



## PURCHASE TERMS AND CONDITIONS

1. **Intent.** These are terms and conditions of sale ("**Terms**") for products ("**Products**").

These terms supplement consistent terms and conditions provided with an ECS Opco 1, LLC d/b/a Spectrum Vascular ("**Spectrum**") acceptable mail, fax, electronically transmitted, or telephone purchase order for the Product ("**PO**" or "**Purchase Order**") with Standard Terms (as defined in **Section 3 (Purchase Orders)** below) submitted by Customer, and with or without Additional/Different Terms (as defined in **Section 3 (Purchase Orders)**) as may be accepted by Spectrum in the manner set forth herein.

2. **Acceptance of Terms.** Customer's acceptance of these Terms is an express condition to Spectrum's offer to sell Products. Any of the following constitutes Customer's unqualified acceptance of these Terms: (i) written acknowledgment of these Terms, whether stand-alone or as part of a separate agreement; (ii) Customer's issuance or assignment of a Purchase Order with Standard Terms and with or without any Additional/Different Terms as may be accepted by Spectrum in the manner set forth herein; (iii) Customer's acceptance of any shipment or delivery of Products; (iv) Customer's payment for any of the Products; or (v) any other act or expression of acceptance by Customer.
3. **Purchase Orders.** If a Purchase Order is used, a Purchase Order shall set forth the following: (i) identification of the Products, i.e. the part number, (ii) the quantity, of the Product to be purchased, (iii) the shipment point of distribution, as described in **Section 8 (Delivery and Shipment)** below, and/or (iv) the delivery date schedule for the ordered Products (hereinafter, (i) through (iv) together shall be referred to as the "**Standard Terms**") and so long as the foregoing Standard Terms information in the Purchase Order is complete (i.e. the Purchase Order includes each of these Standard Terms), Spectrum shall deliver the Products as stated in such Purchase Order for the price stated by Spectrum in the price quote provided by Spectrum to Customer ("**Price Quote**") and if no separate Price Quote has been provided, as specified in Spectrum's price list or other pricing established in writing between the parties; however, notwithstanding the foregoing, Spectrum may withhold its acceptance for any Purchase Order that (i) does not include all of such Standard Terms, and/or (ii) includes additional or different terms other than the Standard Terms (hereinafter, "**Additional/Different Terms**"); provided further, however, Spectrum may choose to accept a Purchase Order with Additional/Different Terms so long as, (A) in the Purchase Order itself, the Purchase Order specifically notifies Spectrum in the content of the Purchase Order of any Additional/Different Terms and Spectrum initials such Additional/Different Term as an Additional/Different Term and confirms that Spectrum has reviewed it and accepts it, and (B) the Additional/Different Terms is not a pre-printed contract terms posted on the Customer website or otherwise provided by Customer.

In this regard, any Purchase Order is subject to the express terms of these Terms, which shall replace in their entirety any pre-printed contract terms posted on the Customer website or otherwise provided by the Customer and referenced or included in any Purchase Order issued hereunder.

Further, any term or statement in a Purchase Order other than the Standard Terms, any document provided by Customer, including, but not limited to, a quote or invoice other than the Price Quote provided to Customer by Spectrum or any document attempted to be referenced in a Purchase Order, or any confirmation of terms or request for an acknowledgment or acceptance of any referenced term made by Customer or any other statement or document, including, without limitation, any emails regarding the same or any oral statements made by Customer, which conflicts with or is in addition to the terms of these Terms, is hereby expressly rejected by the Parties and shall not apply, and the terms of these Terms alone shall apply unless there has been an amendment to these Terms or a separate written document between Customer and Spectrum executed by a Spectrum authorized representative that is the same signature authority as the person that has executed the Terms or higher.

These Terms set forth the only terms and conditions under which Spectrum will sell Products to Customer notwithstanding any conflicting term or condition contained in a Customer purchase order, request for proposals, purchase agreements or any other form submitted by Customer. If, however, a written contract signed by an authorized signatory of Spectrum is already in existence between Spectrum and Customer covering the purchase of Products, the terms of such contract shall prevail to the extent that it is inconsistent with these terms.

