

CHARTER MEDICAL LTD.'S TERMS AND CONDITIONS OF SALE TO DISTRIBUTORS

1. SALE OF GOODS These terms and conditions are an offer on the part of Charter Medical, Ltd. ("MANUFACTURER") to the party to whom this document is submitted, ("DISTRIBUTOR"). **MANUFACTURER'S AGREEMENT TO SELL GOODS TO DISTRIBUTOR IS EXPRESSLY CONDITIONED ON DISTRIBUTOR'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED BELOW.** As hereinafter used, "goods" shall mean the personal property (including any services incident thereto) specified in this document. **IF THIS OFFER RESPONDS TO OR FOLLOWS ANY REQUEST FOR QUOTATION OR PURCHASE ORDER CONTAINING TERMS OR CONDITIONS DIFFERENT FROM OR ADDITIONAL TO THOSE SET FORTH HEREIN, SUCH TERMS AND CONDITIONS SHALL BE CONSIDERED TO MATERIALLY ALTER THIS OFFER AND SHALL NOT CONSTITUTE AN ACCEPTANCE OF DISTRIBUTOR'S TERMS AND/OR CONDITIONS ONLY. HOWEVER, MANUFACTURER EXPRESSLY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS.**

2. PRICES Prices quoted are F.O.B. MANUFACTURER'S plant, unless otherwise stated in this document and are for goods produced to commercial tolerances. Prices do not include any federal, state or local taxes. Wherever applicable, such taxes will be added to the invoice to be paid by DISTRIBUTOR. Where packaging other than standard packaging or special handling is necessary, the expense will be charged to the DISTRIBUTOR. MANUFACTURER reserves a security interest in any goods sold to the extent of the invoiced amount to secure payment of DISTRIBUTOR's obligation (unless otherwise prohibited by law). If DISTRIBUTOR defaults, it agrees to make the goods available so that MANUFACTURER may peaceably repossess. A copy of the invoice may be filed with the appropriate office at any time as a financing statement. At MANUFACTURER request, DISTRIBUTOR will execute any instrument MANUFACTURER requires to perfect its security interest. Prices on any undelivered goods covered by this contract are subject to further increase, unless otherwise agreed, (a) due to increase in cost to MANUFACTURER of materials used in the manufacture, (b) as a result of restrictions or regulations imposed under any agreements, codes, or licenses made or issued pursuant to federal or state law, decrees or orders, or (c) as a result of increase in labor costs, providing that this clause shall not be operated to fix a price in violation of any price regulations of the United States Government. MANUFACTURER shall notify DISTRIBUTOR of any price increase arising for any of the above reasons. Prices quoted for goods to be shipped outside the continental United States are based on international currency exchange rates in effect at the time of quotation. MANUFACTURER reserves the right to change its prices at any time prior to shipment if exchange rates vary. Any quantity discount applicable to the sale covered by this document shall apply only to sales of goods made by MANUFACTURER, and such discount shall be computed solely on the basis of goods sold to DISTRIBUTOR by MANUFACTURER. Any early payment shall be on the purchase price only.

3. TERMS OF PAYMENT Unless otherwise provided, payment shall be net cash thirty (30) days from the date of invoice. Goods exported from the USA may be subject to a down payment, with the balance payable through an Irrevocable Letter of Credit established through and confirmed by a bank acceptable to MANUFACTURER. The obligation to make payment shall continue without regard to any warranty obligations made hereunder by MANUFACTURER and without regard to whether DISTRIBUTOR has made any inspection of the goods. MANUFACTURER shall have the right, in its sole discretion, to require payment before shipment or payment via letter of credit in the event that it determines that DISTRIBUTOR is delinquent in payment or will exceed credit limit. A finance charge of one and one half percent (1 1/2%) per month (or the highest rate allowed by law) will be applied to any outstanding balance. DISTRIBUTOR shall pay to MANUFACTURER any reasonable expenses incurred by MANUFACTURER for collection from DISTRIBUTOR of money due and unpaid, including reasonable attorney's fees and related costs. DISTRIBUTOR agrees to authorize its creditors to disclose to MANUFACTURER information concerning DISTRIBUTOR'S credit worthiness, upon MANUFACTURER'S request. By submitting any purchase order or other document, either prior to or subsequent to the date of MANUFACTURER'S quote, DISTRIBUTOR represents that it is solvent for the purposes of U.C.C. Section 2-702 and that it is not insolvent as defined by U.C.C. Section 1-201 (23). In the absence of written notification of insolvency, the transmission of any writing by DISTRIBUTOR to MANUFACTURER during the course of performance of the contract will be understood to constitute a written representation of continued solvency for the purposes of U.C.C. Section 2-702 (2).

