

NEOTRACT STANDARD TERMS & CONDITIONS FOR DIRECT PURCHASERS IN THE UNITED STATES

1. General Principles. These Terms and Conditions (the “Terms”) are applicable to any proposition, offer, order and agreement relating to the sale of products (collectively “Products”) marketed by NeoTract, Inc., acting as principal or sales representative (hereinafter “Company”) to the Purchaser (hereinafter “Purchaser”). These Terms do not apply to sales to distributors. On the basis solely of a purchase order or invoice settlement for the products, Purchaser is irrevocably deemed to have acknowledged and agreed to be legally bound to the Terms. Company will not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions of these Terms (whether or not it would materially alter these Terms) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Company specifically agrees to such provision in a written instrument signed by Company. Company’s acceptance of any order by Purchaser is expressly conditioned by Purchaser’s assent to the terms and conditions of these Terms.

2. Order and Delivery.

2.1 Orders. Orders may be placed by contacting:

NEOTRACT CUSTOMER SERVICE
TEL: 925-401-0700
FAX: 925-401-0699
EMAIL: CUSTOMERSERVICE@NEOTRACT.COM

2.2 Purchase and Sale. Company will sell to Purchaser and Purchaser will accept and pay for all Products ordered by Purchaser pursuant to an order which has been accepted by Company. All orders are subject to acceptance by Company, which may be in writing or electronic record delivered to Purchaser or by shipping Products. Company may accept any order in whole or in part and Company’s shipment of less than all Products ordered shall constitute acceptance of the order only as to those Products shipped.

2.3 Shipment. Company will make every reasonable effort to meet the delivery dates quoted or acknowledged, but will not be liable for any failure to meet such dates. Company reserves the right to make partial shipments. Unless specified otherwise in these Terms, Company will deliver the Products FOB Origin. Delivery shall be deemed to have been made when Purchaser’s shipment has been delivered to a carrier, selected at Company’s option. The Purchaser bears full costs and risks of moving the goods from the Product’s shipping location to destination. Purchaser hereby acknowledges and accepts responsibility to promptly reimburse Company for all shipping charges, including but not limited to, premiums for freight insurance, inspection fees, assessments, express delivery charges and all other costs incurred in transporting the Products to the shipping destination. Company assumes no liability for products damaged during transit, but will extend assistance to help settle claims.

2.4 Inspection and Acceptance. Purchaser shall inspect all shipments within forty-eight (48) hours after arrival and notify Company in writing immediately of any shortages or other failures to conform to these Terms which are reasonably discoverable upon arrival, including, without limitation, any claim that the Products fail to conform to the specifications described herein. Purchaser shall allow Company a reasonable opportunity to inspect such Products to enable Company to verify the alleged nonconformity. Purchaser’s failure to timely notify Company in writing of any alleged nonconformity of the Products or any co-mingling of the Products shall constitute an immediate and irrevocable acceptance of the Products.

3. Payment.

3.1 Prices. Unless specified otherwise in these Terms the purchase prices for the Products shall be as specified by Company at its then-current standard price list or then current pricing agreement in effect with Purchaser at the time of purchase. Company may change its prices with 30 days’ prior written notice to Purchaser. The prices payable under this paragraph 3.1 do not include sales, goods and services, value added or other taxes. Purchaser will pay or reimburse Company for all such taxes, or other amounts payable to governmental authorities on account of the sale of the Products or will provide Company with an exemption certificate satisfactory to Company.

3.2 Payment. Company will issue invoices for all amounts payable under these Terms. Purchaser will pay the amount set forth on Company’s invoice within thirty (30) days from date of such invoice unless otherwise expressly stated in these Terms. All amounts payable under these Terms are denominated in the currency invoiced unless expressly agreed otherwise.

3.3 Payment of Undisputed Invoices. Unless previously otherwise negotiated, invoices issued by Company for whole or partial shipments of the Products shall be paid by the Purchaser. Purchaser shall promptly notify Company’s customer service personnel of any disputed invoice in writing to customerservice@neotract.com. Any amounts not paid when due and not the subject of good faith dispute will be subject to a late payment fee computed daily at a rate equal to one and one half percent (1.5%) per month or the highest rate permissible under applicable law, whichever is lower. Purchaser agrees to pay Company’s reasonable attorneys’ fees and other costs incurred in collection of any amounts not paid when due, whether or not a suit is commenced.