4. **Prices and Taxes.** All Product prices, where listed or provided, are listed or provided in United States Dollars, and for prices on a price list, Spectrum reserves the right to change the prices and specifications of its Products at any time without notice, unless otherwise explicitly specified in a written Price Quote, and any Purchase Order calling for future delivery shall be billed according to the Price in effect at the time of the Purchase Order. The amounts invoiced to Customer by Spectrum are inclusive of any applicable discounts, pricing concessions, and related costs of manufacture and supply of the Products as described herein (the “**Price**”); however, no discount is valid if the resulting Price of any Product would be below Spectrum’s cost to manufacture the Product. The formula for calculating any applicable rebate which is redeemable at a later time must be fixed, described in detail, and disclosed in writing prior to the purchase; additionally, any failure to so do necessarily voids any such rebate. Pursuant to this **Section 4 (Prices and Taxes)** of the Terms, Customer is responsible for any applicable reporting requirements related to Price and/or discounts. In addition to the Price quoted in a written Price Quote provided by Spectrum or invoiced by Spectrum, Customer shall also be responsible for any tax, duty, custom, or other fee of any nature related to or calculated from the Price or otherwise imposed upon this transaction by any governmental or quasi-governmental authority. It is the Customer’s responsibility to provide proof of tax-exempt status, if applicable. In the event Spectrum is required to prepay any such tax, Customer will fully reimburse Spectrum for such tax prepayment.

Except as may otherwise be agreed in a separate written agreement, Spectrum reserves the right, at any time, to modify, suspend, or terminate any credit terms previously extended to Customer. Spectrum may also refuse to sell to Customer until each overdue account of Customer and all of Customer’s affiliates are paid in full. Customer is responsible for all of Spectrum’s collection costs on Customer’s past due accounts, including, without limitation, reasonable attorneys’ fees. Spectrum may accept any payment in any amount without prejudice to Spectrum’s right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any payment, accompanying any payment, or elsewhere will be construed as an accord or satisfaction.

5. **Discounts.** Customer and Spectrum each acknowledge that it is their intent to establish a business relationship in which any rebates, discounts, payments, and credits provided to Customer by Spectrum (“**Discounts**”) comply with the exceptions to the U.S. Anti-Kickback Statute set forth at 42 U.S.C. 1320a-7b(b)(3) and the “Safe Harbor” regulations regarding discounts set forth in 42 C.F.R. 1001.952(b); and the Parties believe that the relationship contemplated by these Terms is in compliance with those requirements. Customer agrees to report all Discounts to its payors in accordance with the requirements of the Anti-Kickback Statute and any other applicable laws or regulations.

6. **Payment.** Full payment without setoff shall be due to Spectrum thirty (30) calendar days following the invoice date, and all payments shall be in United States Dollars, unless in each case otherwise agreed upon in writing by Spectrum.

Spectrum reserves the right to charge a late fee of 1.5% per month or the highest rate permitted by applicable law, whichever is lower, on any unpaid balance until payment in full has been made. Customer shall pay Spectrum for all Products that are delivered as to which there is no dispute regardless of whether a dispute exists as to any other obligation between Customer and Spectrum or Customer’s Affiliate and Spectrum.

A minimum order quantity (MOQ) of USD 1,000 per purchase order is required for all accounts not governed by existing contractual agreements specifying alternate MOQ terms. Orders below USD 1,000 will be accepted but will incur a USD 75.00 handling fee per shipment. Accounts with existing contractual terms specifying alternate MOQ provisions will continue to follow the terms of their agreement.

Stenographical, clerical, or computer errors on the face of any Spectrum invoice shall be subject to Spectrum correction.

7. **Invoice Disputes.** Customer must provide Spectrum with written notice of any invoice discrepancies or disputed charges within thirty (30) days of the invoice date or Customer shall be deemed to have waived its rights to dispute the charges. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. Any partial or full payment of an invoice shall constitute consent to all applicable terms and conditions, including, without limitation, any prices and charges set forth on an invoice.