4. DELIVERY Shipping dates are approximate, and time shall not be of the essence in this contract, provided, that MANUFACTURER accepts no liability for any losses or for general, special or consequential damages arising out of delays in delivery. If shipment is delayed for over one hundred and twenty (120) days, DISTRIBUTOR may reject the goods only if the DISTRIBUTOR will sustain substantial damage as a result of such delay. Unless otherwise provided, MANUFACTURER shall have the right to make shipment in installments, and delay in shipment of any installment or failure to ship any installment shall not relieve DISTRIBUTOR of its obligation to accept remaining installments. Where special packaging, including private labeling is required, the expense involved will be charged to DISTRIBUTOR.

5. FORCE MAJEURE MANUFACTURER shall not be held responsible for any delay or failure to perform its obligations hereunder in whole or in part due, directly or indirectly, to matters outside of MANUFACTURER'S control, including without limitation, war, epidemics, flood, acts of God, accidents, shortage of transportation, terrorism, blockades, embargoes, federal, state, municipal, or any other governmental action or regulation, strikes or other labor troubles, fire, damage to, or destruction in whole or in part of merchandise or manufacturing plant, lack of, or inability to obtain, materials, labor, fuel or supplies, restraining orders or injunctions of any court or judge, or any other causes, contingencies or circumstances within or without the United States. Occurrence of any of the above shall, without liability to MANUFACTURER, excuse MANUFACTURER from further performance of this Agreement or, at its election, extend the time of performance. If any shipment is delayed six (6) or more months, either party shall have the right, by written notice to the other, to cancel that shipment and the balance of this contract without liability to either party for any losses or damages arising out of such cancellation.

6. DISTRIBUTOR DELAY: TOOLS If DISTRIBUTOR is unable or unwilling to accept delivery of goods at time of completion, MANUFACTURER shall invoice DISTRIBUTOR for the full purchase price. If MANUFACTURER is able to store the goods in its own facilities, MANUFACTURER shall have the right to impose on DISTRIBUTOR a reasonable charge for handling and storage. Goods held for DISTRIBUTOR under this provision shall be held at DISTRIBUTOR'S sole risk. MANUFACTURER shall not be responsible for any loss or damage to the goods during such storage or for any indirect, incidental, or consequential damages resulting from any damage or loss to the goods while stored on DISTRIBUTOR'S behalf. Unless otherwise expressly provided, MANUFACTURER shall retain title to, and possession of, any models, drawings, patterns, dies, molds, jigs, fixtures and tools relating to this contract.

7. WARRANTY MANUFACTURER warrants that at the time of shipment its goods shall be substantially free of material defects in workmanship and material under normal use and service and shall substantially conform to contract specifications and be within the limits and sizes published by MANUFACTURER, subject to MANUFACTURER'S standard tolerances for variations. This warranty is inapplicable to the extent MANUFACTURER has selected materials or designed the product. If MANUFACTURER has provided a sample to DISTRIBUTOR that differs from contract specifications and DISTRIBUTOR has approved such sample, MANUFACTURER'S warranty will be satisfied if the goods either substantially (i) conform to the sample or (ii) conform to the contract specifications and fall within the limits and sizes published by MANUFACTURER, subject to standard tolerances for variations. MANUFACTURER shall have no liability to DISTRIBUTOR if DISTRIBUTOR'S purchase order omits a specification and MANUFACTURER fills the order using goods or a design that materially conforms to a standard or customary specification. In no event shall MANUFACTURER be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity or the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. **ALL OTHER WARRANTIES, DIRECT OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.**

8. DISTRIBUTOR'S REMEDIES DISTRIBUTOR agrees to inspect the goods prior to acceptance and upon receipt and to give written notice within 15 days to MANUFACTURER of the precise nature of any claim that the goods breach any warranty provided herein. MANUFACTURER will be afforded a prompt opportunity to inspect the goods. If DISTRIBUTOR shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed accepted and to conform with the terms of the contract and DISTRIBUTOR shall be bound to accept and pay for the goods in accordance with the terms of the contract. DISTRIBUTOR expressly waives any rights DISTRIBUTOR may have to revoke or refuse acceptance after such 15 day period. If DISTRIBUTOR provides MANUFACTURER with notice within fifteen (15) days of learning of a possible warranty breach and reasonable opportunity to inspect: (a) if the claim is for a shortage in excess of ten percent (10%) of the entire order, DISTRIBUTOR may require MANUFACTURER to make up the shortage within a reasonable time of MANUFACTURER'S receipt of the notice; and (b) if the claim is for a breach of warranty, MANUFACTURER may, at its option, either repair or replace said nonconforming goods or repay the price thereof. If MANUFACTURER requests the return of the nonconforming goods, no obligation for breach of warranty shall arise unless the goods have been returned to MANUFACTURER at MANUFACTURER'S expense, within thirty (30) days after such request is made. DISTRIBUTOR'S failure to provide timely notice shall constitute a waiver of its claims. **The aforesaid obligations of MANUFACTURER to correct deficiencies in quantities in excess of ten percent (10%) and to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of MANUFACTURER'S liability and DISTRIBUTOR'S sole and exclusive remedy. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR LOSS OF USE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES.**

