

**1. DEFINITIONS.** As used herein: (a) "Seller" means the division of NORDSON MEDICAL shown on the reverse side of this order (Quest Medical, Inc), and (b) "Buyer" means the party or parties accepting this acknowledgement and any agent, officer, servant, employee or subcontractor of such party or parties.

**2. ACCEPTANCE.** This acknowledgement becomes binding when accepted by Buyer and is expressly conditioned on Buyer's acceptance without addition or alteration of the terms and conditions herein. No modification of this acknowledgement shall be of any force or effect unless in writing and signed by the party to be charged. Seller rejects any additional or different terms that Buyer proposes or attempts to impose, and Seller's acknowledgment or acceptance of purchase order forms stipulating different conditions shall not modify the terms and conditions hereof. Buyer shall be deemed to have accepted these terms and conditions (and objections to any terms and conditions shall be deemed to have been waived) if Seller does not receive written notice within ten (10) days of the date of this acknowledgement.

**3. END USE.** Buyer has the sole responsibility to determine the suitability of the goods described on the face hereof for Buyer's contemplated use. Buyer assumes all risk and liability for loss, damage or injury to Buyer's property or person arising out of the use or possession of the goods furnished hereunder.

**4. SHIPPING TERMS.** Seller shall promptly ship to Buyer, F.O.B. Origin, in which title and responsibility of the Products transfers to Buyer as soon as the Products leaves the point of origin. Buyer shall be billed and shall pay for all reasonable costs associated with freight and transportation costs/expenses, including shipping and packaging, and Buyer shall bear all risk of loss or damage during shipment. If Buyer requests insurance for purchased goods while in transit, Buyer must make requests for insurance at the time the order is placed. Buyer is responsible for all costs associated with insuring purchased goods while in transit.

**5. TAXES.** In addition to the price quoted or invoiced, Buyer shall pay any tax, duty, custom or other fee that any Federal, State or local governmental authority imposes on this transaction. Buyer shall promptly reimburse Seller if Seller is required to prepay such monies.

**6. FORCE MAJEURE.** Seller shall have no liability for any delays or nonperformance caused by circumstances beyond Seller's control including, but not limited to, fire, flood, war, riot, civil commotion, government action, accident, labor trouble or shortage, energy shortage, inability to obtain material, equipment or transportation delays, or acts of God.

**7. TECHNICAL ADVICE.** Upon request, Seller will endeavor to furnish such technical advice as it has available in reference to Buyer's use of its products. Buyer expressly understands that any technical advice that Seller furnishes concerning the use of its products is given gratuitously, and Seller assumes no obligation or liability for the advice or results obtained, all such advice being given and accepted at Buyer's risk.

**8. TERMS OF PAYMENT.** Buyer agrees to promptly pay all sums agreed to be paid hereunder, together with all costs incurred in the collection of any amount due by suit or otherwise, including reasonable attorneys' fees. Unless otherwise noted on the face of this order, terms are net cash thirty (30) days from date of invoice. Shipments and deliveries hereunder shall at all times be subject to the approval of Seller's credit department. Seller's published prices, extras and payment terms are subject to change without notice and those in effect at time of shipment shall apply. Amounts on the face of this order may be subject to discounts. Seller reserves the right to divide an order into separate shipments and separately invoice such shipments, in which case each shipment shall be deemed a separate contract and payment therefore shall be due in accordance with these terms and conditions. If Buyer fails to fulfill the terms of payment, or if Seller shall ever have any doubt as to Buyer's financial responsibility, Seller may, at its option, and without limitation, (i) require full or partial payment in advance, (ii) demand payment and suspend deliveries until payment is received, or (iii) decline to make further deliveries except upon receipt of cash or satisfactory security. Buyer's failure to furnish payment upon demand shall constitute a repudiation of this contract, and Seller shall be entitled to receive reimbursement for its reasonable cancellation charges. Seller shall not be liable for any of Buyer's costs or expenses arising out of the exercise of any of Seller's rights hereunder. Seller agrees that Buyer may pay for the Product(s) using electronic fund transfers, purchase cards, checks or credit cards. However, the credit card payment method is only allowed if paid at the time of the purchase order or shipment date, and may be subject to additional credit card fees.

**9. CANCELLATION CHARGES.** Buyer shall be liable for the payment of reasonable cancellation charges, which shall not be less than 12% of the price of the goods canceled, but shall include, without limitation, the following: (a) all costs and expenses that Seller incurs for or on account of the goods canceled and the cancellation; (b) any and all liabilities, costs, damages and expenses that Seller incurs by or as a result of commitments incident to the goods involved, including, without limitation, commitments made or liabilities assumed to any supplier of such goods or materials used in such goods; and (c) any and all indirect charges as well as a reasonable profit.

