

Disclosure of Essential Terms and Conditions of Sale for Diaphragm Direct® Replacement Diaphragms

1.0 Not Binding Contract: This document does not constitute a binding contract. It is intended to be a disclosure of the essential terms and conditions of Seller's Agreement For Sale Of Diaphragm Direct® Replacement Diaphragms ("Agreement").

2.0 Sale and Purchase: The purchase price of all diaphragms ("Goods") will be stated in the Agreement. The costs of shipping and the amount of any taxes, including sales, excise or other taxes, if any, applicable to the Goods covered under this Agreement, shall be added to the purchase price and shall be paid by Buyer unless otherwise agreed to by the Parties. Buyer shall make full payment for the Goods within thirty (30) days after Buyer receives the Goods. If Buyer fails to make full payment to Seller for Goods within 30 days, Buyer shall be liable to Seller for a late charge of one and one-half (1½) percent per month (or 18 percent per year) on any outstanding amounts Buyer owes to Seller.

3.0 Shipment, Tender, Transfer of Title, Receipt of Goods, and Risk of Loss: The Seller will arrange to ship the Goods to Buyer's address via a carrier to the Buyer's address. Buyer shall pay all costs associated with shipping. The Goods shall be deemed tendered, and title shall be deemed to have passed, when delivered to the carrier. The Goods shall be deemed received by Buyer when delivered to Buyer's place of business. Risk of Loss also passes to Buyer upon delivery to the carrier. The costs of shipping and handling will be shown on Buyer's invoice ("Invoice"). The Seller will inform Buyer of estimated shipment dates, but Seller will not be responsible for delays in delivery due to events beyond Seller's control, including but not limited to: shortage of materials; labor strikes; transportation failures; acts of God; war; accidents; delays or difficulties associated with carriers, contractors, or suppliers; inability to obtain materials; or shortages of fuel or energy.

4.0 Right of Inspection: Buyer shall have the right to inspect the Goods at the time and place of delivery, and within ten (10) business days after delivery. Buyer must give written notice to Seller of any claim that the Goods are nonconforming on account of the condition, quality, or grade of the Goods. Buyer must specify in detail the basis of such claim. All written notices of nonconforming Goods to Seller must be made via facsimile at 919-981-6584. If Buyer fails to provide written notice to Seller within ten (10) days after receipt of Goods, or otherwise fails to comply with the conditions set forth in this section, Buyer will have irrevocably accepted Goods, waived its right to reject Goods, and waived all other claims with respect to Goods.

5.0 Return of Non-Conforming Goods: a) Buyer provides written notice of nonconforming Goods to Seller pursuant to the Section 4.0, above, Seller will arrange to ship the nonconforming Goods back to Seller within thirty (30) days after receiving the Buyer's written notice. Prior to the expiration of this thirty (30) day period, Seller may have an agent inspect the Goods for nonconformity. Otherwise, such inspection will be made on return to Seller's plant within ten (10) days after Goods arrive at the plant. If Seller confirms the Goods as nonconforming, Seller will ship conforming Goods to Buyer within twenty (20) days of the inspection. b) All Goods returned to Seller are subject to the following terms: (a) all Goods must, on their arrival at Seller's plant, be found to be in first-class condition; if not, the cost of returning goods to saleable condition will be deducted from the credit memoranda; (b) a handling charge will be made from all credit memoranda issued for Goods returned; (c) transportation charges, if not prepaid, will be deducted from credit memoranda.

6.0 Seller's Right Of Possession: Seller shall have the right, in addition to all others it may possess, at any time, for credit reasons or because of Buyer's default or defaults, to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and repossess all goods which may be stored with Seller for Buyer's account, without the necessity of taking any other proceedings, and Buyer consents that all the merchandise so recalled, retaken, or repossessed shall become Seller's absolute property, provided that buyer is given full credit for it. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to Seller because of any default of Buyer under the Uniform Commercial Code as in force and effect in the State of Florida on the date of this Agreement.

7.0 Limited Warranty: THIS PRODUCT IS SUBJECT TO THE FOLLOWING EXPRESS AND LIMITED WARRANTY: SELLER WARRANTS THAT GOODS, FOR A PERIOD OF ONE YEAR COMMENCING FROM THE DATE GOODS WERE DELIVERED TO BUYER, TO BE FREE FROM DEFECTS OF MATERIAL AND WORKMANSHIP, PROVIDED THE PRODUCT IS USED IN A MANNER WHICH SELLER RECOMMENDS. IF SELLER'S EXAMINATION SHALL DISCLOSE TO ITS SATISFACTION THAT THE PRODUCTS ARE DEFECTIVE, AND AN ADJUSTMENT IS REQUIRED, THE AMOUNT OF SUCH ADJUSTMENT SHALL NOT EXCEED NET SALES PRICE OF THE DEFECTIVE PRODUCTS ONLY AND NO ALLOWANCE WILL BE MADE FOR LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. BUYER MUST MAKE WRITTEN CLAIM TO SELLER TO COMMENCE THE WARRANTY ADJUSTMENT PROCEDURES, AND BUYER MUST MAKE THE CLAIM WITHIN THE ONE-YEAR WARRANTY PERIOD DESCRIBED ABOVE. UPON SELLER'S RECEIPT OF WRITTEN NOTICE FROM BUYER, TOGETHER WITH DOCUMENTATION EVIDENCING PURCHASE, SELLER SHALL HAVE A REASONABLE OPPORTUNITY TO INSPECT ALL ASSEMBLY COMPONENTS OF THE GOODS. THE SELLER SHALL HAVE THE OPTION TO EITHER REPLACE, REPAIR OR REFUND THE PURCHASE PRICE OF THE GOODS.

WITH THE EXCEPTION OF THE WARRANTY PROVIDED IN PARAGRAPH ABOVE, **NO OTHER WARRANTY**, EITHER EXPRESS OR IMPLIED, INCLUDING AN IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, IS GIVEN BY THE SELLER WITH RESPECT TO GOODS OR ANY OTHER GOODS.

ANY AND ALL LIABILITY OF THE SELLER AND ITS AFFILIATES UNDER THIS AGREEMENT IS EXPRESSLY LIMITED TO THE PRICE BUYER HAS PAID FOR THE GOODS. BUYER'S SOLE REMEDY AGAINST SELLER IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS BUYER PAID, PURSUANT TO SECTION 2, UPON THE PAYMENT OF WHICH SELLER SHALL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO BUYER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, ECONOMIC LOSS, LOSS OF DATA, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT EQUIPMENT, FACILITIES OR SERVICES, DOWN TIME, YOUR TIME, THE CLAIMS OF THIRD PARTIES, AND INJURY TO PROPERTY, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PRICE STATED FOR THE GOODS IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY AND BUYER'S REMEDY. FURTHER, SELLER WILL NOT BE LIABLE FOR ANY DAMAGES, LOSSES OR EXPENSES AS A RESULT OF BUYER'S NEGLIGENCE, WHETHER DEEMED ACTIVE OR PASSIVE AND WHETHER OR NOT ANY SUCH NEGLIGENCE IS THE SOLE CAUSE OF ANY SUCH DAMAGE, LOSS OR EXPENSE.