

Devyser Inc

TERMS AND CONDITIONS OF SALE

1. Application

The following terms and conditions of sale (the "Terms and Conditions") are in addition to all other terms and conditions appearing on purchaser's purchase order or elsewhere (collectively, the "Other Terms"), and apply to all quotations made and orders accepted by Devyser unless otherwise specifically stated to the contrary on the face of this Agreement. Notwithstanding the foregoing, in the event of any inconsistency between any of the provisions of the Terms and Conditions and any of the Other Terms, the provisions of the Terms and Conditions shall control unless otherwise provided herein. The Terms and Conditions, together with the purchase order or other contract or agreement to which the Terms and Conditions are applicable, are hereinafter referred to collectively as the "Agreement." Devyser is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.

2. Product information

All product information and price lists are binding only when expressly referred to in the Agreement. Devyser reserves the right to correct any errors in specifications or prices.

Each Product is labelled for its intended use. Customer acknowledges that the Product is to be used in accordance with its intended use. Products labelled as Research Use Only have not been approved, cleared or licensed by the United States Food and Drug Administration or any other regulatory entity, whether foreign or domestic, for any specific intended use, whether research, commercial, diagnostic or otherwise. Products labelled "For Laboratory Use" are intended For Research Use Only outside the United States. Customer must ensure it has any regulatory approvals that are necessary for Customer's intended uses of the Product. Customer further agrees to comply with all applicable laws and regulations when using, maintaining and disposing of the Product.

3. Delivery

Delivery shall be made Ex Works (INCOTERMS 2020). Shipment shall be made in accordance with instructions issued by purchaser.

Purchaser shall select transportation modes and carriers and arrange for shipment of products manufactured by Devyser to such destinations as purchaser determines. Purchaser shall bear the cost of custom duties, shipping and insurance. If and to the extent such shipping and insurance are paid by Devyser, Devyser shall be acting as purchaser's agent and purchaser shall reimburse Devyser for such expenses paid by Devyser. Devyser shall cooperate with purchaser and provide such reasonable assistance as purchaser may reasonably request in connection with shipment of the products.

To the extent delivery is prevented or impeded due to a circumstance specified in section 9, or by the purchaser's action or negligence, the time of delivery stated in Devyser's order acknowledgement shall be extended accordingly.

If Devyser does not deliver the goods within the agreed or extended time, the purchaser may cancel the order in writing, if the delay is of substantial importance to him and Devyser has realized or should have realized this and provided that Devyser has not started producing the products according to the order. No compensation shall be due by Devyser for late delivery.

Shipping allowances and prices are subject to change by Devyser without notice. If a delivered price has been quoted, any increases in transportation charges and other costs and also charges at destination for spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by purchaser, and the quoted price shall be adjusted accordingly.

4. Payment

The purchaser shall pay all products in U.S. Dollars (unless otherwise agreed in writing) within thirty (30) days of the date of the invoice and to the bank account stated in the said invoice. In the event of

late payment, Devyser shall be entitled to interest at an annual rate of fifteen (15) per cent.

5. Retention of title

Until the products are fully paid by the purchaser, Devyser retains the title to the products and, to the extent permitted by applicable law, entitled to repossess products that have not yet been paid in full. Until full payment has been made, the purchaser shall not without Devyser's prior written consent dispose of the products in a manner that could jeopardize Devyser's right to repossession. No acceptance or promissory note shall be considered as payment until fully paid.

6. Warranties

Any rights contained in this section 6 extend only to purchaser and, except as stated expressly herein, Devyser expressly disclaims all other warranties or guarantees of any kind, express or implied (other than the implied warranty of title), or statutory, whether or not arising from any cause of dealing or usage of trade, including, without limitation, all implied warranties of non-interference with enjoyment, merchantability or fitness for a particular purpose, non-infringement or quality. Without limiting the foregoing, purchaser acknowledges that any such express warranties supersede and exclude any oral or written warranties or representations made or implied in any manual, literature, advertising brochure or other materials. Some laws do not allow the exclusion of implied warranties. To the extent these laws apply, then all express and implied warranties are limited to the warranty period identified below. Unless stated herein, any statements or representations made by any other person or firm are void.

The sole and exclusive remedy of the purchaser for any breach of warranty and all other performance under or pursuant to delivery from Devyser shall be limited to cancellation of the purchase order and shall in no event include any damages whatsoever.

The sole liability of Devyser for defective or nonconforming products shall be, at its option, to repair or replace without charge any product which is proved to be defective or nonconforming. Defective products shall be returned to Devyser at the purchaser's cost and risk and replacement products shall be forwarded to the purchaser at Devyser's cost and risk. Written authorization from Devyser is required before any return of any

defective product. By delivering a duly repaired or replaced component to the purchaser, Devyser shall be deemed to have fulfilled its obligations with respect to the defective or nonconforming product. All replaced products will become Devyser's property.

Devyser's representations and warranties, and its responsibility and liability in connection with products, shall not apply to, and defective or nonconforming products shall not include, any product or part thereof which is (A) subject to misuse or neglect, (B) modified or altered other than by Devyser, or (C) not transported, stored, handled or used after it is released by Devyser to the carrier or by purchaser or any third party in accordance with Devyser's instructions and manuals or in compliance with applicable law, including relevant industry and regulatory rules, regulations and guidelines.

Devyser's liability in respect of defective products shall furthermore be limited to defects reported by the purchaser within 15 days from the date the defect was or should have been detected, and within one year from the date of delivery of the product.

Purchaser shall be solely responsible, at its own expense, to comply with all international, national and local laws, rules regulations and/or relevant industry codes in force from time to time applicable to the purchase, handling and use of products.

7. Product recall or field action

If Devyser discovers a defect in a Product, purchaser shall, upon request, immediately suspend sales of such product.

Purchaser will assist Devyser in dissemination of information, including information related to any field actions, decided by Devyser, and implementation of any risk-reducing actions relating to a defective Product.

Any written or pictorial materials prepared by or sought to be used by purchaser relating to Devyser or the products shall be used only after submission to Devyser and only with Devyser's specific written approval in each instance. The substantive and aesthetic content of advertisements will be determined by the parties on a case-by case basis, with Devyser's approval required in each instance. Devyser shall have no liability or obligation for representations made, whether express or implied,

or for advertising contracted for or placed by the purchaser or any other person except for such liability or obligation that relate to the specifications or that Devyser shall have expressly assumed in writing.

8. Complaint and incidence handling

Purchaser shall communicate to Devyser customer service in writing any and all complaints and/or associated reports related to any of the products, with respect to injury, death or otherwise, including name of care provider and contact details, device details, patient name, date, place, timing and known details of the injury or death, without delay and in any event within twenty-four (24) hours of receipt by purchaser of such complaint or report of injury. Purchaser shall keep a register of complaints of non-conforming devices and of recalls and withdrawals, and keep Devyser informed of such monitoring and provide it with any information upon its request.

Purchaser shall, without delay, also report to Devyser any malfunction or deterioration in the characteristics and/or performance of a product manufactured by Devyser, and/or any inadequacy in the labelling or the instructions for use.

9. Force majeure

Each party shall be relieved from liability for failure to perform any of its obligations due to any circumstance beyond its immediate control, which impedes, delays, or aggravates any obligation to be fulfilled by it under this Agreement, such as changes in laws and regulations or in the interpretation thereof, acts of authorities, war, acts of war, military intervention, terrorism, civil commotion and unrest, sabotage, labor disputes and strikes (even if such party is a party), lockouts by persons other than such party, blockades, major accidents, epidemic, pandemic, acts of government (including agencies and regulatory bodies) in either its sovereign or contractual capacity and including government intervention and quarantine restrictions, interruption or failure of any transportation or utilities, failure or unavailability of third party products or services necessary for such party to perform hereunder, and acts of God, including fire, flood and other natural disaster.