4. Product Return and Warranty. If a Product ordered or purchased under these Terms: (a) was shipped in error by Company; (b) was delivered after the Product’s expiration date; (c) was one which Company specifically authorized for return; or (d) was one that was opened at the direction of Company sales representative, Company, agrees to accept the return of the Product for full credit, provided: (i) the Product is returned to Company within forty-five (45) working days from the date the Product was received, and (ii) the Product, other than due to clause (d) above, is returned to Company, in its original packaging, in saleable condition, unopened, and undamaged. If the Purchaser desires to return Product pursuant to this warranty, the Purchaser shall contact its local Company sales representative for instructions on how to return the Product and for information on credit or replacement in accordance with Company standard practices. EXCEPT TO THE EXTENT PROHIBITED BY THE LAW OF THE TERRITORY WHERE THE PRODUCTS ARE USED: (A) COMPANY’S LIABILITY (WHETHER IN TORT, CONTRACT, OR OTHERWISE), AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), STRICT LIABILITY, OR PRODUCT LIABILITY OF COMPANY WITH REGARD TO ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THESE TERMS SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO COMPANY UNDER PARAGRAPH 3.1; AND (B) COMPANY SHALL HAVE NO OBLIGATION OR LIABILITY WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THESE TERMS WHETHER OR NOT COMPANY WAS AWARE OF THE POSSIBILITY OF THE SAME. RETURNS BASED ON A DEFECT OR MALFUNCTION OF A PRODUCT WILL BE HANDLED IN ACCORDANCE WITH THE APPLICABLE PRODUCT WARRANTY. Nothing in this Section shall limit the party’s limitation under Section 7 (Indemnity).

4.1 Limited Warranty. Company warrants to Purchaser that the Products substantially conform to Company's material published specifications and are free from any defects in material or workmanship through the sterility expiration date stated on the package. Purchaser's exclusive remedy for Company's breach of the foregoing warranty shall be, at Company's option, the replacement of a confirmed defective Product or the refund of the purchase price paid by Purchaser. All costs of replacement, including shipping charges, will be borne by the Company. This warranty is contingent upon proper use of Products in the application for which they were intended as indicated in the Instructions For Use thereof. This warranty shall not apply to Products that were modified or subject to unusual physical or environmental stress. Nothing in this Section shall limit the party's limitation under Section 7 (Indemnity).

4.2 Disclaimer and Release. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF COMPANY AND THE REMEDIES OF PURCHASER SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND PURCHASER HEREBY WAIVES, RELEASES, AND DISCLAIMS ALL OTHER TERMS, REPRESENTATIONS, CONDITIONS, WARRANTIES, OBLIGATIONS AND REMEDIES OF PURCHASER AGAINST COMPANY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND ANY OTHER GOODS OR SERVICES DELIVERED UNDER THESE TERMS, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF COMPANY; AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR INFRINGEMENT. Nothing in this Section shall limit the party's limitation under Section 7 (Indemnity).

4.3 Third Party Beneficiaries. There are no third party beneficiaries of the warranty granted by Company herein.

5. Reporting, Recordkeeping and Recall.

5.1 Company and Purchaser agree to supply to each other upon request any information necessary for the other to comply with any applicable governmental reporting or recordkeeping requirement including, but not limited to, the United States Food and Drug Administration's Medical Device Reporting Regulations, the European Medical Device Vigilance Guidelines, and all similar national laws 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 governmental reporting or recordkeeping requirements. Without limiting the generality of the foregoing, Purchaser agrees to provide, upon request, information to Company that responds to whether the device(s) may have caused or contributed to the death or serious injury of an individual or has malfunctioned, and whether the device(s) would be likely to cause or contribute to death or serious injury of another if the malfunction were to recur, in order for Company to comply with the aforesaid governmental reporting or recordkeeping requirements.

