

# **Stryker Sales Corporation**

## **Acting through its Endoscopy division**

### **Standard Terms of 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 Endoscopy sales contract and designed to supplement such contract. In this “**Standard Terms of Sale**”, Equipment and Disposables sold by Stryker are referred to 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.** The Customer agrees that Stryker may, at its sole discretion, ship and invoice all of the Products at one time or in portions. Unless Stryker has agreed otherwise in writing, payment in full of any invoice (including a partial invoice) submitted to Customer 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. **Credit Policies.** Based upon Customer’s financial position and payment history, Stryker may, in Stryker’s sole discretion, assign Customer a credit limit. Customer’s total in-house orders and outstanding accounts payable to Stryker must remain within the amount of the credit limit. Stryker may at any time, in Stryker’s sole discretion, modify or discontinue Customer’s credit limit or modify Stryker’s credit terms and other credit policies. Neither this paragraph nor any other provision of the Agreement makes Customer a dealer or distributor of Stryker or obligates Stryker to sell any Products to Customer.

3. **Delivery and Risk of Loss.** Unless Stryker agrees otherwise in writing, Stryker shall deliver the Products F.O.B. Stryker’s facility from which the Products will be shipped. Delivery shall be deemed to have been made when Customer’s shipment has been delivered to a carrier, selected at Stryker’s option. Title of the Products sold hereunder shall pass to Customer upon delivery by Stryker. Shipping and delivery dates are estimates only, and time is not of the essence. Stryker shall have the right to determine the method of shipment and routing of the Products, unless Stryker agrees otherwise in writing.

4. **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).

5. **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.

6. **Warranty; Remedies.**

6.1. 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.

6.2. If a valid Warranty claim is received within the Warranty Period, Stryker will, in its sole discretion: (a) repair the Product at no charge, (b) replace the Product at no charge with a Product that is at least functionally equivalent to the original Product, or (c) 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 defective or non-conforming part or component.

6.3. 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.

6.4. 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.

6.5. 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.

6.6. 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. Notwithstanding the above, the following Products are warranted for a period of ninety (90) days from the date of purchase: scopes (except the articulation mechanism and angulation wires for the Digital Cystoscopes CST 5000S and CST 5000iS and the Fiber Cystoscopes CST 4000S and CST-4000iS, which shall retain the one year warranty), associated scope hardware, fiber optic cables, laparoscopic instruments, monitors, and printers; replacement light bulbs are warranted for a period of sixty (60) days from the date of purchase.

7. **Certified Pre-Owned Products.** Stryker Certified Pre-Owned ("CPO") Products shall be noted as such on proposals and agreement exhibits and be subject to the Warranty set forth above.

8. **Non-Stryker Products.** Non-Stryker products are transferred "as is", with no warranty of any kind, express or implied.

9. **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 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 Stryker. Customer agrees to indemnify Stryker against any liability or damages to the extent arising from (a) through (d) above.

10. **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 9 (INDEMNITY) ABOVE OR SECTION 15 (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.

11. **Return Policy.**

11.1. Customer may return purchased Products to Stryker within ninety (90) days of Customer's receipt of the Product, for a credit or a refund of the purchase price paid, less shipping and handling fees. Products that fail after the first 90 days may be covered by and are subject to the terms of applicable product warranty. Sterile Products may not be returned for credit or refund unless they are; (i) in their original, unopened packaging; (ii) damaged in transit; (iii) defective; or (iv) contaminated.

11.2. 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.

11.3. Customer should carefully package the Product being returned. Credit will not be given for items that are damaged in return shipment due to inadequate packaging. 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.

12. **Trade-in Equipment.**

12.1. Any trade-in discount reflected on the proposal is an additional discount given by Stryker as a result of trade-in equipment remitted to Stryker by Customer at Customer's request and may not bear any relation to the value of such equipment. Customer hereby transfers and delivers unto Stryker all of its rights, title and interest in and to such trade-in equipment.

12.2. All trade-in equipment must be returned to the following address within sixty (60) days of Customer's receipt of the purchased Products:

Stryker Endoscopy  
Attn: Service Department (Trade-In)  
5900 Optical Court  
San Jose, CA 95138

12.3. All trade-in equipment must be appropriately packaged, consistent with Stryker's instructions or if such instructions have not been provided, with good commercial practice. Customer assumes responsibility for shipment of trade-in equipment to Stryker and for risk of loss or damage during shipment. Trade-in equipment must be accompanied by a copy of the purchase order or the trade-in order number. Failure to return trade-in equipment in accordance with these instructions may result in forfeiture

of the trade-in discount, for which Stryker will bill Customer, to be paid by Customer in accordance with Section 1.

13. **Solvency and Security Interest.** Customer represents that Customer is solvent. Stryker retains a security interest in the Products to secure payment of the price and all other indebtedness that Customer now and in the future owes to Stryker.

14. **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.

15. **Confidentiality.**

15.1. Subject to Section 17c., 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.

15.2. Customer must remove any "Protected Health Information" ("PHI") as defined in the Health Insurance Portability and Accountability Act of 1996 from Products prior to sending them to Stryker. Although Stryker will make reasonably commercial efforts to secure any PHI encountered, Stryker is not responsible for the security thereof.

15.3. 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.

16. **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.

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

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

17.2. 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.

17.3. 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.

18. **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.

19. **Insurance.**

19.1. 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.

19.2. 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. Upon request by Stryker, Customer will provide a certificate of insurance evidencing such coverage.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.