

Stryker Sales Corporation
Acting through its Endoscopy division

DermaCELL Standard Terms of Consignment and Sale

All sales of Products distributed by the Endoscopy division of Stryker Sales Corporation (“**Stryker**”) are subject to the following terms and conditions, which are incorporated into each sales contract and designed to supplement such contract. In this “**Standard Terms of Consignment and Sale**”, Dermacell allograft human tissue products sold by Stryker are referred to herein as “**Products**”, the purchaser of the Products is referred to as the “**Customer**” and the relevant sales contract between Stryker and Customer with respect to the Products is referred to as the “**Agreement**.”

1. **Payment and Sale Terms.** 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. Payment must be made to Stryker at PO Box 93276, Chicago, IL 60673 or at such other location requested by Stryker.

2. **Delivery and Risk of Loss.** Unless Stryker agrees otherwise in writing, LifeNet Health (the “**Product Processor**”) shall deliver and ship the Products on Stryker’s behalf in accordance with Stryker’s standard Product shipping policies in effect at the time of shipment, which will be provided to Customer upon request. Stryker’s current shipping policy for Dermacell Products is ground shipping 3-Day Select. The cost of any expedited or specific carrier requests will be billed to Customer. Title of the Products sold hereunder shall pass to Customer upon delivery by the Product Processor. Shipping and delivery dates are estimates only, and time is not of the essence. Stryker and/or Product Processor may ship all the Products at one time or in portions. Stryker shall have the right to determine the method of shipment and routing of the Products, unless Stryker agrees otherwise in writing.

3. **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).

4. **No Guarantee of Supply; Technical Modifications.** The parties acknowledge that the supply of human tissue is limited and beyond the control of Stryker. Thus, Stryker cannot guarantee the fill rate or supply of human tissue products but will use commercially reasonable efforts to provide Product upon request. Further, the parties acknowledge that the Product Processor may modify the technical specifications of the Product, as necessary or appropriate from time to time, and Stryker will use good faith efforts to notify Customer of same.

5. **Use of Product.** Customer will use the Product only for uses permitted by all applicable federal laws, regulations, and policies, including those governing the use and transplantation of human allograft tissue. Customer acknowledges and agrees that it will receive, inspect, store, track, use, transplant, report adverse reactions, or dispose of all Product in accordance with all applicable laws, regulations, and industry guidelines and is therefore responsible for maintaining a system that enables the tracking of each Product from receipt at Customer’s or an affiliate’s facility to implantation in a patient or other final disposition in accordance with 21 C.F.R. part 1271.290 and The Joint Commission requirements. Customer agrees to provide complete tracking documentation to Stryker or its designee upon request.

6. **Warranty; Remedies.**

6.1. The Product processor warrants that the Product has been collected, processed, stored, and distributed according to the Standards for Tissue Banking set forth by the American Association of Tissue Banks and Title 21, Code of Federal Regulations (CFR) part 1270, Human Tissue Intended for Transplantation

and Part 1271, Establishment Registration and Listing. No representations are made nor warranties given concerning the Biologic Properties or Biomechanical Properties of Product. “**Biologic Properties**” means the genetic properties of a part or function of a living body, and “**Biomechanical Properties**” means the mechanical properties of a part or function of a living body, which properties depend upon the inherent properties of the part or function’s constituents and upon how the constituents are arranged relative to each other.

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

6.3. This Warranty does not apply to: (a) Products that have been misused, neglected, modified, altered, adjusted or tampered with by non-Stryker personnel; or (b) Products that have not been maintained in accordance with the instructions in the product labels, technical specifics or other product use manuals or as demonstrated by a Stryker representative;

6.4. If Stryker determines in its reasonable discretion that the claimed 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 a cost proposal for the price of replacing the Product.

7. **Indemnity.** Stryker agrees to indemnify Customer from any third party liability and/or damages which Customer may suffer directly as a result of the failure of the Product to be collected, processed, stored, and distributed according to the Standards for Tissue Banking set forth by the American Association of Tissue Banks and Title 21, Code of Federal Regulations (CFR) part 1270, Human Tissue Intended for Transplantation and Part 1271, Establishment Registration and Listing. 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 any product not purchased from Stryker; or (d) Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Product Processor. Customer agrees to indemnify Stryker against any liability or damages to the extent arising from (a) through (d) above.

8. **Limitations. THE EXPRESS WARRANTIES SET FORTH IN THIS 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 7 (INDEMNITY) ABOVE OR SECTION 11 (CONFIDENTIALITY) BELOW, STRYKER’S LIABILITY ARISING IN CONNECTION WITH OR UNDER THE AGREEMENT WHICH INCORPORATES THESE STANDARD TERMS OF SALE (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) WILL NOT EXCEED THE PRICE 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.**

9. **Consignment.** The Customer may request the consignment of Product at the Customer’s facility (“**Consigned Inventory**”) by completing and executing the Consignment Request Form, a copy of which attached as **Attachment “A”** hereto, provided however, such request to consign Products shall not be effective until Stryker accepts the requested par levels for the Products by mutually executing and returning the Consignment Request

