

# **Stryker Sales Corporation**

## **Acting through its Endoscopy Division**

### **Additional Terms and Conditions**

These “**Additional Terms and Conditions**” shall apply to Stryker Endoscopy’s (“**Stryker**”) Equipment Placement and Disposable Purchase Agreement (“**Agreement**”) in accordance with the URL provided in the Agreement. “**Customer**” shall utilize the placed capital equipment (“**Equipment**”) and purchase associated disposables (“**Disposables**”; with the Equipment, collectively the “**Products**”) in accordance with the Agreement.

1. **Payment.** Unless Stryker has agreed otherwise in writing, payment in full of the mutually agreed upon price is due thirty (30) days after the date of Stryker invoice, except that (a) Stryker will not make a sale to Customer if the sale would cause to be exceeded any credit limit that Stryker shall have extended to Customer under the next paragraph, and (b) if at any time Stryker determines that Customer’s financial condition or credit rating does not justify a sale on credit or if Customer is at any time in default in any indebtedness or obligation that Customer owes to Stryker, then Stryker may require advance payment or may ship C.O.D. Payment must be made to Stryker at PO Box 93276, Chicago, IL 60673 or at such other location requested by Stryker.

2. **Taxes.** Stryker’s price does not include privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Customer shall be liable for all of those taxes, whether or not Stryker invoices Customer for them (unless Customer shall provide Stryker at the time an order is submitted with an exemption certificate or other documents acceptable to taxing or custom authorities).

3. **Unavoidable Delay.** If Stryker is not able to finish and deliver the Products to Customer on time because of anything that Stryker cannot control (such as casualty, labor trouble, accidents or unavailability of supplies or transportation), then the estimated delivery time shall be extended accordingly, and Stryker shall not be liable to Customer for any damages that the delay causes.

#### **4. Warranty; Remedies.**

4.1. Stryker warrants (the “**Warranty**”) all Products, subject to the exceptions provided herein, to be free from defects in design, materials and workmanship and to substantially conform to the Product specifications contained in the documentation provided by Stryker with the Products for a period of one (1) year from the date of purchase (the “**Warranty Period**”). This Warranty shall apply only to the original end-user purchaser of Products directly from Stryker or a Stryker authorized distributor. This Warranty may not be transferred or assigned without the express written consent of Stryker.

4.2. If a valid Warranty claim is received within the Warranty Period, Stryker will, in its sole discretion: (a) repair the Product at no charge, or (b) replace the Product at no charge with a Product that is at least functionally equivalent to the original Product. In any event, Stryker’s liability for breach of warranty shall be limited to the replacement value of the defective or non-conforming part or component.

4.3. This Warranty does not apply to: (a) Products that have been misused, neglected, modified, altered, adjusted, tampered with, or improperly installed by non-Stryker personnel; (b) Products that have been repaired or refurbished by any person other than Stryker personnel without the prior written consent of Stryker; (c) Products that have not been maintained in accordance with the instructions in the user manual or as demonstrated by a Stryker representative; (d) Products on which any original serial numbers or other identification marks have been removed or destroyed; or (e)

Products that have been repaired with any unauthorized or non-Stryker components, including replacement lamps.

4.4. If Stryker determines in its reasonable discretion that the claimed defect or non-conformance in the Product is excluded from Warranty coverage as described hereunder, it will notify the Customer of such determination and, upon reasonable discussion with the Customer, will provide an estimate of the cost of repair of the Product. In such an event, any repair would be performed at Stryker's standard rates.

4.5. Products and Product components repaired or replaced under this Warranty continue to be warranted as described herein during the Warranty Period or, if the Warranty Period has expired by the time the Product is repaired or replaced, for ninety (90) days after delivery of the repaired or replaced Product. When a Product or component is replaced, the item provided in replacement will be the customer's property and the replaced item will be Stryker's property. If a refund is provided by Stryker, the Product for which the refund is provided must be returned to Stryker and will become Stryker's property.

4.6. The inspection, testing, acceptance or use of the Products furnished hereunder shall not affect Stryker's obligation under this Warranty, and such Warranty shall survive inspection, test, acceptance and use.

5. **Indemnity.** Stryker agrees to indemnify Customer from any third party liability and/or damages which Customer may suffer directly as a result of a defect in workmanship or design of the Products. This indemnification does not apply to liability and/or damages to the extent arising from: (a) an injury due to the negligence or misconduct of any person other than an employee or agent of Stryker; (b) the failure of any person other than an employee or agent of Stryker to follow any labeling, manual and/or instructions for use of the Product; (c) the use of the Disposables on non-Stryker equipment; (d) the use of non-Stryker disposable products on Equipment; or (e) Product that has been modified, altered, reprocessed, or repaired by any person other than an employee of agent of Stryker. Customer agrees to indemnify Stryker against any liability or damages to the extent arising from (a) through (e) above.

6. **Limitations. THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS PROVIDED HEREUNDER AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH THE EXCEPTION OF THIRD PARTY CLAIMS OR CLAIMS WHICH INVOKE SECTION 5 (INDEMNITY) ABOVE, STRYKER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THE AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE AGREEMENT. NEITHER PARTY SHALL BE ENTITLED TO, OR LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE OR BUSINESS INTERRUPTION.**

7. **Return Policy.**

7.1. Customer may return Equipment and/or Disposables to Stryker using the information provided below. Sterile Products may not be returned unless they are; (i) in their original, unopened packaging; (ii) damaged in transit; (iii) defective; or (iv) contaminated.

