



## **SPIRATION, INC. d/b/a Olympus Respiratory America**

### **TERMS AND CONDITIONS OF SALE**

#### **COMPLETE AGREEMENT**

The terms and conditions contained herein constitute the sole and entire agreement between the parties and are the only basis upon which Spiration, Inc. d/b/a Olympus Respiratory America ("ORA") offers to sell goods to Buyer, unless otherwise agreed to in a writing signed by a duly authorized representative of ORA. Buyer's terms and conditions shall be of no effect to the extent they are inconsistent with or in addition to these terms and conditions, and notwithstanding anything to the contrary in Buyer's purchase order or other acceptance of this offer to sell, Buyer accepts all of ORA's terms and conditions set forth herein and incorporated by reference in ORA's quotation.

#### **PAYMENT AND PRICING**

Payment terms are net thirty (30) days from the date of the procedure. Buyer agrees to pay all invoices when due. All payments and other amounts due shall be made without counterclaim or offset for any reason.

#### **TAXES AND OTHER CHARGES**

Prices do not include taxes. Buyer shall pay any fees and any sales, use, property, value-added or other taxes. Buyer's tax exempt status is subject to receipt of proper documentation.

#### **ORDERING, SHIPPING AND TITLE**

Prior to each shipment, Buyer shall issue an initial no-charge purchase order or billable purchase order. Each billable purchase order must reference an ORA quotation number. Terms of sale are F.O.B. shipping point, shipping and handling charges prepaid by ORA and added to the invoice. Upon receipt of a purchase order, ORA will ship product to the Buyer at no initial cost. All Products are the property of ORA until they become Used Products, at which time they become the property of the Buyer. "Used Products" means: (1) ORA valves that remain in the patient at the conclusion of the procedure; (2) any Products that have been opened, but not deployed (unless there is a manufacturing defect or shipping damage); (3) Products that are lost; and (4) Products that are improperly stored or damaged by the Buyer.

#### **RETURNABLE PRODUCTS**

Buyer shall return all Returnable Products to ORA within ten (10) days of initial delivery. "Returnable Products" means (1) Products that are unopened and properly maintained; (2) Products with manufacturing defect(s); and (3) Products with shipping damage. Final determination of Products alleged to be damaged and defective will be subject to ORA's investigation and reasonable determination. All Returnable Products will be inspected by ORA to verify that the requirements outlined in these terms and conditions have been met. ORA will provide return packaging and return shipping label. A copy of the Shipping and Product Utilization Form ("SPUF") must be included with the return shipment or faxed to (425) 968-9022. If for any reason it becomes necessary for ORA to request return of Products prior to their use, it will be at ORA's expense. Requests for extension of product return timelines must be made within ten (10) days of initial delivery and approved in writing by ORA. If Returnable Products and the SPUF are not returned within thirty (30) days of the Products' delivery date and an extension for the return of product has not been granted by ORA, then all shipped Products may be invoiced to the Buyer.

#### **USED PRODUCTS**

Buyer will only be invoiced for Used Products. Within ten (10) days of the applicable procedure, Buyer will issue a billable purchase order for all Used Products or ORA will invoice for Used Products referencing the billable PO provided prior to shipment. Upon receipt of the Returnable Products, SPUF and purchase order, ORA will issue an invoice for all Used Products plus shipping and handling, taxes and any other applicable fees. A penalty fee of one-percent (1%) of the final invoice per month will be applied for all past due purchase orders.

#### **PRESCRIBING INFORMATION AND ADDITIONAL PRODUCTS**

For full prescribing information, go to [www.spiration.com/IFU](http://www.spiration.com/IFU). Buyer acknowledges that additional third party Products are necessary for use of the ORA Products. These third party items are listed in each product's Instructions For Use. Procurement of these items is the responsibility of the Buyer and may require additional lead time.

