against any and all Losses arising out of or based upon any bodily injury (including death) or property damage arising from the incorporation of the Goods as part of any other or further product made by Buyer or Buyer's immediate or ultimate customers for medical applications, including without limitation cardiac pacemakers, defibrillators, electrodes, leads, and programmers, and components therefor. Seller shall give Buyer prompt written notice of any such claim and shall cooperate in the defense of such claim at Buyer's expense.

(d) Buyer will indemnify, defend, and hold the Seller Indemnitees harmless for any and all Losses which Seller may incur or suffer as a result of Buyer's failure to comply with the terms and conditions stated herein.

19. In the event that Seller provides Buyer with propriety compositions for evaluation, Buyer agrees to abide by the Export Administration Regulations promulgated by the U.S. Bureau of Industry and Security and regulations promulgated by the relevant authorities in other jurisdictions, and not export or re-export such propriety compositions without first obtaining any necessary licenses and the prior written approval by Seller. Seller makes no representation that any propriety composition supplied to Buyer is available for export, and Seller also makes no representation that any propriety composition supplied to Buyer meets the International Traffic and Arms Regulations.

20. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware.