

SMITHS MEDICAL ASD, INC.

DISTRIBUTOR TERMS AND CONDITIONS OF SALE (U.S.)

THE TERMS AND CONDITIONS SET OUT BELOW APPLY TO THE SALE OF EQUIPMENT, SUPPLIES, COMPONENTS, SPARE PARTS OR MATERIALS OR OTHER GOODS ("PRODUCTS") OFFERED BY SMITHS MEDICAL ASD, INC ("SUPPLIER") AND ORDERED BY THE PERSON, BUSINESS, COMPANY, OR GOVERNMENT AGENCY ("BUYER") WHICH PURCHASES THE PRODUCTS FROM SUPPLIER SEEKING TO PURCHASE THE PRODUCTS, UNLESS MODIFIED BY A SEPARATE WRITTEN AGREEMENT BETWEEN SUPPLIER AND BUYER.

NO TERMS OR CONDITIONS SET FORTH ON, DELIVERED WITH OR CONTAINED IN THE BUYER'S PURCHASE ORDER, CONFIRMATION OF ORDER, SPECIFICATION OR OTHER DOCUMENT SHALL BE BINDING ON SUPPLIER. SUPPLIER EXPRESSLY REJECTS ANY SUCH OTHER TERMS AND CONDITIONS. ANY VARIATION TO THESE TERMS AND CONDITIONS AND ANY REPRESENTATIONS ABOUT THE PRODUCTS SHALL HAVE NO EFFECT UNLESS SET OUT IN WRITING AND SIGNED BY AUTHORISED REPRESENTATIVES OF EACH OF THE PARTIES. THE BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY STATEMENT, PROMISE OR REPRESENTATION MADE OR GIVEN BY OR ON BEHALF OF THE SUPPLIER THAT IS NOT SET HEREIN...

ANY BUYER PURCHASES OF SUPPLIER PRODUCTS FROM ANY THIRD PARTY IS AT BUYER'S SOLE RISK.

1. PRICES.

- 1.1 Unless otherwise agreed by Supplier in writing, the price for the Products shall be Supplier's standard distributor price in effect from time to time. Supplier reserves the right to change prices without notice to Buyer. In any event, the price set forth on Supplier's invoice controls.
- 1.2 Prices do not include, and Buyer will pay or reimburse Supplier for, any and all taxes (other than Supplier's income taxes) and other governmental fees, assessments, duties and charges that are payable as a result of this transaction or Buyer's use or resale of Products.

2. PAYMENT TERMS.

- 2.1 Payment terms are 1% 15/ Net 30.
- 2.2 Invoices are payable in full. The Buyer shall make all payments due in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. If the full payment of the purchase price is not received when due as specified, Supplier reserves the right to charge interest on any unpaid balance at a rate of up to 1½% per month (or the highest rate permitted by applicable laws, if lower) from the due date.
- 2.3 Supplier may suspend or cancel deliveries of ordered Products if Buyer fails to pay when due any amount owed by it to Supplier for any goods or services. Supplier also reserves the right to require from Buyer, at any time, satisfactory assurance of performance of Buyer's payment obligations to Supplier, and refusal or failure promptly to furnish such assurance will entitle Supplier to suspend or cancel further deliveries to Buyer.

3. ORDERING PROCESS; MINIMUM ORDERS; DROP SHIPMENTS.

- 3.1 The following information must be included in every purchase order:

<ul style="list-style-type: none">• Customer/Buyer name• Bill to address• Complete delivery address• Purchase order number or Product Reorder number• Requested date of delivery	<ul style="list-style-type: none">• Shipping preference• Item, quantity and unit price• Total price per line• Contact name, phone number, fax number or email address
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- 3.2 Orders may be placed as follows:

<u>Mail Orders</u>	Attention Customer Service: 5200 Upper Metro Place Ste 200, Dublin, OH 43017
<u>Phone Orders</u>	1-800-258-5361 (8:00AM–8:00PM) ET
<u>Fax Orders</u>	Attention customer service – 1-800-621-2590
<u>Email Orders</u>	MDBNinfoasd@icumed.com
<u>EDI Orders</u>	Contact customer service: 1-800-258-5361 (8:00AM – 8:00PM EST)

- 3.3 No order is binding on Supplier unless and until Supplier accepts the order by written acknowledgment or confirmation or Supplier ships the order. Acceptance of purchase orders is at the discretion of the Seller
- 3.4 Any order for less than \$500.00 is subject to an additional administrative fee of \$50.00. Orders requesting drop shipments are subject to a drop ship fee of \$30.00.