8. **Delivery and Shipment.** Spectrum will make commercially reasonable efforts to ship the Products hereunder in accordance with the requested delivery date, provided that Spectrum accepts no liability whatsoever for any losses or for damages arising out of delays in delivery. All delivery dates are estimates and the time of delivery shall not be of the essence. Spectrum shall be entitled to deliver the Products in installments.

Unless otherwise agreed in writing, all Products shipped by Spectrum are delivered Ex Works (EXW) (INCOTERMS 2020) point of distribution by Spectrum, at which time title and risk of loss shall pass to Customer. Except as otherwise agreed upon by Spectrum in writing, the method of transportation (i.e. method of shipping, routing and carrier) will be at Spectrum’s discretion. All shipment costs shall be paid by Customer and if prepaid by Spectrum, Customer shall reimburse Spectrum in full for all shipping costs. Any special shipping requests by Customer, including, without limitation, freight

forwarder or air freight, may incur additional shipping and handling charges for which Customer will be solely responsible. To support urgent clinical needs, optional expedited shipping services are available in addition to standard freight charges: same-day shipping at USD 35.00; overnight shipping at USD 15.00; 2-day shipping at USD 10.00. All expedited shipping fees are in addition to any applicable standard freight charges.

Where permitted by law, Spectrum retains a security interest in all Products sold until full payment is received.

9. **Inspection.** Customer shall be responsible for inspecting all Products shipped hereunder prior to acceptance, provided, that if Customer does not give Spectrum written notice of rejection fully specifying and documenting the reasons thereof within five (5) days following receipt of the Products by Customer, the Products shall be deemed to have been accepted by Customer. Spectrum may, on Customer's premises, inspect any Products claimed not to conform. In the alternative, if helpful, Spectrum may confirm any claimed non-conformance through analysis by a third-party laboratory reasonably acceptable to both parties and within a reasonable time frame. If, as a result of the analysis, non-conformance is confirmed, the cost for the analysis shall be paid by Spectrum; otherwise, Customer shall pay for the cost of the analysis.
10. **Compliance with Laws.** Each party shall comply with all laws, rules and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to affirmative action, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance portability and Accountability Act of 1996 ("**HIPAA**"). Customer is reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.620 [h]).
11. **Limited Product Warranties.** Subject to the Limited Product Warranties Exceptions below, Spectrum warrants to the original Customer purchasing the Product or the Customer purchasing the Product from a Spectrum authorized distributor only that (i) the Products substantially conform to Spectrum's published specifications in its Product directions for use or its Product instructions for use, as applicable, for each Product ("**Product Specifications**"); (ii) the Products are free from defects in material or workmanship, and (iii) the Products are not adulterated or misbranded within the meaning of the United States Federal Food, Drug and Cosmetic Act, as amended (hereinafter, the "**Limited Product Warranties**" and a failure of a Product to meet with these Limited Product Warranties shall be referred to as a "**Non-Conforming Product**"). Specific descriptions of Product in any of Spectrum's literature are meant solely to describe the applicable Product at the time of manufacture and do not constitute a warranty for the Product of any type, express or implied, including, without limitation, a warranty of merchantability or fitness for a particular purpose. The duration of these Limited Product Warranties is one (1) year from the date of delivery ("**Limited Product Warranties Period**"). If the Customer discovers within this Limited Product Warranties Period a breach in one of the Limited Product Warranties (each, a "**Limited Product Warranties Claim**"), the Customer must promptly notify Spectrum in writing as set forth herein ("**Limited Product Warranties Notice**") and in no event shall such notification be received by Spectrum later than thirteen (13) months from the date of delivery ("**Limited Product Warranties Notice Period**") and no action for breach of warranty may be commenced after fifteen (15) months following delivery of the Products in issue.

It is Customer's responsibility to check the Products upon receipt and before use. The Limited Product Warranty set forth above will be void in the following circumstances: (a) where damage caused by Customer's use of the Products for any purpose for which they were not designed or in any manner for which they were not contemplated (such as the reuse, reprocessing or resterilization of any single use Product), (b) damage caused by unauthorized alterations or modifications made to the Products, (c) damage caused during Customer shipping or storage, or any other abuse or misuse by Customer, (d) damage where the defect is the result of, or because of, accident, unusual physical conditions, freezing or any other causes other than ordinary use, or (e) damages caused by Customer's failure to maintain the Product in accordance with any Product requirements set forth in the aforementioned Product Specifications ("**Limited Product Warranties Exceptions**"). In the event Spectrum gives Customer technical advice with respect to the Products, it is agreed that such advice is given without any liability on Spectrum's part.