10. Limitation of liability

Any damages due by Devyser in connection with this Agreement shall be limited to such loss as

could reasonably have been foreseen at the time the Agreement was concluded as a typical result of the said circumstances.

Notwithstanding anything to the contrary herein, in no event will Devyser have liability for: (a) any lost profits, lost revenue, failure to realize savings, inconvenience, cost of substitute equipment, or claims of third parties, including customers, (b) any administrative, regulatory, or other penalties, or (c) any incidental, indirect, consequential, exemplary, special or punitive damages, whether liability therefor is based on contract, tort (including, without limitation, negligence or strict liability), or otherwise, even if such party has been informed, is aware, or should be or have been aware, of the possibility of such damages and even if any or all remedies available to the other party fail of their essential purpose.

In no event will Devyser be liable for damages in excess of the amounts paid to Devyser under this agreement with respect to the product.

If the purchaser alleges breach of contract it shall take reasonable measures to limit the resulting damage. Should it fail to do so, any damages to which it would otherwise have been entitled shall be reduced or forfeited.

11. Time limitation

Any action for any loss or damage with respect to products which are supplied hereunder or for breach of the terms hereof must be commenced by purchaser in accordance with section 18 below within two (2) years from the delivery of the product supplied hereunder.

12. Insurance

The purchaser shall maintain appropriate product liability insurance covering the risks associated with the purchase, handling and use of the Products.

13. Intellectual Property Rights

All intellectual property rights, such as but not limited to, know-how, trade secrets, patent rights, trademarks, trade names, design rights, copyright and any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world, relating to Devyser

and its Products shall remain the property of Devyser, and no license or other rights to such rights are granted or implied hereby (except the rights explicitly provided for by this Agreement), other than is necessary to distribute the products as provided under this Agreement. Devyser and purchaser agree that this Agreement does not grant purchaser any right, title, or interest in and to Devyser's name or Devyser's trademarks, trade names, trade dress, trade symbols, copyrights, patents, patent applications, inventions, trade secrets, product names and/or designations, model names and/or numbers, processes, models or prototypes, designs, and formulas or any other such rights or information (the "Proprietary Information"). Purchaser shall not use any of the Proprietary Information, including but not limited to, the name "Devyser" or those of any of Devyser's affiliated companies, on any of its products or in conjunction with purchaser's conduct of its business operations except as specifically instructed or authorized by Devyser in writing.

Purchaser agrees not to change, adulterate, obscure, remove or deface trademarks, tradenames or labels appearing on any of the products.

Devyser may from time to time change the design, specifications or construction of products. In the event the product purchased hereunder is changed prior to shipment, Devyser shall notify purchaser, and purchaser shall be entitled to accept the changed product or cancel its Order as to that product only and receive a refund of any monies paid to Devyser in respect thereof. The foregoing shall be purchaser's sole remedy for any change to the product purchased hereunder after acceptance of the Order and prior to delivery, and Devyser shall have no other liability whatsoever for any such change.

Purchaser shall not register, by itself or through a third party, any of the Proprietary Information, including but not limited to, the name "Devyser" or those of any of Devyser's affiliated companies, design, utility model or patent of Devyser with respect to any of the products anywhere in the world.

14. Registration; Regulation

All regulatory filings and other correspondence with regulatory authorities shall be made by, and in the name and at the expense of, Devyser.

Devyser shall oversee, monitor and coordinate all regulatory actions, communications and filings with

and submissions, including filings and submissions of supplements and amendments thereto, to regulatory authorities with respect to each product.