4. FREIGHT; DELIVERY TERMS.

- 4.1 Unless agreed otherwise in writing by Supplier and Buyer, the Products shall be shipped CPT Buyer's facility (Incoterms 2010) with freight collect if applicable. Delivery shall occur and title and risk of loss shall pass to Buyer upon Supplier's placement of the Products with carrier for shipment to Buyer. Case or box quantity only; Orders not meeting \$500 will be billed at actual freight charges. Orders greater than \$500 (excluding Sodasorb and Water) within contiguous USA will be shipped prepaid. Sodasorb will be billed at actual cost unless three pallets are ordered, and each pallet is of same product, then freight is prepaid. Orders for water products will ship as follows: orders of \$15,000 or more by hospital distributors will ship freight prepaid and orders of \$2,500 or more by alternate care distributors will ship freight prepaid. Distributor categories are determined by Smith Medical.
- 4.2 Products may be shipped by any carrier, route or means reasonably selected by Supplier. If Buyer's order is for multiple types of Products, such Products may be shipped in lots of similar Products, as reasonably determined by Supplier, and each such lot will be paid for separately. No nonconformity or defect in any lot will constitute a breach of Buyer's entire purchase order, and any lots whose conformity and condition Buyer does not dispute will be paid for in accordance with these terms and conditions, regardless of any dispute concerning other shipments or undelivered Products.
- 4.3 Special shipping requests, such as overnight deliveries via UPS or Federal Express will be billed at actual freight. For shipments to points in Alaska and Hawaii, the freight terms are "Freight Prepay and Add." International Delivery Terms are CPT or CFR Destination Port or City, as applicable (Incoterms 2010), and the freight terms are "Freight Prepay and Add."

5. CANCELLATIONS AND RETURNS.

- 5.1 Any order by Buyer may be cancelled or changed only with the written consent of Supplier.
- 5.2 No Product (whether or not it is defective or nonconforming) may be returned to Supplier without Supplier's prior written consent. If a Product is returned without such consent, it shall thereupon become the property of Supplier without obligation for refund. A Returned Goods Authorization number from Supplier must accompany all returns. Contact Customer Service at 800-258-5361.
- 5.3 All products, except hardware items have a 90-day return period from Invoice Date. Hardware products including pumps and fluid warming devices have a 45-day return period.
- 5.4 Products authorized to be returned for any reason other than for breach of warranty (a) are subject to a 20% restocking fee, (b) must be in full case quantity, unexpired, in original unopened packaging and saleable condition as Supplier determines in its discretion, and (c) must not be discontinued products. No returns on custom products are accepted.

6. LIMITED LICENSE; REMEDIES. With respect to the Products, Supplier grants Buyer a royalty free, nontransferable license (with no right to sub-license) to those of Supplier's rights in patents, patent applications, copyrights, registered or unregistered designs, trade marks, service marks, brand names with claims that cover the Products or any of them ("IP Rights"), for the limited purpose of permitting the Buyer to distribute the Products to end user customers of the Products. For the avoidance of doubt, this limited license shall not extend to any Products that the Buyer purchases or obtains from any third party, or sells or conveys to any third party that is not an end user. Save as aforesaid, the Buyer acknowledges that it has no rights and will obtain no rights in the IP Rights (or any goodwill associated with such rights). If Buyer or any agent or representative of Buyer purchases or obtains Products from any third party, or sells or conveys Products to any third party that is not an end user, then, without limitation to any other rights or remedies available to Supplier, such act shall constitute an infringement of Supplier's IP Rights. In addition, Buyer acknowledges that Supplier will incur significant damages should Buyer engage in any of the foregoing conduct, including Supplier's lost sales, damage to its reputation, and other injuries, both tangible and intangible, for which Buyer will be fully liable to Supplier. References to Supplier in this section include its affiliated companies.

7. LIMITED WARRANTY, INSPECTION AND CLAIMS.

- 7.1 Supplier warrants exclusively to Buyer that each Product sold hereunder will be free from defects in material and workmanship.