In the event of a Limited Product Warranties Claim due to what Customer asserts is a Non-Conforming Product, unless a Limited Product Warranties Exception applies, Spectrum will, as Customer's sole and exclusive remedy for a breach of one of the Limited Product Warranties, in Spectrum's sole discretion, use commercially reasonable efforts to repair or replace any Product reported to Spectrum by Customer as a Non-Conforming Product in the Limited Product Warranties Notice during the Limited Product Warranties Notice Period, provided that no repair or replacement provided to the Customer will extend the original Limited Product Warranties Notice Period, or alternatively, refund the purchase price paid by Customer for all such Products.

THE PRODUCTS ARE PROVIDED "AS IS" AND, EXCEPT FOR THE FOREGOING LIMITED PRODUCT WARRANTIES, SPECTRUM PROVIDES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS SOLD, INCLUDING, BUT NOT LIMITED TO: (1) NO OTHER EXPRESS WARRANTIES; (2) NO IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

AND/OR NON-INFRINGEMENT; AND (3) NO IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

CUSTOMER SPECIFICALLY ACKNOWLEDGES THAT THE PRODUCTS ARE MEDICAL DEVICES THAT HAVE RISKS, INCLUDING THOSE DESCRIBED IN ANY DIRECTIONS OR INSTRUCTIONS FOR USE OF THE PRODUCTS. FURTHER, CUSTOMER ACKNOWLEDGES THAT THE HANDLING, STORAGE, CLEANING AND STERILIZATION OF THE PRODUCTS AS WELL AS OTHER FACTORS RELATING TO A PATIENT, DIAGNOSIS, TREATMENT, SURGICAL PROCEDURES AND OTHER MATTERS BEYOND SPECTRUM'S CONTROL DIRECTLY EFFECT THE PRODUCT AND THE RESULTS OBTAINED FROM ITS USE. ACCORDINGLY, SPECTRUM EXPRESSLY MAKES NO WARRANTIES THAT THE PRODUCTS WILL BE SAFE AND EFFECTIVE WHEN USED, INCLUDING IN EACH APPLICATION, IN EACH PATIENT OR UNDER ANY AND ALL CIRCUMSTANCES.

Products marked as "single-use" are for single use only. Customer shall not reuse, reprocess, or resterilize single-use products or otherwise modify or alter the same in any way. Customer acknowledges and agrees that reuse, reprocessing, resterilization, modification or alteration may (i) compromise the structural integrity of the Product and/or lead to Product failure, which may result in patient injury, illness, or death and/or (ii) create a risk of contamination of the Product and/or cause patient infection or cross-infection, including, but not limited to, the transmission of infectious disease(s) from one patient to another and contamination of the Product may lead to injury, illness, or death of the patient. SPECTRUM ASSUMES NO LIABILITY WITH RESPECT TO SINGLE-USE PRODUCTS REUSED, REPROCESSED, RESTERILIZED, MODIFIED OR ALTERED AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT, NOR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, WITH RESPECT TO ANY SINGLE USE PRODUCT.

THE TERMS IN THIS **SECTION 11** MAY NOT BE ALTERED, AMENDED, REPLACED, SUBSTITUTED, OR RESCINDED BY ANY EMPLOYEE, AGENT, INDEPENDENT CONTRACTOR, OR CONSULTANT OF SPECTRUM. ANY SUCH ALTERATION, AMENDMENT, REPLACEMENT, SUBSTITUTION, OR RESCISSION SHALL NOT BE BINDING UPON SPECTRUM, ITS AFFILIATES, OR SUBSIDIARIES.