7.2. A Returned Merchandise Authorization (RMA) number must be obtained from Stryker before returning Product. To obtain an RMA number, Customer must contact Stryker Customer Service at (800) 624-4422.

7.3. Customer should carefully package the Product being returned. Stryker does not accept any COD returns. Return shipping costs are borne by Customer unless Stryker specifically agrees otherwise. Any contaminated Products must be cleaned and sterilized prior to returning them to Stryker. If a return does not comply with these terms, Stryker will destroy the Product at the Customer's expense. Any replacement would be at Customer's expense.

8. **Safety Features.** Customer shall install and/or operate the Products properly and according to Stryker's instructions for use and shall not remove or change a safety device, warning or operating instruction that Stryker places on the Products.

9. **Safe Medical Device Act.** If Customer files with the Federal Food and Drug Administration an FDA Form 3500A or a similar form of medical device report under the Federal Safe Medical Device Act, with respect to the Products or any part of the Products, then Customer shall simultaneously furnish to Stryker a copy of the form or report. If Stryker recalls the Products or a part of the Products, then Customer shall cooperate fully with Stryker in implementing the recall, including, without limitation, by returning the Products to Stryker to the extent that Stryker requests.

10. **Proper Reporting of discounts and pricing.**

10.1. Pricing set forth in the Agreement is unique to the Agreement and is confidential.

10.2. The parties hereby represent and warrant that it is the intent and good faith belief of both that the Agreement complies with the Medicare/Medicaid "Anti-Kickback Statute" (42 U.S.C. 1320a-7b) and regulations promulgated thereunder, and does not in any manner violate either statute or regulation. Notwithstanding any unanticipated effect of any of the provisions herein, neither party will conduct itself under the terms of the Agreement in a manner so as to constitute a violation of the Anti-Kickback Statute or the Advamed Code of Ethics. Under no circumstances shall the Agreement be intended in any manner to compensate for or require referrals or business of any kind between the parties. No compensation shall be paid by either party to the other in connection with the Agreement except payment (including discounts, credits and rebates) for Product purchases.

10.3. Customer shall (a) comply with all applicable laws and regulations relating to the accounting and application of discounts related to the Agreement, including but not limited to all Federal and State laws and regulations regarding reimbursement and proper reporting of discounting and pricing, such as the requirements of the discount "safe harbor" located at 42 C.F.R. 1001.952(h) (the "Discount Safe Harbor") (b) properly report and appropriately reflect all prices paid under the Agreement net of all discounts as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports and (c) retain a copy of the Agreement and all other communications regarding the Agreement, together with the invoices for purchases or lease and shall permit agents of the U.S. Department of Health and Human Services or any state agency access to such records upon request. Stryker shall furnish Customer with a report detailing year end usage and any changes to the following year's projections. In the event that the requirements of the Discount Safe Harbor would not be met at such volumes during the Initial Term, then the parties will promptly confer to revise the Agreement such that the Discount Safe Harbor is satisfied. Failing agreement upon such a revision, either party may immediately terminate the Agreement.

11. **Compliance with Applicable Law; Not For Resale or Export.** Customer represents and warrants that it (a) shall comply with all applicable laws and regulations of the various states and of the United States in the use of the Products and (b) is buying for its own internal use only, and not for resale or export.

12. **Insurance.**

12.1. Stryker will maintain adequate general liability insurance, including coverage for Products and completed operations, and workers compensation and employer's liability insurance against any claim or claims which might arise out of Products listed in the Agreement. Stryker has the right to self-fund to comply with this requirement. When requested by Customer, Stryker will furnish an insurance certificate signed by an authorized agent evidencing the above-referenced insurance coverage.

12.2. Customer shall maintain adequate insurance to cover liability arising out of the Agreement including liability arising out of Customer's indemnity obligations set forth in the Indemnity Section above. Upon request by Stryker, Customer will provide a certificate of insurance evidencing such coverage.

13. **Severability.** In the event that any provision of the Agreement is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.

14. **Applicable Law.** The Agreement shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Either party may bring an action that arises out of or relates to the Agreement in a federal or state court in Kalamazoo, Michigan, that has jurisdiction of the subject matter, and Customer irrevocably consents that that court shall have personal jurisdiction over Customer and waives any objection that the court is not a convenient forum.

15. **Headings.** The headings to the paragraphs of the Agreement are included only for convenience of reference and shall not be used to interpret the meaning of a provision of the Agreement.

16. **Amendment.** A change in the Agreement must be made by a written amendment signed by both parties. Stryker sales representatives are not authorized representatives of Stryker for purposes of agreeing to Customer terms and conditions or other agreements, including without limitation, any changes to the Agreement.

17. **No third-party beneficiaries.** The rights and remedies conferred under the Agreement apply only to Stryker and Customer, and shall not be construed to inure to the benefit of or provide any right of action to any other person, including without limitation any patient or third-party payor.