Form. Any placement of Products by Stryker at the Customer's facility on a consignment basis shall be subject to the following terms and conditions:

- a. **Par Levels.** The initial quantities and par levels of such Products is set for on **Attachment "A"**. On a going forward basis, Stryker and Customer may update the Consigned Inventory levels on a form provided by Stryker and signed by Customer, provided that Stryker reserves the right to cancel the consignment or adjust the par levels in its sole and absolute discretion upon thirty (30) days' advance written notice to the Customer.
- b. **Ownership; Storage and Handling; Risk of Loss.** All Consigned Inventory is the property of Stryker until withdrawn by Customer; however, Customer accepts all risk of loss and full responsibility for the condition of, any shortages in and the payment for all Consigned Inventory which may be used, opened, lost, or damaged. Customer must return to Stryker all damaged Consigned Inventory, and Stryker will arrange to have the damaged items destroyed. Customer must use reasonable efforts to (i) identify all Consigned Inventory as being the property of Stryker, (ii) separate Consigned Inventory from other property of Customer, and (iii) maintain complete and accurate records concerning the Consigned Inventory. Customer must provide appropriate space to store and safeguard the Consigned Inventory.
- c. **Use of Consigned Inventory.** Customer, in its sole discretion, will determine whether to withdraw items of Consigned Inventory. As a Product is withdrawn from the Consigned Inventory, the Product shall be deemed to have been purchased by Customer, title in the Product shall pass to Customer and title in the sale proceeds shall vest in and belong to Stryker. Within two (2) days from the withdrawal from consignment of any Consigned Inventory, Customer must issue to Stryker a hard copy of a purchase order for such withdrawn items. In the event Customer fails to issue a purchase order to Stryker, Stryker, at its option, may place Customer on credit hold and remove Consigned Inventory from Customer's premises. Items that are withdrawn and opened but not implanted into a patient will be discounted by 50% off of the published list price in effect at the time of order.
- d. **Consignment Audit.** Customer will maintain a list of all Products, including graft ID numbers, in its consignment inventory and will furnish such list to Stryker upon request. Customer will perform a quarterly audit of all Product in Customer's consignment inventory during business hours and upon providing seventy two (72) hours' notice to Customer. In the event that Stryker's audit of the Consigned Inventory concludes that inventory is missing, Customer agrees that it shall pay to Stryker any monies which are due and owing based on the missing inventory. Customer and Stryker agree to meet within fifteen (15) days after an audit of the inventory has been taken by Stryker, to resolve whether a surplus or a shortfall exists.

10. Return Policy. Customer agrees to comply with the Product Processor's return policy, a current copy of which will be provided to Customer upon request. Customer will report receiving a damaged Product, or other complaints regarding Product received, to the Product processor within forty-eight (48) hours of receipt and return the Product as instructed by the Product Processor. Failure to notify the Product Processor in a timely manner may result in billing of the damaged Product to Customer. Customer agrees to notify Product Processor immediately of any adverse reaction, and to cooperate with Stryker and the Product Processor in the case of a tissue recall.

11. Confidentiality.

11.1 Subject to Section 12.3c., the Product pricing set forth in Stryker's proposal and invoice is the confidential and proprietary information of Stryker and shall not be disclosed by customer to any third party, including, without limitation, posted on any on-line discounting websites or forums or disclosed to Stryker competitors.

11.2 All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the course of the Agreement, shall be treated by both parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws.

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

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

12.2 The parties hereby represent and warrant that it is the intent and good faith belief of both that this 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.

12.3 Customer shall (a) comply with all applicable laws and regulations relating to the accounting and application of discounts related to this 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 this 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 this Agreement and all other communications regarding this 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 this Agreement such that the Discount Safe Harbor is satisfied. Failing agreement upon such a revision, either party may immediately terminate this Agreement.

13. **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.

14. **Insurance.**

14.1. 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 purchased by Customer from Stryker under 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.

14.2 Customer shall maintain adequate insurance to cover liability arising out of this Agreement including liability arising out of Customer's indemnity obligations set forth in the Indemnity Section above and for loss or damage to any Product consigned on the Customer's premises. Upon request by Stryker, Customer will provide a certificate of insurance evidencing such coverage.

15. **Severability.** In the event that any provision of this 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.

16. **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.

17. **Headings.** The headings to the paragraphs of these Standard Terms of Sale are included only for convenience of reference and shall not be used to interpret the meaning of a provision of these Standard Terms of Sale.

18. **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.

19. **No third-party beneficiaries.** The rights and remedies conferred under the Agreement and under these Standard Terms of Sale 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.

Attachment "A"

Consignment Request Form

The Customer agrees that by completing and executing this Consignment Request Form ("**Form**") it accepts the terms and conditions with regards to consignment set forth in the Dermacell Standard Terms of Consignment and Sale.

Product Location _____

Address _____

Room _____

Product Code	Date	Par Level

IN WITNESS WHEREOF, each party has executed and delivered this Form as of the date last signed below (the "**Consignment Effective Date**").

**STRYKER SALES CORPORATION, acting
through its Endoscopy Division**

NAME:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____