Regardless of whether a claim is based on tort law, breach of contract, breach of warranty or any other legal theory, the sole obligation of Spectrum under this limited warranty and Customer's sole and exclusive remedy for any claim arising by reason of or in connection with the sale, purchase, delivery or use of Products shall be for Spectrum to provide Customer free of additional charge with repair or replacements for parts of Products, or in the sole discretion of Spectrum, complete Products, which are found to be a Non-Conforming Product without a Limited Product Warranties Exception within the Limited Product Warranty Notice Period with the same delivery terms as the original Products or, in Spectrum sole discretion, reimbursement or a credit for the amount paid by Customer for the Products.

Further, for any equipment that Spectrum has obtained from a third-party supplier as may be noted in a Purchase Order, all manufacturers' warranties for any such equipment shall be passed through to Customer and warranty claims shall be presented by Customer directly to the manufacturer. WITH RESPECT TO ANY SUCH EQUIPMENT, SPECTRUM MAKES NO INDEPENDENT WARRANTY OVER AND ABOVE THE THIRD-PARTY SUPPLIER'S WARRANTY AND THE REMEDIES PROVIDED PURSUANT TO SUCH THIRD-PARTY SUPPLIER'S WARRANTY SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AS AGAINST SPECTRUM. The foregoing shall not apply to any equipment owned and managed by Spectrum.

- 12. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO CASE SHALL SPECTRUM BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON IN RESPECT OF THE PRODUCTS OR ANY USE THEREOF OR ANY SERVICES, FOR ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE, ARISING OUT OF, IN CONNECTION WITH OR BASED UPON, ANY BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY OR ANY NONCONFORMITY OR DEFECT IN THE PRODUCT, REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF ANY MACHINERY OR ANY ASSOCIATED MACHINERY, COST OF CAPITAL, COST OF ANY SUBSTITUTE EQUIPMENT OR PRODUCT, FACILITIES OR SERVICES, DOWN-TIME, THE CLAIMS OF THIRD PARTIES, AND INJURY TO PROPERTY. THIS LIMITATION SHALL SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES PROVIDED IN THE TERMS, INCLUDING, WITHOUT LIMITATION, THOSE FOUND IN **SECTION 11 (Limited Product Warranties)**.

IN ADDITION, THE REMEDIES OF CUSTOMER SET FORTH IN THE TERMS ARE EXCLUSIVE OF ANY OTHER REMEDIES AND TO THE FULLEST EXTENT PERMITTED BY LAW, SPECTRUM TOTAL LIABILITY IN CONNECTION WITH A PARTICULAR PRODUCT SOLD, LEASED, RENTED OR OTHERWISE FURNISHED BY SPECTRUM WILL NOT EXCEED THE PAYMENTS MADE BY CUSTOMER TO SPECTRUM UNDER THESE TERMS FOR THAT PARTICULAR PRODUCT OR SERVICE UPON WHICH LIABILITY IS PREMISED.

CUSTOMER ACKNOWLEDGES THAT THE FEES DUE UNDER THE TERMS OR ANY PURCHASE ORDER REFLECT THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND THAT SPECTRUM WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

- 13. Intellectual Property Rights Infringement.** Spectrum shall defend or settle any claim against Customer that a Product provided under these Terms infringes a valid claim under a United States patent or any other country in which Spectrum has been granted a patent on the Product, provided that the Customer: (i) provides Spectrum prompt written notice of the claim, (ii) grants Spectrum full and complete information and assistance necessary for Spectrum to defend, settle, or avoid the claim, and (iii) gives Spectrum sole control of the defense or settlement of the claim. The provisions of this section shall not apply in the event of any sale or other transfer of the Product by the Customer.

In the event the Products are found or believed by Spectrum to infringe such claim, Spectrum may, at its option, (a) procure the right for the Customer to use the Product, (b) replace or modify the Product to avoid infringement, or (c) refund to the Customer a portion of the Product purchase price upon the return of the original Product. Spectrum shall have no obligation for any claim of infringement arising from Spectrum’s compliance with the Customer’s designs, specifications, or instructions; Spectrum’s use of technical information or technology supplied by the Customer; modifications to the Product by the Customer or its agents; use of the Product other than in accordance with the Product specifications or applicable written Product instructions; use of the Product with products not manufactured by Spectrum; use of the Products if infringement would have been avoided by the use of a current unaltered release of the Products; or use of the Products after Spectrum has offered the Customer one of the options described in this section. The terms in this section state Spectrum’s entire obligation and liability for claims of infringement, and the Customer’s sole remedy in the event of a claim of infringement.