#### **LIMITED WARRANTY; LIMITATION OF LIABILITY**

ORA WARRANTS THAT, AT THE TIME OF SHIPMENT, THE PRODUCTS HAVE BEEN MANUFACTURED AND TESTED ACCORDING TO THEIR SPECIFICATIONS IN ACCORDANCE WITH GOOD MANUFACTURING PROCESSES. ORA MAKES NO WARRANTY AND ASSUMES NO LIABILITY WITH RESPECT TO THE REUSE, REPROCESSING OR RESTERILIZATION OF THE PRODUCTS. THIS SOLE AND EXCLUSIVE WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ORA IS NOT RESPONSIBLE FOR ANY HARM ARISING FROM OR CAUSED BY HANDLING, STORAGE, CLEANING AND/OR STERILIZATION OF THE PRODUCTS WHICH MAY AFFECT ITS PLACEMENT OR PERFORMANCE; NOR IS ORA RESPONSIBLE FOR THE IMPROPER OR NEGLIGENT USE OF THE PRODUCTS OR THE PRACTICE OF MEDICINE OR OTHER MATTERS BEYOND ORA'S CONTROL. ORA NEITHER ASSUMES, NOR AUTHORIZES ANY OTHER PERSON, INCLUDING A SALES REPRESENTATIVE, TO ASSUME FOR IT OR AGREE TO ANY OTHER OR ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE PRODUCTS. BUYER'S SOLE REMEDY UNDER

THIS WARRANTY IS LIMITED TO THE REPLACEMENT OF THE PRODUCTS. IN NO EVENT SHALL ORA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES ARISING FROM THE PURCHASE OR USE OF THE PRODUCTS WHETHER OR NOT ORA SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

#### **PRODUCT LIABILITY INDEMNITY**

ORA shall defend any Products liability suit or proceeding brought against Buyer, its trustees, directors, officers, and employees based on a third party's claim for bodily injury or property damage arising from the Products provided hereunder, provided ORA is (i) notified promptly in writing of any such claim; (ii) given authority to control fully any such suit or proceeding; and (iii) in receipt of information and reasonable assistance and cooperation from Buyer in preparation of the defense of any such suit or proceeding. Provided Buyer complies with the above requirements, ORA shall pay all damages, costs, and expenses, including reasonable attorneys' fees of third parties that Buyer shall be legally required to pay on the basis of bodily injury or property damage and shall reimburse Buyer for any authorized expense it incurs at ORA's written request. Notwithstanding this section, ORA shall not be liable to Buyer to the extent the bodily injury or property damage claim is based on or arises out of: (i) the use of Products not manufactured or recommended by ORA and/or not bearing the "Spiration, Inc." brand label; (ii) any Products which have been disassembled, repaired, tampered with, altered, changed, or modified by persons other than ORA's own authorized service personnel; (iii) the negligence, omissions, or misconduct of Buyer; (iv) the improper storage, usage, service, or maintenance of the Products; (v) failure of Buyer or the end-user to use updated components provided by ORA for avoiding such injury or damage; or (vi) use of the Products in a manner for which they were not approved. THE FOREGOING SETS FORTH BUYER'S EXCLUSIVE REMEDY AND ORA'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS OF BODILY INJURY OR PROPERTY DAMAGE RELATING TO THE PRODUCTS SUPPLIED HEREUNDER.

#### **COMPLIANCE WITH LAW**

Each party represents and warrants that it shall comply with all laws, rules and regulations applicable to its respective business. ORA acknowledges that the Buyer may have an obligation to report any discount offered under this Products offering/program to any third party payer on any cost reimbursement form submitted to the payer. This includes payers such as a state or the federal government under Medicare, Medicaid or any other similar governmental program, or a private payer like an HMO, PPO or other health plan.

#### **FORCE MAJEURE**

Except for payment obligations, both parties will be excused from performing their obligations if performance is prevented by a force majeure event, and the excuse continues while the force majeure event continues. A "force majeure" event shall mean causes beyond a party's reasonable control, including, by way of example but not limitation, acts of God, war, riot, or civil commotion, terrorist activities, damage to or destruction of production facilities or materials by fire, earthquake, storm, or other disaster, strikes or other labor disturbances, epidemic, pandemic, failure or default of public utilities or common carriers, and other similar acts.

#### **CHOICE OF LAW AND JURISDICTION; COURTS**

This transaction is deemed to have been made in Pennsylvania and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to the conflict of laws rules thereof. All controversies, disputes and claims arising out of or relating to this transaction, or the breach or threatened breach of this document, shall be adjudicated by a court of competent jurisdiction within the County of Lehigh, Commonwealth of Pennsylvania or the Federal District Court in the Eastern District of Pennsylvania, except that any judgment obtained in such action may be enforced in other jurisdictions. Buyer hereby waives personal service of process provided that process is served by certified, registered mail. Buyer hereby waives any objection that it may have regarding the personal jurisdiction or venue of any of the aforesaid courts, as well as any claim that the forum or venue is inconvenient or should be transferred. Buyer agrees to pay any and all reasonable costs, legal fees, and expenses incurred by ORA resulting from all controversies, disputes or claims which are adjudicated or settled favorable to ORA.

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