

## TERMS AND CONDITIONS OF SALE

The following terms and conditions apply to purchases of Preceptis Medical, Inc. ("Company") products.

1. **Acceptance of Orders.** All products and services of the Company are furnished to the purchaser identified in a quote, price list or other order form (the "Buyer") only on the terms and conditions stated below ("Terms") and in such quote, price list or other order form (together, the "Agreement"). Each order from the Buyer shall be subject to these Terms, and acceptance of an order by Company and Company's performance under the terms of the Agreement is expressly conditioned on the Buyer's assent to such Terms. Any additional or conflicting terms shall have no effect.
2. **Prices.** Prices are FOB Company's facility in Minneapolis, Minnesota, Freight Prepaid and Add, unless otherwise agreed. The prices for products are set forth in the applicable Company price lists, quotes or other order forms
3. **Taxes and Other Charges.** Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between Company and the Buyer, shall be paid by the Buyer in addition to the prices quoted or invoiced, unless Company specifically states in writing that such taxes or charges are included in such price. If applicable, the Buyer shall provide written evidence of its tax exempt status.
4. **Delivery, Claims and Delay.** All delivery dates are approximate and will be contingent upon Company's receipt of confirmed orders and approval by Company of credit information. Company will not be liable for any failure to meet shipping or delivery schedules or for any damages caused as a result of any delay in delivery or failure to deliver. Delivery of Products shall be FOB Company's facility. The risk of loss or damage to the Products shall be assumed by Buyer upon the shipment of the Products from Company's facility. Shipping charges are not included in the price quoted for the Products, but will be added to the final invoice for the Products unless otherwise agreed to by the parties in writing.

Company's Products will be shipped standard ground service, unless otherwise specified. Expedited shipping is available upon request at an additional fee. Company reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve the Buyer of its obligation to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to Company within 10 days after receipt of shipment. Damage or destruction of the Products after delivery shall not release the Buyer from its obligation to pay for such Products

5. **Acceptance by Buyer.** The products shall be deemed accepted by Buyer as of the date or receipt of the products by Buyer unless within ten (10) days after such date Buyer gives Company written notice that the products are not accepted and specifies in detail the reasons thereof.

Company may then, at its sole discretion, proceed to make any necessary corrections; such corrective action by Company shall be Buyer's sole remedy for non-acceptance of a product. Upon completion and acceptance of such corrections, the products will be accepted by Buyer. Under no circumstance shall Buyer be entitled to revoke acceptance of any product subsequent to acceptance thereof.

6. **Payment Terms.** The terms of payment for Products shall be net cash, net 30 days after shipment of the Products. Company reserves the right to require pre-paid payment terms from any Buyer whose account is overdue for a period of more than 30 days or who has an unsatisfactory credit or payment record. Company may also refuse to sell to Buyer until overdue accounts are paid in full.
7. **Discounts and Compliance**
  - a. Each Party represents and certifies it will comply with all applicable federal and state laws and regulations, including, without limitation, the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, the False Claims Act, 31 U.S.C. §§ 3729-3733, and any comparable state laws and regulations with respect to this Agreement.
  - b. Each Party acknowledges and agrees that this Agreement is made in good faith, based upon fair market value, pursuant to an arm's length negotiation between the Parties, and is intended by Parties to establish a business relationship in which any rebates, discounts, payments or credits provided to the Buyer comply with the Discount Safe Harbor in 42 C.F.R. § 1001.952(h). Specifically, any discount offered herein is intended by Company to qualify as and constitute permissible "discounts and other reductions in price" under the regulations published by the Office of Inspector General under the Anti-Kickback Statute, and the Parties agree this Agreement complies with such requirements.
  - c. Buyer further agrees to (a) comply with all applicable laws and regulations relating to the accounting, application, and proper reporting of discounts and pricing under this Agreement, including but not limited to the requirements of the Discount Safe Harbor under 42 C.F.R. § 1001.952(h); **(b) properly claim, report and appropriately reflect all prices paid under this Agreement net of all discounts as required by applicable laws and regulations, including but not limited to on Medicare, Medicaid and state agency cost reports;** (c) retain a copy of this Agreement and all other documentation regarding this Agreement, together with the invoices for purchase of Products hereunder and shall permit representatives of the U.S. Department of Health & Human Services or any relevant state agency access to such records upon request; and (d) to not seek or collect reimbursement from any governmental agency (including Medicare or a state agency such as Medicaid which reimburses for health care services) or any other payer, including patients, for any Device that is provided to Buyer by Company at no charge or replaced at no charge. **The reporting under section (b) above shall expressly include the cost of the free or discounted Devices provided by the Company to Buyer under this Agreement.**
8. **Limited Warranty and Remedies.** Company warrants all Products manufactured by it and supplied hereunder to be free from defects in material and workmanship and shall meet the published technical and performance specifications for the Products for a period of 1 year from

the date of delivery or the expiration of a Product's shelf life, whichever is shorter. The Product is designed for single use only and is not reusable. If the Product fails through no fault of Buyer, the Product will be replaced by Company. All returns based on defect must be accompanied by a complaint number, available by contacting the Company's Customer Service Department at [customerservice@preceptismedical.com](mailto:customerservice@preceptismedical.com) and shipping all authorized returns to the address provided at time of return request within 10 days. This warranty shall not apply to Products that are re-used or defects or damage resulting from: fire; misuse; abuse; accident; neglect; improper care and/or maintenance; lack of care and/or maintenance; Buyer-supplied products or equipment used in connection with the Product; modification or repair of which is not authorized by Company; permitting any substance whatsoever to contaminate or otherwise interfere with the Product; and any other cause outside the control of Company.