- 14. Returned Goods.** A returned goods authorization (RGA) is required to return any Product purchased from Spectrum. To receive a RGA number, please contact Spectrum’s Customer Service Department at 1-888-599-2099. The following information is required to issue an RGA number for your return:

- A. Reason for the return;
- B. Customer purchase order number;
- C. Spectrum’s invoice number, sales order number or packing slip number; and
- D. Serial number and/or Lot number with expiration dates (if applicable).

The RGA number must be clearly written on all enclosed documents and on outside of shipping container.

Spectrum’s Products returnable guidelines is as follows:

Product Type	Less than 30 days from purchase date	Greater than 30 days from purchase date
Standard Products	25% Restocking charge for the return*	Not returnable, no credit*
Custom Products, specially manufactured Products, or convenience kit Products	Not returnable, no credit*	Not returnable, no credit*
Product Opened, damaged or tampered with, over labeling or otherwise unsellable  Sterile products with broken seals, or where the Product or sealed packaging has been tampered	Not returnable, no credit*	Not returnable, no credit*

\*Unless such Products were received by Customer in (i) a damaged condition (i.e. such damages occurred prior to Spectrum’s delivery to Customer) or (ii) a non-conforming condition (i.e. a Non-Conforming Product under the Limited Product Warranties, but subject to the terms of **Section 11** (Limited Warranties), in which case the Products shall be returned to Spectrum in the condition they were received by Customer.

All returned Products are received conditionally and subject to inspection. Spectrum reserves the right to promptly destroy any returned Products that are not eligible for credit or exchange, or returned Products that Spectrum determines are in non-usable condition due to damage, defaced labels, improper storage, deterioration of any kind, or any other condition caused by Customer or Customer’s carrier that makes the returned Products unusable.

Spectrum is not responsible for returned Product shipments lost and/or damaged in transit, unless Spectrum has shipped in error or itself delivered the goods damaged.

In order for an authorized return to be accepted, all returned Product must be returned to Spectrum in its original, unopened packages, undamaged and unmarked, packed appropriately for shipping, and not have been re-used, reprocessed, re-

sterilized, altered or modified and must be in saleable condition and suitable for restocking (unless they are otherwise returned as a Non-Conforming Product or returned due to damage occurring from Supplier's delivery). Customer acknowledges that Products have varying shelf-lives and that certain restrictions and/or restocking charges (as noted) may apply based on the remaining shelf-life of the returned Product.

15. **Damaged Products and Product Shortages.** Damaged Products or Product shortages must be noted on the delivery receipt at the time of delivery. Customer must notify Spectrum in writing within five (5) days following delivery whenever damage, short, or incorrect deliveries occur so that the issue can be resolved in a timely manner.
16. **Reporting, Recordkeeping, and Recall.** Spectrum and Customer agree to provide to each other, upon request, any information reasonably necessary for the other to comply with any applicable governmental reporting or recordkeeping requirements, including, but not limited to, the United States Food and Drug Administration's Medical Device Reporting Regulations and all similar laws or regulations insofar as they are applicable where the Products are used. When requesting such information, the requesting party shall inform the other what information is required for these purposes, and, promptly after being made aware of any such required information, the recipient of the request shall supply the other with responsive information necessary to enable the requesting party to comply with such requirements. Customer also agrees to provide to Spectrum any and all information that may be required by law or regulation regarding whether any Product(s) may have caused or contributed to the death or serious injury of an individual or has malfunctioned, and whether the Product(s) would be likely to cause or contribute to death or serious injury of another if the malfunction were to recur.

In the event of a recall, Customer shall cooperate with Spectrum in conducting such recall.