**10. CANCELLATION.** Accepted orders cannot be canceled, in whole or in part, without Seller's written consent. If Buyer requests cancellation of orders for products which have been manufactured in whole or in part, such cancellation shall be at Seller's option and subject to cancellation charges. Seller's failure to meet estimated ship dates will not be sufficient cause for cancellation of orders.

**11. WARRANTY.** As applicable, Seller warrants after the date of delivery through the date of the Product label expiration date, that the Product(s) will be free from defects in material, workmanship, design and manufacturing per Product warranty specifications.

**12. DAMAGES.** As applicable, Buyer's exclusive remedy for claims arising from defective or nonconforming goods/Products(s) shall be limited to replacement thereof or refund of a portion of the purchase price, at Seller's option. IN NO EVENT SHALL SELLER'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES (e.g., LOST BUSINESS, REVENUE OR PROFITS), EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. NO WARRANTIES EXIST WHICH EXTEND BEYOND WHAT IS DESCRIBED HEREUNDER. SELLER DISCLAIMS AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO DESCRIPTION, QUALITY, PRODUCTIVENESS, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSES, OR ANY OTHER MATTER, OR AS TO THE PRODUCT(S) SOLD PURSUANT TO THIS AGREEMENT.

**13. SECURITY INTEREST.** Buyer grants to Seller a first-priority purchase money security interest in all products purchased hereunder, and in each and every item thereof, including replacements, proceeds and products thereof, to secure payment of all amounts and performance of all obligations due hereunder. Buyer shall execute, at Seller's request, all financing statements that Seller deems necessary or desirable to perfect Seller's security interest. Buyer authorizes Seller to sign on Buyer's behalf, and file, a copy of the security agreement or a financing statement with the appropriate authorities to perfect Seller's security interest in all purchased goods. Seller shall have all rights and remedies of a secured party under the UCC in effect in any applicable jurisdiction.

**14. RETURNS.** No merchandise can be accepted for credit unless Seller has previously authorized the return. Any merchandise with an expiry date that has expired cannot be returned. A 20% restocking charge may apply to returned merchandise.

**15. OPTION TO ACCELERATE.** Seller shall have the right on written notice to Buyer to demand immediate payment of amounts due hereunder if Seller believes in good faith that the prospect of Buyer's payment or performance is impaired. Buyer's acceptance of products shall constitute an express representation that Buyer is not then insolvent within the meaning of Title 11, United States Code or similar federal or state law.

**16. SEVERABILITY.** The provisions of this Agreement are severable and if any provision is invalid, void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

**17. NON-WAIVER.** Seller's failure or refusal to insist upon strict performance of any provisions of this Agreement shall not be deemed a waiver of Seller's rights or remedies, or a waiver by Seller of any subsequent default by Buyer in the performance of or compliance with the terms of this Agreement.

**18. CAPTIONS.** The captions in this Agreement are included for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

**19. ASSIGNMENT.** Buyer may not assign this Agreement in whole or in part and any attempted assignment shall be void and of no effect.

**20. ENTIRE AGREEMENT.** This instrument constitutes the entire agreement and understanding of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. No agreements, understandings, restrictions, warranties, or representations exist between or among the parties other than those expressly set forth.

**21. CLAIMS.** Claims for errors, shortages, defective goods and any other claims of Buyer relating to the goods must be made in writing within thirty (30) days after receipt of the goods and must refer to the date and number of the invoice. Seller shall have a reasonable opportunity to investigate all claims.

**22. APPLICABLE LAW AND JURISDICTION.** Buyer and Seller agree that interpretation of and performance under these contract terms and conditions, as well as all other aspects of the transaction contemplated by these terms and conditions, shall be governed by the laws of the State of Texas without regard to Texas's conflict or choice of law rules. Buyer and Seller further agree that any action at law, suit in equity or other judicial proceeding with respect thereto must be brought and maintained in the federal or state courts of record situated in the State of Texas.

**23. LATE PAYMENT AND COLLECTION COSTS.** If Seller decides to place Buyer's account for collection, Buyer shall pay all costs and expenses thereof, including a reasonable attorneys' fee. Should Buyer fail to pay any amount that Buyer is required to pay to Seller, Buyer shall pay to Seller interest on the delinquent payment from the due date thereof until paid at the rate of 1 ½ % per month (18% per year), but in any case not to exceed the maximum lawful rate under any applicable law.

**24. GOVERNMENTAL REQUIREMENTS.** Any provisions required to be included in a contract of this type by any applicable federal, state or local law, ordinance or governmental rule, regulation, order or other governmental requirement shall be deemed incorporated herein as if fully set out.