5.2 In the event of a recall, Company shall send a written notification to Purchaser. Purchaser shall cooperate fully in conducting such recall. Company shall pay all costs associated with shipping and costs of destruction if applicable.

6. Confidentiality. Both parties agree to hold in strict confidence and to use solely in connection with the performance of this Agreement all information provided in connection with the performance of their obligations under this Agreement, including without limitation, financial information and information relating to Purchasers and pricing, except to the extent that disclosure is required by applicable law. Both parties shall not make public announcements or publicity releases regarding any projects or this Agreement without the other party's prior written approval.

7. Indemnity.

7.1 By Company. Company shall indemnify and hold Purchaser and its officers, directors, employees and agents (each a "Purchaser Indemnitee") harmless from and against all claims, losses, damages or injuries (including reasonable attorneys' fees and legal expenses) arising out of any third party suit, action or claim (collectively "Liabilities") arising out of (i) the actual or alleged infringement of any United States patent¹ by a Product, except where such infringement would not have occurred but for Company's adherence to specifications, designs or drawings originating from Purchaser, (ii) the use of any Product by a Purchaser Indemnitee, provided such use is in strict accordance with the Product's Instructions For Use, (iii) any defect in a Product purchased by Purchaser under this Agreement, or (iv) a breach by Company of any representation or warranty herein, or any act, error or omission relating to the performance of Company's duties under this Agreement. Notwithstanding the foregoing, Company shall not indemnify or hold Purchaser Indemnitees harmless from any Liability to the extent arising from the negligence or willful misconduct of any Purchaser Indemnitee. In the case of (i) above, Company shall, at its own expense, settle or defend all suits, actions or claims against Purchaser Indemnitees in which such infringement is alleged. If any judgment shall be rendered against a Purchaser Indemnitee in any patent infringement suit, action or claim, Company shall, at its own cost and expense, satisfy and discharge same. In the event Purchaser is enjoined from using any part of the Products due to the alleged infringement of any patent granted by the United States government, Company shall at its sole option: (1) purchase for Purchaser the right to continue its use of the subject Product(s); (2) modify the subject Product(s) so that it is no longer infringing without loss of functionality; (3) replace the subject Product(s) with equipment or products of equal or better quality and the same functionality which is not infringing; or (4) refund to Purchaser the purchase price, as applicable, of affected Product(s). The foregoing patent indemnity obligations shall apply to all claims asserted by third parties against Purchaser Indemnitees, including claims of any government against Purchaser Indemnitees.

7.2 By Purchaser. Purchaser shall indemnify and hold Company and its officers, directors, employees and agents (each a "Company Indemnitee") harmless from and against all Liabilities arising out of (i) the use of any Product by Purchaser that is not in strict accordance with the Products instructions for use, or (ii) a breach by Purchaser of any representation or warranty herein, or any act, error or omission relating to the performance of Purchaser's duties under this Agreement. Notwithstanding the foregoing, Purchaser shall not indemnify or hold Company Indemnitees harmless from any Liability to the extent arising from the negligence or willful misconduct of any Company Indemnitee.

8. Termination; Default. Either party may immediately terminate this Agreement in whole or in part if the other party materially breaches its obligations under the Agreement. Upon partial termination, the terminated party will continue the performance to the extent not terminated. Purchaser agrees to pay any and all reasonable attorney's fees and other legal costs incurred by Company in connection with curing a default or enforcing any right or remedy under this Agreement. Either party may terminate this Agreement without liability with thirty (30) days prior written notice; provided, however, that any termination or expiration of this Agreement shall not release either party from its obligations accrued through such date nor shall any termination or expiration of this Agreement affect existing purchase orders accepted by Company prior to such expiration or termination and those purchase orders will be subject to the terms and conditions of this Agreement; provided further, however, that Company shall not be required to honor such existing purchase orders in the event of a

termination by Company for a material breach of Purchaser's obligations under this Agreement, including the failure to pay, or due to the fact that Purchaser becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed or has all or a substantial portion of its assets assigned, conveyed or sold.