17. **Agents.** No agent, employee, consultant, independent contractor or other representative of Spectrum has the right to modify or expand Spectrum's standard warranty applicable to the Products or to make any representations as to the Products other than those warranties set forth in Spectrum's Product Specifications and these Terms and any such affirmation, representation, or warranty, if made, is void and should not be relied upon by Customer and shall not form a part of these Terms.
18. **Export Controls.** Customer shall comply strictly with all export control laws, including without limitation, the U.S. Export Administration Regulations (collectively, "**Export Controls**"), cooperate fully with Spectrum in any official or unofficial audit or inspection that relates to the Export Controls, and not export, re-export, divert, or transfer, directly or indirectly, any Product or direct product thereof to any country that is embargoed by the Export Controls or an Executive Order, unless Customer has first obtained written authorization from Spectrum and the relevant U.S. export control authorities. Customer also shall comply with all applicable export and import control laws and regulations of any territory in which such Products are used. Spectrum shall not be liable for any delays in shipping, or inability to ship, Products resulting from or relating to any import or export laws.
19. **Compliance with Foreign Corrupt Practices Act.** Customer acknowledges that Spectrum is a United States corporation and, as such, is subject to the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America, 91 Statutes at Large, Sections 1495 et seq. ("**FCPA**"), and any other similar laws in the country or territory in which Customer is located. Under the FCPA, it is unlawful to pay or to offer to pay anything of value to foreign government officials, or employees, or political parties or candidates, or to persons or entities who will offer or give such payments to any of the foregoing in order to obtain or retain business or to secure an improper commercial advantage. Customer further acknowledges that it is familiar with the provisions of the FCPA and hereby agrees that it shall take or permit no action which will either constitute a violation under, or cause Spectrum to be in violation of, the provisions of the FCPA.
20. **Confidentiality.** Customer covenants and agrees to keep any pricing and products information (collectively, the "**Confidential Information**") furnished to Customer pursuant to these Terms, strictly confidential and not to disclose Confidential Information to any third party. The confidentiality obligations set forth in this section shall survive the expiration or termination of these Terms and any relationship between Spectrum and Customer.
21. **Access to Records.** Both parties will comply with all applicable requirements of 42 CFR Section 420.302, including without limitation: (i) retaining required documents; and (ii) giving the US Comptroller General, HHS, and their duly authorized representatives access to its contract, books, documents, and records related to any transactions under these Terms and those of any organizations related to the parties.
22. **Force Majeure.** Neither party hereto shall be in default in the performance of its obligations hereunder (other than its obligation to make any payment of money hereunder), or be liable in damages or otherwise for any failure or delay in performance, which is due to causes beyond its reasonable control. Either party affected by such an event shall promptly give notice to the other, stating the nature of the event, its anticipated duration and action being taken to avoid or minimize its effect. Neither party hereto shall be required to grant any demand or request to bring to an end any strike or other concerted act of workers. If, at Customer's request or for any reason for which Customer is responsible, the production or

shipment of Products is delayed, Spectrum may immediately invoice Customer for the Products produced, and costs and expenses incurred up to the time of the delay.

