

**CLARET MEDICAL, INC.**  
**TERMS AND CONDITIONS OF SALE**

1. **Agreement.** These Terms and Conditions of Sale, together with any other document(s) that Claret Medical, Inc. ("Claret") has attached hereto or executed that specifically reference these Terms and Conditions of Sale (such as a purchase order confirmation, quotation, proposal, invoice) (collectively, "Agreement") constitute the entire binding agreement between Claret and the purchasing party ("Buyer") regarding the purchase, use, and/or distribution of products, services and support from Claret (collectively, "Products") and supersede all other agreements and understandings, whether written or oral, between Claret and Buyer. Notwithstanding anything to the contrary, whether executing a purchase order, quotation, proposal, issuing payment, or by accepting delivery of the Products, Buyer agrees to be bound by and accept the terms and conditions contained in herein. No additions, conditions, amendments, alterations, or modifications by Buyer or any other person, whether oral or contained in any purchase order, quotation, proposal, payment or other documents submitted from Buyer to Claret will be binding on Claret, regardless of Claret's failure to object, acceptance of payment, or Claret's shipment of Products. THIS AGREEMENT WILL APPLY UNLESS BUYER HAS A SEPARATE WRITTEN AGREEMENT WITH CLARET THAT EXPRESSLY REPLACES THIS AGREEMENT. Claret and Buyer are referred to individually as a "Party" and collectively as the "Parties."
2. **Price.** Buyer shall pay to Claret the current list price for each unit of Product as of the date that Claret accepts Buyer's purchase order, except if otherwise set forth in a Claret quotation or invoice for such Product. All prices exclude applicable United States federal, state, and local taxes as well as any applicable foreign taxes, which will be the responsibility of Buyer and unless Buyer is exempt therefrom and Claret has received proper documentation therefor, such taxes will be added to the price of the Product or billed separately to Buyer where Claret has the legal obligation to collect the taxes. Prices are inclusive of routine shipping charges. Buyer shall be responsible for additional charges if the shipment of the Order requires any special or expedited shipping or handling.
3. **Delivery Terms.** Claret shall deliver all Products to Buyer F.O.B. Destination. Risk of loss of the Products ordered by Buyer shall pass to Buyer on the delivery of the shipment to Buyer at the designated point of delivery. Any rejection of Products supplied under this Agreement by Buyer shall not shift any risk for those Products until they are returned to, and received by, Claret in accordance with the terms set forth herein. Claret will retain title to all Product supplied to Buyer until Claret receives payment in full for such Product.
4. **Supply.** The Parties agree that Claret's obligation to supply any Products to Buyer is subject to the availability of such Products. Claret will not be liable for damages caused by failure to ship or delay in shipment resulting from conditions beyond the control of Claret, including the unavailability of such Products because of the inability to obtain materials and supplies or to produce sufficient Products to meet Buyer's requirements.
5. **Acceptance.** Buyer, or its designated agent shall, within three (3) days following receipt of a shipment of Products at the requested destination (the "Acceptance Period"), visually inspect and test each shipment of the Products for any damage to the Product or packaging, non-compliance with the Order or non-compliance with the Product's specifications or the warranty described herein. Buyer shall notify Claret in writing of any non-conformity found in the shipment of Products within the Acceptance Period. If Buyer does not notify Claret of any non-conformity within the Acceptance Period, such shipment of the Products shall be deemed accepted. Claret shall not have any obligation to exchange any accepted Products.
6. **Returns; Exclusive Remedies.** Before returning any non-conforming shipment of Product, in whole or in part, Buyer must give Claret written notice of non-conforming Products, the non-conformity, and request Claret provide a return merchandise authorization ("RMA"). Claret may require that Buyer provide reasonable proof of such non-conformity of the shipment before providing an RMA. Buyer may return the non-conforming Products to Claret after the issuance of the RMA. Claret may refuse, at Buyer's risk and expense, any Products returned by Buyer without an RMA. At Claret's discretion, Claret shall either: (i) supply to Buyer replacement Products, without additional charge to Buyer; or (ii) refund the Price paid for the non-conforming Products. Buyer shall return or destroy any non-conforming Products, as directed by Claret and at Claret's expense. The remedies in this Section are expressly conditioned upon: (x) Buyer notifying Claret promptly and in writing of any nonconforming Products prior to the expiration of the acceptance period, which notice must identify with particularity the non-conformity; and (y) Buyer's full cooperation with Claret in all reasonable respects relating to such non-conformity. THE REMEDIES IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO NON-CONFORMING PRODUCTS, AND, IN FURTHERANCE THEREOF, BUYER WAIVES ALL OTHER REMEDIES AT LAW OR IN EQUITY.
7. **Invoicing.** Claret shall an invoice to Buyer for each shipment of the Products supplied to Buyer. Buyer shall pay each such amount to Claret within thirty (30) days after the invoice date.
8. **Late Payments.** Any payments or portions thereof which are not paid on the date such payments are due shall bear interest at the lower of: (a) one and one-half percent (1 ½%) per month; or (b) the maximum rate permissible by law. If any payment by Buyer for an Invoice is past due or if Buyer has had multiple past due Invoices during the Term, Claret may, singly or in combination,