9. INDEMNIFICATION DISTRIBUTOR shall include in its terms and conditions of sale an effective disclaimer of warranties and limitations of liability at least as restrictive as those contained herein. In any event, DISTRIBUTOR ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD MANUFACTURER HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT MANUFACTURER IS NEGLIGENT OR STRICTLY LIABLE) ARISING: (1) OUT OF ANY PROPERTY MADE IN WHOLE OR IN PART FROM THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT AND (2) AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Any advice furnished by MANUFACTURER, as to any use of the goods by DISTRIBUTOR, is offered "as is" without warranty of any kind, is gratuitous and shall not affect the limitations on MANUFACTURER'S warranties or DISTRIBUTOR'S agreement to indemnify. DISTRIBUTOR acknowledges that this Agreement is for the purchase of goods, not services, and that MANUFACTURER shall therefore have no liability to DISTRIBUTOR for any harm or loss caused by advice received by DISTRIBUTOR from any of MANUFACTURER'S agents or employees. With respect to goods manufactured solely to MANUFACTURER'S designs or specifications, MANUFACTURER shall defend any action brought against DISTRIBUTOR claiming that such goods are an infringement of any patent, trademark or copyright and MANUFACTURER will pay any costs and damages finally awarded against DISTRIBUTOR in any such action, under the following conditions: (a) MANUFACTURER is notified promptly in writing by DISTRIBUTOR of any notice of such claim, (b) MANUFACTURER has sole control of the defense in any action on such claim and all negotiations for its settlement and compromise, and (c) should MANUFACTURER'S products become, or in MANUFACTURER'S opinion are likely to become, the subject of a claim of infringement of a patent, trademark or copyright, MANUFACTURER will have the option of replacing or modifying the same so that it does not infringe or to accept its return and grant to DISTRIBUTOR a credit for such products. This states the entire liability of MANUFACTURER with respect to infringement of patents by MANUFACTURER'S goods or any parts thereof. DISTRIBUTOR shall indemnify, defend and hold MANUFACTURER harmless against any damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, copyrights or trademarks or for unfair competition (1) relating to the use or sale of any of MANUFACTURER'S goods in any combination, method, or process and/or (2) arising out of compliance by MANUFACTURER with DISTRIBUTOR'S designs, specifications or instructions, including claims for patent or copyright infringement. If a claim is brought against MANUFACTURER by an agent or employee of DISTRIBUTOR, DISTRIBUTOR agrees to defend, indemnify and hold MANUFACTURER harmless from and against any and all liability, loss, damages, and expense relating to the claim.

10. SETOFF MANUFACTURER shall have the right to setoff all amounts due to MANUFACTURER against payments owed to DISTRIBUTOR, whether arising out of this or any other contract between DISTRIBUTOR and MANUFACTURER, its subsidiaries, or affiliates.

11. GENERAL

a) Assignment and Delegations: DISTRIBUTOR will not assign any rights or delegate any duties under the Agreement without the written consent of MANUFACTURER.

b) **Statute Of Limitations:** DISTRIBUTOR agrees that any action of any kind by the DISTRIBUTOR against MANUFACTURER must be brought within one (1) year of the date of delivery.

c) **Modification, Waiver and Termination:** This contract shall not be modified or terminated unless expressly agreed by both parties in writing. No waiver of any default hereunder shall be deemed a waiver of the obligation of future compliance, and any provision waived shall remain in full force and effect. In addition to its other remedies, MANUFACTURER may cancel any unfulfilled part of the contract without any liability and without notice if DISTRIBUTOR fails to pay amounts due or DISTRIBUTOR shall become bankrupt, insolvent, makes an assignment for the benefit of creditors or a receiver is appointed for DISTRIBUTOR, or DISTRIBUTOR is acquired or sold in whole or in part.

d) **Sole Agreement:** Unless otherwise agreed in writing, this document constitutes the entire agreement between MANUFACTURER and DISTRIBUTOR, and supercedes any previous agreement, representation or warranty, whether express or implied, regarding the goods. DISTRIBUTOR acknowledges that no representations, understandings, conditions, or agreements have been made or relied upon other than those specifically stated in this Agreement.

e) **Construction:** The contract will be governed by the laws of the State of MANUFACTURER'S place of business, as shown on the face of this Quote.