9. Miscellaneous.

9.1 Force Majeure. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances beyond its reasonable control including but not limited to; acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery, restraints or delays affecting carriers, shortage or inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage. If the event continues for a continuous period in excess of 90 days, the other party shall be entitled to give notice in writing to the party experiencing the Force Majeure to terminate these Terms.

9.2 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, delegated or transferred by either party without the prior written consent of the other party; provided, however, that either party's consent shall not be required with respect to any assignment, delegation or transfer by a party (a) to a corporation controlling, controlled by or under common control with the party, (b) in connection with a merger, consolidation or combination, or (c) in connection with a sale of all or substantially all of the circulatory support assets of the party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9.3 Export Laws. Purchaser acknowledges that any Products supplied to Purchaser are subject to export control laws and regulations of the United States. Purchaser agrees to comply with all export laws, trade sanctions, regulations and restrictions of the United States, including but not limited to the shipment or any other transfer of the Products to a location or to any end user or for any end use that would violate any applicable export controls and trade sanctions. Purchaser further agrees to ensure that the Products will not be exported, sold or otherwise transferred to countries or persons in violation of the export laws and regulations of the United States.

9.4 Participation in Federal and State Programs. Neither party nor any of its employees is debarred, suspended, excluded or otherwise ineligible to participate in any federal or state health care program.

9.5 Compliance with Laws; Discount Safe Harbor. (a) Purchaser shall, in connection with this Agreement, comply with all applicable federal and state laws, regulations, and other authorities; (b) Purchaser shall comply with the authorities referenced in (a) above, including but not limited to, the federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b (b) ("Anti-Kickback Law"). As part of the cost reporting process or otherwise, Purchaser may be obligated to report and provide information concerning any discounts, rebates, credits or other price reductions provided under this Agreement pursuant to 42 U.S.C. § 1320a-7b (b) (3) (A) (the discount exception to the Anti-Kickback Law) and/or 42 C.F.R. § 1001.952(h) (the discount safe harbor to the Anti-Kickback Law), other federal or state laws, or agreements with third party payers. Purchaser should retain this Agreement, related invoices and any other documentation of discounts, rebates, credits and other price reductions and make such information available to federal or state health care programs (in connection with Medicare, Medicaid or other program), or third-party payers, upon request.

9.6 Governing Law and Forum. The validity, performance and construction of these Terms shall be governed by the laws of the State of California (excluding principles of conflict of laws). Each party agrees that valid service of process may be effected by certified mail at the last known address of its principal office, or by other means authorized under the laws of the State of California. Any suit or proceedings with respect to these Terms, shall be brought in the state or federal courts located in Alameda County, California. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to these Terms.

9.7 Notices. Unless otherwise specifically stated, any notice given hereunder shall be mailed certified or registered mail, postage prepaid, with return receipt requested; via a nationally recognized overnight courier, or transmitted via facsimile and shall be deemed received 3 days from mailing date, upon delivery if sent by overnight courier, or when it is received if by facsimile. If to Company: NeoTract, Inc., 4473 Willow Road, Ste. 100, Pleasanton, CA 94588, Attention: NeoTract Pricing; Fax: (925)401-0696, with a copy to NeoTract Legal by mail or by facsimile (925)401-0696.

Notices to Purchaser shall be sent to:

Purchaser: _____
Address: _____

Attention to: _____
Facsimile: _____
Phone: _____

10. Survival. Expiration or termination of this Agreement shall not relieve either party of its obligations incurred prior to expiration or early termination. Notwithstanding anything to the contrary contained in this Agreement, the obligations set forth in Sections 2.4, 4, 5, 6, 7, 8, 9.6, 9.7, 10 and 11 will survive any expiration or termination of this Agreement.

11. Entire Agreement. These Terms constitute the entire agreement, and supersede any and all prior agreements, between Company and Purchaser with regard to the Products, unless an agreement is entered into between the Company and Purchaser for special purchase terms supplemental to these Terms. Purchaser agrees that Company's failure at any time to require compliance by Purchaser of any of the provisions of the present Terms shall not operate as a waiver of the right of Company to request strict performance of the same or like provisions at a later time. No amendment, modification, or waiver of these Terms will be valid unless set forth in a written instrument signed by the parties to be bound.