at its option: (i) withhold shipment of any Products under any new Order; (ii) require Buyer pay all outstanding Invoices; or (iii) require Buyer pay for any new Order of Product(s) in advance of shipment.

9. **Use of Products.** Buyer will use the Products solely for the provision of medical care to Buyer's patients. Buyer shall be responsible for its management of any inventory of Products and shall not use any Products after the expiration dates indicated on the Product labeling. Buyer shall not transfer, resell, barter or trade or export the Products.

10. **Adverse Event Notification.** Buyer shall be responsible for reporting events in compliance with Applicable Law, including the FDA Medical Product Reporting Regulation set forth in 21 CFR Part 803 (as amended or replaced) and will notify Claret promptly (within twenty-four (24) hours) whenever Buyer becomes aware of an adverse event involving any of the Products. Buyer agrees to make medical device reports available to Claret within twenty-four (24) hours of the initial receipt of any report that reasonably suggests that one of the Products: (a) may have caused or contributed to a death or serious injury; or (b) has malfunctioned. If Buyer receives communications from any regulatory authority, the Buyer agrees to provide Claret copies of any such communications related to the Products within twenty-four (24) hours of when Buyer receives such communication.

11. **Compliance with Laws; Licenses; Representations.** The Parties shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including, but not limited to the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.), the Stark ("Self-Referral") Law (42 U.S.C. §§ 1395nn, et seq.), the Anti-Kickback Statute (42 U.S.C. §§ 1320a-7b(b), et seq.), and the Patient Protection and Affordable Care Act (42 U.S.C. § 1320a-7h) ("Applicable Law"). Each Party agrees that the other Party is authorized to make disclosures, to the extent other Party deems necessary, to comply with the foregoing laws. Each Party hereby represents and warrants that has obtained all licenses and permits required to perform its obligations under this Agreement and that it is not sanctioned or excluded from participating in any federally funded health care programs, as provided in Sections 1128 and 1128A of the Social Security Act, 42 U.S.C. §1320a-7a.

12. **Recalls.** Notwithstanding anything to the contrary, as between the Parties, Claret will have the sole right (at its sole discretion) to initiate a recall of any Products. If Claret recalls any of the Products, Buyer will use reasonable efforts to comply with all Claret instructions regarding the recall. Claret will either reimburse or credit Buyer for any recalled Products, and reimburse Buyer for return shipping.

13. **No License.** Nothing contained in this Agreement shall be construed to grant Buyer any right, interest or license to any intellectual property rights in the Product or of Claret, including without limitation, any patent application, patent, trade secret, trademark, or other intellectual property right, whether expressly, by implication or by estoppel.

14. **Confidentiality.** The Parties agree that a Party receiving confidential or proprietary information ("Confidential Information") of the other Party will keep such Confidential Information in strict confidence and shall not use or disclose such Confidential Information to any third party without prior written consent of the other Party, except as: (a) permitted hereunder, (b) mutually agreed upon by the Parties, or (c) required by law.

15. **HIPAA.** Buyer agrees to comply with the applicable Health Insurance Portability and Accountability Act of 1996 and all related regulations, as they may be amended from time to time ("HIPAA") in the course of performing its obligations under this Agreement. The Parties acknowledge and agree that Buyer does not intend to provide Claret with any personally identifiable health information ("PHI") under this Agreement.

16. **Products Warranty.** Claret warrants that all Products shall conform to the Claret's specifications for such Products for the shelf life of the Products as specified on Product's labeling and free from defects in material and workmanship as of the time of delivery to a common carrier; provided, however, that such Products: (i) have been properly shipped and stored; (ii) used in accordance with the Product's instructions for use; and (iii) have not be modified by Buyer or any third party. CLARET'S SOLE AND EXCLUSIVE OBLIGATION UNDER THE FOREGOING WARRANTY SHALL BE, AT CLARET'S SOLE ELECTION, TO EITHER REPLACE THE RELEVANT PRODUCT OR REFUND BUYER'S PURCHASE PRICE FOR SUCH PRODUCT. THE WARRANTIES SET FORTH OR REFERRED TO IN THIS SECTION ARE INTENDED SOLELY FOR THE BENEFIT OF BUYER AND ARE NOT MADE TO BUYER'S CUSTOMERS AND/OR PATIENTS.