Unless otherwise agreed in writing, the Buyer's sole and exclusive remedy under the above warranty is limited to replacing, free of charge, a Product which is reported to Company's Customer Service Department and which is thereafter returned with the appropriate RMA number and complaint number, not later than 10 days after the expiration date of the applicable warranty, to the Company's Customer Service Department, transportation charges prepaid, and which, upon Company's examination, is found not to conform with above warranties. Company does not accept returned goods for a cash refund.

If the Buyer transfers, sells or assigns the Products other than to an affiliate of the Buyer, all obligations under this warranty will terminate unless the Buyer receives the prior written consent of Company for the transfer, sale or assignment.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR ANY OTHER MATTER. COMPANY SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER WITH RESPECT TO PRODUCTS, PARTS OR SERVICES MANUFACTURED OR FURNISHED BY IT, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. ANY REMEDIES UNDER THE TERMS OF THIS SECTION ARE SUBJECT TO THE TERMS AND LIMITATIONS IN SECTION 9 BELOW.**

9. **Returns.** No products may be returned without prior written authorization from Company, except for warranty claims described above. Altered, damaged, obsolete and discontinued products will not be accepted. Credit will be given for authorized returns: for the full purchase price if received within thirty (30) days of the shipment date, and for the full purchase price less 15% restocking charge if received after thirty (30) but less than sixty (60) days after shipment; No returns will be accepted more than sixty (60) days after shipment.
10. **Vigilance.** Buyer agrees to notify Company promptly of any complaints or incidents relating to the products and provide such details as are requested by Company.
11. **Default.** The Buyer's failure to either make any payment when due or comply with any other material term or condition of these Terms shall constitute default. If the Buyer has not cured the

default within 30 days after Company gives written notice of such default, Company may, in addition to any other rights and remedies for damages provided herein or under law, terminate the Agreement between itself and the Buyer and terminate its obligations to perform thereunder by giving the Buyer written notice to take effect upon receipt. An interest charge equal to 1 1/2% per month (18% per year) or the highest rate allowable by applicable law, whichever is less, will be added to invoices outstanding beyond 30 days after shipment. Buyer agrees that Company is entitled to recover all and any legal and other costs and expenses (including reasonably attorneys' fees) arising from the collection of any overdue monies.

12. **Attorney's Fees.** Buyer agrees to pay Company reasonable costs, expenses and attorney's fees incurred by Company in enforcing Buyer's obligations or Company's rights hereunder, including collecting any money due from Buyer or successfully defending against any claim made by Buyer.
13. **LIMITATION OF LIABILITY.** Notwithstanding anything in this agreement to the contrary, Company will not be liable for any consequential, incidental, special, or punitive damages, or for loss of revenue or profit, in connection with its performance or failure to perform this agreement, regardless of whether such liability arises from breach of contract, tort, or any other theory of liability. In no event shall Company's liability to buyer arising out of or relating to the sale of any product or service pursuant to this agreement exceed the purchase price paid by buyer to Company for such product or service.
14. **Assignment.** The Buyer may not assign any of its rights or delegate any of its duties hereunder, except to a majority-owned and controlled affiliate of the Buyer, without the prior written consent of Company, such consent not to be unreasonably withheld.
15. **Waivers.** The failure of Company to insist upon the performance of any of the terms or conditions of this contract or to exercise any right there under shall not be deemed to be a waiver of such terms, conditions or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right under this contract. No terms and conditions other than those stated herein, and no agreement or understanding, in any way purporting to modify these terms and conditions, shall be binding on Company without its express written consent.
16. **Severability Of Provisions.** In the event that any of the provisions hereof are found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this agreement shall remain valid and enforceable according to its terms. Without limiting the foregoing, it is expressly understood and agreed that each and every provision of this agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages is intended by the parties to be severable and independent of any other such provision and to be enforced as such. Further it is expressly understood and agreed that in the event a remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth herein shall remain in effect.
17. **Changes.** Company may at any time make such modifications or changes in design and construction of the Products, components or parts as Company deems appropriate, without notice to the Buyer, subject to applicable governmental regulations.

18. **Force Majeure.** Delay in or failure to carry out the duties imposed upon either party (except Buyer's duty to make payments to Company) under this agreement shall not give rise to any claim for damages if such delay or failure results directly or indirectly from acts of God, acts of any civil or military authority, civil disturbances, war, strikes, or other labor disputes, shortages or labor materials, fire, transportation contingencies, laws, regulations, acts or orders of any government or agency or official thereof, catastrophes or any other similar occurrences beyond such party's reasonable control.
19. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction. The exclusive forums for the resolution of any disputes hereunder shall be the state courts in Hennepin County, Minnesota or federal district courts in the District of Minnesota.

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