- 7.2 Supplier will have the right at its expense to inspect and have returned any Product claimed by Buyer to not conform to this limited warranty, Supplier's sole obligation and Buyer's exclusive remedy for any breach of the limited warranty will be the repair or replacement, at Supplier's option, of the defective Product. Any replacement or repaired Product will be covered by the limited warranty only for the remainder of the original warranty period. If Supplier determines that such repair or replacement is not economical or feasible or such remedy fails of its essential purpose, Buyer's exclusive alternate remedy and Supplier's sole obligation for any such breach will be the return to Buyer of the purchase price paid to Supplier for the Product, in which case Supplier may repossess the Product.
- 7.3 The limited warranty will apply only if (a) the delivered Product is not altered or damaged and is properly installed, stored, handled, maintained and used in accordance with the Product's normal usage and any Supplier published instructions; (b) Buyer obtains the Product only from Supplier or an authorized Supplier distributor; and (c) Buyer notifies Supplier of the defect in writing not more than one year after its delivery to Buyer and not more than 30 days after Buyer first learns of the defect.
- 7.4 Buyer will promptly inspect all Products delivered to it. Any claim against Supplier under the limited warranty or otherwise for shortages or for damages to or defects in the delivered Products that are observable in a reasonable visual inspection will be deemed waived unless the claim is made in writing to Supplier within 30 days after such delivery.
- 7.5 EXCEPT FOR THIS EXPRESS LIMITED WARRANTY AND SUPPLIER'S STATUTORY WARRANTY OF GOOD TITLE, SUPPLIER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF SUPPLIER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SUPPLIER EXCEPT TO THE EXTENT SPECIFICALLY STATED HEREIN.
- 7.6 SUPPLIER FURTHER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT THAT BUYER PURCHASES OR OBTAINS FROM A THIRD PARTY, OR SELLS OR CONVEYS TO A THIRD PARTY OTHER THAN AN END USER. THE POSSESSION AND USE OF ANY SUCH UNAUTHORIZED PRODUCT IS WITHOUT WARRANTY OF ANY KIND.

8. LIMITS ON LIABILITY. IN NO EVENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, (A) WILL SUPPLIER BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SELECTION, ORDERING, PURCHASE USE, RESALE OR DISTRIBUTION OF THE PRODUCTS COVERED HEREBY, OR OTHERWISE, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR (B) WILL SUPPLIER'S TOTAL AGGREGATE LIABILITY TO BUYER AND ANY THIRD PARTIES WITH RESPECT TO ANY SPECIFIC PRODUCT AND ANY RELATED SERVICES EXCEED THE PURCHASE PRICE PAID TO SUPPLIER FOR THAT PRODUCT AND SUCH SERVICES AT THE TIME OF THE EVENT GIVING RISE TO THE CLAIM. SUCH DAMAGES THAT SUPPLIER WILL NOT BE LIABLE FOR INCLUDE, BUT ARE NOT LIMITED TO: LOSS OF PROFITS, SAVINGS OR REVENUE; LOSS OF USE OF A PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE GOODS, EQUIPMENT, FACILITIES OR SERVICES; DOWNTIME; AND THE CLAIMS OF THIRD PARTIES INCLUDING BUYER'S CUSTOMERS.

9. FORCE MAJEURE AND SHORTAGES. Supplier will not be liable for loss or damage of any kind resulting from any delay in delivery or failure to supply ordered Products or otherwise to carry out its obligations under this agreement due to causes beyond its control, and no such event will relieve Buyer of its obligations to make payments for other deliveries under this agreement. Supplier reserves the right, in its sole judgment and without liability to Buyer, reasonably to allocate its available production capacity and Product inventories as may be necessary or equitable in the event of any shortages of production capacity or Products at any time.

10. ASSIGNMENT. Any assignment of Buyer's rights or obligations hereunder will be void without Supplier's prior written consent.

11. MODIFICATION. These terms and conditions may be amended or terminated at any time by Supplier. Further, Supplier reserves the right to modify or discontinue any of its Products at any time.

12. THIRD PARTY BENEFICIARIES. Nothing in these terms and conditions is intended to benefit any person other than the Buyer and Supplier.

13. GOVERNING LAW AND JURISDICTION. This agreement, and any claims or disputes related to this agreement, will be governed by the laws of the state of Minnesota. Such laws shall exclude conflict of law provisions and, with respect to a U.S. state, the U.N. Convention on Contracts for the International Sale of Goods.

14. DISCOUNTS AND REBATES. Buyer is not entitled to any discounts, rebates or other reductions in price without a separate written agreement with Supplier specifying the terms of such discounts or rebates, and Buyer shall not offer any discount or rebate to any customer for, on behalf of, in the name of, or as agent for Supplier. Supplier intends that any discounts or rebates provided by Supplier either to the Buyer or to any customer of Buyer will comply with 42 U.S.C. Section 1320a-7b(b)(3)(A) and 42 C.F.R. § 1001.952(h).