Upon being contacted by any regulatory authority for any regulatory purpose pertaining to this Agreement or to a product, purchaser shall promptly notify and consult with Devyser, and Devyser shall be entitled to provide a response as it deems appropriate, and Devyser shall have sole right and responsibility for responding to all inquiries to Devyser or purchaser, as the case may be, regarding a product.

In the event that Devyser determines that an event, incident or circumstance has occurred that may result in the need for a recall or other removal of any product, or any lot or lots thereof, from the market in any part of the territory of purchaser, it shall advise and consult with purchaser with respect thereto. Devyser shall make the final determination to recall or otherwise remove the product or any lot or lots thereof from the market. The costs and expenses of such recall or removal in each part of such territory, including expenses and other costs or obligations to third parties, the cost and expense of notifying customers and costs and expenses associated with shipment of the recalled product from a customer to either Devyser or purchaser shall be borne by Devyser.

Purchaser will not knowingly export, either directly or indirectly, any product or service to any country for which approval is required, without the prior written approval of the office of Export Administration of the U.S. Dept. of Commerce or any other applicable U.S. Government Agency.

15. Confidentiality

The existence and content of the agreement between the parties shall be kept strictly confidential and not be disclosed to any third party without the prior written consent of the other party (such consent not to be unreasonably withheld).

All information which is not publicly available, whether oral or written or in visual, electronic or tangible form, regarding or otherwise relating to a party or to any of its business matters, shall at all times be kept strictly confidential and may not be used for any other purpose than the performance or enforcement of the agreement between the parties, nor be disclosed to any third party without the prior written consent of the other party; provided that Devyser may use any information

disclosed or made available by purchaser to Devyser with respect to its sales or customers or with respect to warranty or customer complaint matters.

The receiving party will not analyze or reverse engineer any confidential tangible materials provided by the other party, except as necessary to perform their respective obligations under this Agreement. Each party will use its reasonable efforts to promptly notify the other of anything that might require disclosure of the other party's confidential information.

The restrictions in this section shall not apply to information and knowledge:

- to the extent reasonably necessary to be used or disclosed by a party in order for it to secure its interests against the other party in connection with a dispute, controversy or claim arising out of or in connection with the agreement between the parties or to otherwise enforce its rights under the agreement;
- that was at the time of its disclosure or which becomes thereafter generally available to the public otherwise than as a consequence of a breach by the agreement; or
- that a party is required to disclose by law or any governmental or other regulatory authority or by any applicable contract or regulations of any applicable stock exchange or other marketplace.

Each party shall refrain from disclosing the other party's confidential information and trade secrets and from using such information or secrets other than for the performance of the agreement. The said obligations shall survive the agreement.

16. Sub-distributors or other intermediaries

The purchaser shall not be entitled to engage sub-distributors or other intermediaries, without having obtained Devyser's prior written approval.

Where the purchaser subcontracts its obligations under the Agreement, with the consent of Devyser, it shall do so only by way of written agreement with the sub-distributor /intermediary, imposing the same obligations on the sub-distributor/intermediary as are imposed on the purchaser under the Agreement between the parties, which written agreement shall expressly provide that Devyser shall be a third-party beneficiary thereof, with the direct right of enforcement.

17. Governing Law

The agreement shall be governed by and interpreted in accordance with the provisions of substantive laws of the State of New York.

18. Resolution of Disputes

Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally and exclusively settled by arbitration, in New York County, New York, administered and governed by the rules of JAMS that are in effect when the arbitration is filed, excluding any rules that permit arbitration on a class or representative basis, available at <http://www.jamsadr.com>, or by calling 1-800-352-5267, and under the rules set forth in this Agreement. Disputes shall be resolved by a single neutral arbitrator, and both parties shall have a reasonable opportunity to participate in the selection of the arbitrator. The arbitrator shall be bound by the terms of this Agreement.

Judgment on the award may be entered in any court having jurisdiction.

If for any reason a claim proceeds in court rather than in arbitration, each party waives any right to trial by jury. Each party also agrees that the other may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

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