

**PATHWAY MEDICAL TECHNOLOGIES, INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

**1. Agreement.** These Standard Terms and Conditions of Sale are a part of the order or other written agreement ("Order") between the purchaser specified in the Order ("Purchaser") and Pathway Medical Technologies, Inc. ("Pathway") for Purchaser's purchase of products ("Products") from Pathway. The Order and these Terms and Conditions are sometimes referred to herein as this Agreement. Pathway 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 this Agreement (whether or not it would materially alter this Agreement) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Pathway specifically agrees to such provision in a written instrument signed by Pathway. Pathway's acceptance of any Order by Purchaser is expressly conditioned on Purchaser's agreement to these Standard Terms and Conditions of Sale.

**2. Purchase and Sale.** Pathway 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 Pathway. All Orders are subject to acceptance by Pathway either in writing or by shipping Products. Pathway may accept any Order in whole or in part and Pathway's shipment of less than all Products ordered will constitute acceptance only as to those Products shipped.

**3. Delivery.** Pathway will use commercially reasonable efforts to meet any delivery date specified in the Orders, but will not be liable for any failure to meet such dates. Unless otherwise specified in the Order, Pathway will prepay freight and other shipping costs.

**4. Prices and Taxes.** Purchaser will pay Pathway the prices specified in the applicable Order or, if no price is specified in the Order, the price set forth in Pathway's standard price list in effect on the date that the Order is accepted by Pathway. All prices are in United States dollars, FOB point of shipment, and do not include any sales, use or other taxes. Purchaser will pay or reimburse Pathway for all shipping costs, taxes and other amounts payable to governmental authorities in connection with the applicable transactions, or will provide Pathway with an exemption certificate satisfactory to Pathway.

**5. Payment.** Purchaser will pay the amount set forth on Pathway's invoice in United States dollars within thirty (30) days from the date of such invoice. Any amount not paid within such thirty (30) day period will be subject to a finance charge equal to 1.5% per month or the highest rate allowable by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure Purchaser's breach or default for late payment. Further, Purchaser will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by Pathway to collect any amount not paid when due. Pathway may accept any payment in any amount without prejudice to Pathway'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.

**6. Limited Warranty and Remedy.** Pathway warrants that, upon delivery, each Product will be free from defects in materials and workmanship and will operate in all material respects in accordance with applicable instructions and manuals provided by Pathway. This warranty will be in effect for two years from the date of delivery in the case of console Products and until the expiration date printed on the Product packaging in the case of catheter Products (each, a "Warranty Period"). If Purchaser gives Pathway written notice during the Warranty Period of any Product's failure to comply with this warranty, Pathway will use commercially reasonable efforts to correct the noncompliance within a reasonable period of time by: (a) repairing or modifying the non-complying Product; (b) providing Purchaser with a replacement Product; or (c) refunding the price paid by Purchaser to Pathway for the Product, each at Pathway's sole discretion. In the event of a refund for a console Product, the price paid will be amortized over a period of two years from the date of delivery and the amount of the refund will be equal to the unamortized portion of the price paid. This warranty will not apply to any Product that (x) has not been operated and maintained in accordance with applicable instructions and manuals, (y) has been repaired or altered by unauthorized personnel, or (z) has been misused, abused, damaged or subjected to operation for which it was not intended. This warranty does not apply to expendable items such as catheter connections or external tubing.

**7. Product Liability Indemnification.** Pathway will defend and indemnify Purchaser against any third party claim arising out of bodily injury or death, if and to the extent caused by any defect in the design or manufacture of the Products, provided that Purchaser: (a) gives Pathway prompt written notice of the claim; (b) allows Pathway to assume control of the defense and settlement of the claim; (c) assists and cooperates with Pathway in connection with the defense and settlement of the claim; and (d) does not settle the claim without Pathway's prior written consent. This paragraph will not apply to any claim arising out of the negligence of Purchaser or any third party.

**8. Patent Indemnification.** Pathway will defend and indemnify Purchaser against any third party claim arising out of any infringement by the Product of any patent issued under the laws of the United States or any other country in which Pathway has been granted a patent on the Product, provided that Purchaser: (a) gives Pathway prompt written notice of the claim; (b) allows Pathway to assume control of the defense and settlement of the claim; (c) assists and cooperates with Pathway in connection with the defense and settlement of the claim; (d) complies with any court order or settlement made in connection with the claim (e.g., as to future use of any infringing Product); and (e) does not settle the claim without Pathway's prior written consent. This paragraph will not apply to any claim resulting from any use of the Product in combination with any equipment or other items not furnished by Pathway, from any use of the Product not in

conformity with applicable instructions and manuals or from any use of a Product modified or repaired by a party not authorized by Pathway.

**9. DISCLAIMER AND RELEASE.** THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF PATHWAY AND THE REMEDIES OF PURCHASER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND PURCHASER HEREBY WAIVES, RELEASES AND DISCLAIMS, ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF PATHWAY AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF PURCHASER AGAINST PATHWAY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND ANY OTHER GOODS OR SERVICES DELIVERED UNDER THIS AGREEMENT, 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 (ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF PATHWAY; AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR INFRINGEMENT.

**10. Excused Performance.** Pathway will not be responsible for or be considered to be in breach of or default under this Agreement on account of any cause beyond Pathway's reasonable control or not occasioned by Pathway's fault or negligence (including, but not limited to, Pathway's inability to procure materials, parts, equipment or services).

**11. LIMITATIONS OF LIABILITY.** PATHWAY'S LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE, AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY OF PATHWAY) WITH REGARD TO ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT WILL NOT EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO PATHWAY FOR THE SAME. FURTHER, PATHWAY WILL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, 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 THIS AGREEMENT.

**12. Intellectual Property Rights.** The Products involve valuable patent, copyright, trademark, trade secret and other intellectual property rights of Pathway. Pathway reserves all such rights. No title to or ownership of any intellectual property rights related to any Product is transferred to Purchaser pursuant to this Agreement. Purchaser will not attempt to reverse engineer any Product or component thereof or to otherwise misappropriate, circumvent or violate any of Pathway's intellectual property rights.

**13. Product Transfers.** Purchaser will not, without the prior written consent of Pathway, ship or otherwise transfer any Product to a location outside the country to which the Product is shipped by Pathway. If Purchaser wishes to transfer any Product to a location other than the location to which it is shipped by Pathway or to any third party, Purchaser will give Pathway prior written of the transfer (including, without limitation, the date of the proposed transfer, the location to which the Product is being transferred, and the name, address and telephone number of the proposed transferee).

**14. No Clinical Trials.** Purchaser will not use any Product in any clinical trial without the prior written consent of Pathway. In the event of any transfer of any Product, Purchaser will give the transferee written notice of this prohibition prior to the transfer.

**15. Unenforceable Provision.** The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced.

**16. Nonwaiver.** Any failure by Pathway to insist upon or enforce performance by Purchaser of any of the provisions of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of Pathway's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather the same will be and remain in full force and effect.

**17. Assignment.** This Agreement will inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives.

**18. Applicable Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law principles. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**19. Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between Pathway and Purchaser with regard to the Products. No amendment, modification, or waiver of this Agreement will be valid unless set forth in a written instrument signed by the party to be bound.