15. DISTRIBUTOR QUALITY STANDARDS.

- 15.1 Buyer shall comply with all laws and regulations applicable to the storage, handling and distribution of the Products, including, but not limited to those applicable to the export and import of the Products and the registration or licensing of the Products prior to sale.
- 15.2 Buyer shall not resell or distribute the Products outside the Territory except as authorized by the Seller in writing, or to the extent that such restriction is not permitted under applicable law.
- 15.3 With respect to any Products held for resale or distribution by Buyer, Buyer shall implement quality management systems and protocols as follows:
- (a) Buyer shall, at its own expense, obtain and maintain any and all licenses, permits registrations, approvals and the like necessary to permit Buyer to lawfully sell, distribute and deliver Products in the Territory.
 - (b) Buyer shall maintain true, accurate, complete and current records relating to its purchases, sales and dispositions, logistics procedures, quality systems, and storage relating to Products. For each sale, transfer or conveyance of Products, Buyer shall collect and maintain the following information:
 - i. Product Traceability, including
 - a. Customer/Transferee Name and Full Address
 - b. Buyers Internal End User Number
 - c. Invoice Number and Date
 - d. Shipping Date
 - e. Quantity and Unit of Measure
 - f. Supplier Item Number
 - ii. Storage and environmental conditions
 - iii. Subdistributor management (including agreements), if applicable
 - iv. Product inspection and quality control
 - v. Customer complaints and complaint management
 - vi. Field action and recall management
 - vii. Corrective and preventative actions
 - viii. Management of nonconforming and returned products
 - ix. Quality system
 - x. Product training, if applicable

Buyer shall maintain such records for the greater of five (5) years or such other period required by applicable local, state, region, territory, government or country requirements under laws and regulations in effect and as amended during the term of this Agreement. In connection with any regulatory or compliance matter, quality systems review, audit any government agency or notified body, or any quality audit pursuant to clause (g) below, or otherwise as required by law, Buyer shall furnish copies of any distributor records requested by Supplier either to Supplier or its auditors, as applicable, within ten (10) business days of such request. Supplier shall not use any such records for the purpose of soliciting the purchase of Products by any Buyer customer directly from Supplier.

In the event that Buyer sells, transfers or conveys Products to any subdistributor or other third party prior to sale or distribution of the Products to the end user, Buyer shall cause such subdistributor or other third party to maintain the records listed above for the applicable period and to make copies of such records available to Supplier as described.

- (c) Buyer shall maintain environmental controls for the storage and transportation of products in compliance with all Product labelling and any written instructions from Supplier.
- (d) Buyer shall ensure that inventory is managed rotated so that delivery of Products with the shortest remaining useful life is shipped first.
- (e) Buyer shall not make any changes to any Products, including Product labelling and packaging, without the prior written authorization of Supplier.
- (f) If Buyer receives any Product complaints or otherwise becomes aware of any Product defect or non-conformity, Buyer shall notify Supplier within five (5) business days of receiving the complaint learning of such information. In the event of a recall or corrective action, regardless of whether it is required by any regulatory agency or voluntarily undertaken by Supplier, Buyer shall cooperate with the reasonable requests of Supplier with respect to the notification of customers and end users and the collection, shipment and storage of any returned Products. Supplier shall reimburse Buyer for any reasonable, directly incurred out-of-pocket costs payable to any third party in connection with providing such cooperation.

- (g) Supplier has the right to conduct audits at Buyers facilities upon reasonable notice to assess compliance to agreements, regulatory requirements and quality standards. Supplier shall provide access to books, records, and other documentation and facilities as part of these assessments.
- (h) In the event that Buyer sells, transfers or conveys Products to any subdistributor or other third party prior to sale or distribution of the Products to the end user, Buyer shall cause such subdistributor or other third party to cooperate with any such audit by Supplier as well

16. COMPLIANCE WITH LAWS AND REGULATIONS.

- 16.1 Buyer will comply with all federal, state and local laws, regulations and ordinances applicable to its business and activities and will indemnify Supplier for any and all claims, damages, penalties, assessments and liabilities imposed on Supplier relating to or resulting from Buyer's failure to comply with such applicable laws, regulations and ordinances.
- 16.2 Without limiting the scope of section 16.1, Buyer shall fully comply with the US Foreign Corrupt Practices Act and other laws prohibiting bribery and corruption in connection with any transaction relating to this Buyer's purchase of Products.
- 16.3 Buyer is not authorized to export Products from the US without Supplier's prior authorization. In any event, and without regard to whether Supplier has given such authorization, Buyer shall fully comply with laws and regulations governing the export of goods from the US, including those administered by the US Department of Commerce and the US Department of State.
- 16.4 Supplier may from time to time request certification of Buyer's compliance with any such laws described above. Buyer's failure to provide such certification shall be a material breach of this Agreement.

17. CODE OF BUSINESS ETHICS. Supplier is committed to conducting its business ethically and lawfully. To that end Supplier, through its ultimate parent company, ICU Medical, Inc., maintains a Sales Partner Code of Conduct and mechanisms for reporting unethical or unlawful conduct. Supplier expects that Buyer also will conduct its business ethically and lawfully. If Buyer has cause to believe that Supplier or any employee or agent of Supplier has behaved unethically or unlawfully under, or in connection with these terms and conditions Buyer is encouraged to report such behavior to Supplier or to ICU Medical, Inc.. ICU Medical, Inc.'s Sales Partner Code of Conduct and mechanisms for making such reports are available on www.icumed.com.