17. **Warranty Disclaimer.** THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY CLARET, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF CLARET FOR DAMAGES ARISING OUT OF OR IN CONJUNCTION WITH THE USE, REPAIR OR PERFORMANCE OF THE PRODUCTS. FURTHERMORE, CLARET DISCLAIMS ANY WARRANTY THAT THE PRODUCTS (OR ANY USE THEREOF) DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER PRODUCT

OR DEVICE. ANY PRODUCT WARRANTY PROVIDED BY CLARET DOES NOT EXTEND TO ANY CLINICAL OR TECHNICAL SUPPORT AND/OR TRAINING PROVIDED BY CLARET TO BUYER, WHICH ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY, AND SUBJECT TO THE WARRANTY DISCLAIMER HEREIN. BUYER ACKNOWLEDGES AND AGREES THAT CLARET AND ITS PERSONNEL DO NOT PROVIDE MEDICAL SERVICES AND ANY SUCH CLINICAL OR TECHNICAL SUPPORT AND/OR TRAINING FOR USE OF THE PRODUCT IS SOLELY TECHNICAL SUPPORT OF THE PRODUCT. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, AS BETWEEN CLARET AND BUYER, BUYER IS SOLELY RESPONSIBLE FOR THE MEDICAL CARE AND TREATMENT OF ITS CUSTOMERS AND/OR PATIENTS AND FOR SUCH DETERMINING SUCH TREATMENT IN ITS BEST MEDICAL JUDGMENT. BUYER FURTHER ASSUMES ANY AND ALL RISK REGARDING ITS USE OF ANY CLINICAL AND TECHNICAL SUPPORT AND/OR TRAINING PROVIDED BY CLARET.

18. **Indemnification.** Buyer hereby agrees to indemnify, defend and hold harmless Claret, its affiliates, and its and their respective directors, employees and agents ("Claret Indemnitees") from any and all claims, suits, demands, losses, liabilities, damages, penalties or expenses, including reasonable attorney fees, (collectively, "Claims") by any third party arising from or related to the negligent act or omission, misconduct, materials breach of terms of this Agreement, use of the Product outside of the Product's instructions for use, or violation of Applicable Law by Buyer, its affiliates, and their respective directors, employees and agents.

19. **EXCLUSION OF DAMAGES.** TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT SHALL CLARET BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY (WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, OR OTHER LEGAL OR EQUITABLE THEORY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

20. **LIMITATION OF LIABILITY.** TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF CLARET AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING ANY WARRANTY CLAIMS, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO CLARET UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING SUCH ACTION OR CLAIM (AS DETERMINED IN REFERENCE TO THE DATE OF FILING OF SUCH ACTION OR CLAIM).

21. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California

22. **Miscellaneous.** No amendments or waivers of the terms and conditions of this Agreement shall be binding upon either Party unless in writing, signed by authorized representatives of the Parties. No waiver by either Party of any breach of this Agreement by the other Party shall be effective as to any other breach, whether of the same or any other term or condition and whether occurring before or after the date of such waiver. Each Party represents that it is acting on its own behalf as an independent contractor and is not acting as an agent (or legal representative) for or on behalf of the other Party or any third party. This Agreement and the relations hereby established do not constitute a partnership, joint venture, franchise, agency or contract of employment. Neither Party may assign this Agreement, or its rights or obligations hereunder, without the prior written consent of the other Party; *except* that Claret may assign this Agreement, or its rights and obligations hereunder: (a) to an Affiliate, or (b) as a result of a corporate reorganization, including but not limited to, a transfer or sale of all or substantially all of Claret's assets, change of control, merger, sale of stock, or otherwise. Any assignment in violation of this Section shall be null and void. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof and all other provisions of this Agreement shall be deemed valid and enforceable to the full extent possible. The terms, conditions and provisions contained in this Agreement constitute the entire understanding of the Parties and supersede all previous communications, representations, agreements and understandings relating to the subject matter hereof. Claret shall not be liable to Buyer for any failure to perform any obligation under this Agreement which is due to an event beyond the control of Claret including, but not limited to, act of God, war, flood, act of terrorism, or other unforeseeable cause beyond the control and without fault by Claret.