23. **Publicity.** Any marketing, promotion, or other publicity material, whether in written, electronic, or any other form, that refers to Spectrum, its affiliates, their Products, or to these Terms must be approved in writing by Spectrum prior to its use or release.
24. **Proprietary Rights.** Spectrum and/or its affiliates are the owners of certain proprietary brand names, trademarks, trade names, logos, and other intellectual property. Except as otherwise expressly permitted by Spectrum, no use of Spectrum's or its affiliates' brand names, trademarks, trade names, logos, or other intellectual property is permitted, nor the adoption, use or registration of any words, phrases, or symbols so nearly resembling any of Spectrum's or its affiliates' brand names, trademarks, trade names, logos or other intellectual property as to be likely to lead to confusion or uncertainty, or to impair or infringe the same in any manner, or to imply any endorsement by Spectrum of another entity's products or services.
25. **Licensed Software and Firmware.** Use of Products comprised of software or firmware may be subject to Customer's acceptance of additional terms and conditions set forth in separate Spectrum's or third-party license agreements that will control to the extent necessary to resolve any conflict with these Terms. In the absence of a separate Spectrum's software license agreement, Customer is granted a non-exclusive, non-transferable and non-assignable, license to use Spectrum's software or firmware in object code form only and solely in conjunction with Spectrum-provided Products for as long as Customer owns the Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.
26. **Insurance.** During the Term of any separate written agreement between the parties or the period in which Purchase Orders are being issued, and for at least five (5) years thereafter, Customer shall obtain and maintain commercial general liability insurance in full force and effect, at its own expense and sufficient to cover claims related to the Terms.
27. **Assignment.** Spectrum may freely assign, transfer and/or delegate any and all of its rights and/or obligations under the Terms or any Purchase Orders to any third-party, whether by agreement, operation of law or otherwise, including without limitation, any order of any court, any plan of merger, consolidation or reorganization or any sale of stock or assets. The Terms and any Purchase Orders hereunder are not assignable, transferable or delegable by Customer, in whole or in part, without the express written consent of Spectrum.
28. **Miscellaneous.**
  - 28.1. **Third Parties.** Nothing in this document is intended to create any rights in third parties against Spectrum.
  - 28.2. **Waiver of Breach.** Any breach hereunder may be waived only by a writing signed by the party against whom enforcement thereof is sought. The waiver by either party at any time to require performance by the other of any provision of these Terms shall not operate as a waiver of such provision at any other time. Any attempt to otherwise assign, delegate or transfer any of such party's rights or obligations hereunder, contrary to this provision, shall be void. Subject to the preceding sentence, this Agreement shall bind both parties and their permitted successors and assigns.
  - 28.3. **Severability.** If any provision of these terms and conditions is held illegal, invalid, inapplicable, or unenforceable, the remainder will continue to be valid and enforceable.
  - 28.4. **Governing Law.** These Terms shall be governed by, construed, and enforced in accordance with the laws of the State of New York, U.S.A, without regard to its conflict of laws or choice of laws provisions. Spectrum and Customer agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.
  - 28.5. **Arbitration.** Any and all disputes or controversies arising under, out of, or in connection with these Terms or the sale Products, except for collection matters, shall be resolved by final and binding arbitration in New York, New York, U.S.A., under the rules of the American Arbitration Association then in effect. The arbitration and any other proceedings to enforce these Terms will be conducted in the English language. The arbitrators shall have no power to add to, subtract from, or modify any of these Terms. Any award rendered in such arbitration may be enforced by either party in the state or federal courts located in New York, New York, U.S.A., to whose jurisdiction for such purposes Spectrum and Customer each hereby irrevocably consents and submits.
  - 28.6. **Modification.** No amendments or modification, of these Terms, including, without limitation, any oral modification or any separate pre-printed form or other similar purchase order terms initiated by a party is effective unless it is in writing, identified as an amendment to the Terms and signed by an authorized representative of a party or it is a Spectrum acceptable purchase order as contemplated under **Section 3 (Purchase Order)** signed by both parties. For the avoidance of doubt, no purchase order terms will apply unless both parties have executed it.

- 28.7. **Entire Agreement.** These Terms, including and together with any related exhibits, schedules, attachments, appendices or Product Specifications, constitute the final, complete, sole, exclusive and entire statement of the terms of the agreement between the parties as a final written expression of all terms of the agreement pertaining to the subject matter herein, including the sale of Spectrum' Products and is the complete and exclusive statement of those terms and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both oral and written, of the parties, whether written or oral, regarding the subject matter. To the extent of any conflict between Section 1 to Section 28 of these Terms and any other exhibits, schedules, attachments, appendices and/or Product Specifications, Section 1 to Section 28 of these Terms shall govern.
- 28.8. **Counterparts.** The Agreement, any part of it, and any amendment to it, may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and shall become binding when any two or more counterparts thereof, individually or taken together, bear the signatures of both parties hereto. For purposes hereof, a facsimile or other electronically scanned and transmitted copy, including the signature pages hereto, shall be deemed an original.
- 28.9. **English Language.** Both parties agree that these Terms shall be governed, interpreted, and construed in the English language, regardless of any translation that may be made into any other language.