

**EVAHEART MEDICAL USA, INC.**  
**TERMS AND CONDITIONS OF PURCHASE**

- 1. CONTRACT.** These Terms and Conditions of Purchase ("Terms and Conditions") apply to orders by Evaheart Medical USA, Inc. ("Buyer") for products and/or services ("Goods") supplied by Seller ("Seller"). **SELLER'S ACCEPTANCE OF ANY PURCHASE ORDER ISSUED BY BUYER IS EXPRESSLY MADE CONDITIONAL ON SELLER'S ASSENT TO THESE TERMS AND CONDITIONS AND BUYER HEREBY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS IN ANY RESPONSE TO THIS OFFER.** The parties intend that these Terms and Conditions, together with the description of Goods and other information on Buyer's Purchase Order, constitute the final, complete, exclusive and fully integrated terms of the contract; provided, however if the Buyer and Seller have entered into a separate signed supply agreement related to purchase of Goods or Services, those terms shall also apply. In the event of any conflict between the terms of any Supply Agreement executed by Buyer and Seller and these Terms and Conditions, the terms of such signed supply agreement shall prevail. Any modification or waiver of these Terms and Conditions, whether evidenced by language or conduct, shall be null and void unless they are evidenced by a writing signed by an authorized representative of Buyer. Buyer hereby rejects all pre-printed terms and conditions proposed by Seller in any quotation issued by Seller, even if there is a reference in a purchase order issued by Buyer ("Order") to Seller's quotation or other form related to the Goods. **Seller's written acknowledgment of an Order, commencement of work on the Goods, or delivery of any Goods hereunder will constitute its unconditional acceptance of these Terms and Conditions.**
- 2. CHANGES TO ORDER.** In the event Buyer desires to modify the specifications for any Goods under an Order, Buyer shall notify Seller of such requested changes. In the event such changes will result in an increase in the time for performance or cost of the Goods, Seller must notify Buyer in writing of such increase within ten (10) days of Buyer's request for the change. The parties will negotiate in good faith to resolve any issues related to the changes requested by Buyer.
- 3. PACKING AND SHIPMENT.** Seller will pack and ship the Goods in accordance with industry standards. Title to the Goods shall not pass to Buyer until the Goods have actually been received by Buyer notwithstanding any agreement to pay freight, express or other transportation or insurance charges. Risk of loss or damage in transit prior to such actual receipt by Buyer shall be born by Seller. Unless otherwise stated in the Order, Seller will bear all risks and costs of delivering the Goods, including shipping and insurance charges, duties, taxes and other charges.
- 4. HAZARDOUS MATERIALS.** Seller will properly classify, describe, package, mark, label and provide Material Safety Data Sheets for the Goods and pack and ship them in compliance with any applicable hazardous materials laws, regulations, ordinances and orders.
- 5. DELIVERIES.** Time is of the essence in Seller's performance of an Order. Delivery must be effected within the time stated on the Order or otherwise specified by Buyer. If shipment is delayed for any cause, Seller must notify Buyer promptly and ship Goods in an expedited manner at Seller's expense. Buyer may change scheduled deliveries at any time by written notice to Seller. If Seller fails to deliver any shipment of Goods in accordance with Buyer's instructions, Buyer may cancel the Order for such goods and/or purchase substitute goods, in which event, Seller will reimburse Buyer for its costs in procuring the substitute goods as well as additional production expenses. These costs may include, but are not limited to, premium freight, overtime, production downtime, rework, inspection, expediting and the like. If applicable, these costs shall also include any charges incurred by Buyer from any customer of Buyer.
- 6. INSPECTIONS.** Buyer may inspect and/or test the Goods, including work in progress, components, and intermediate assemblies to be used in the Goods, at any time at its own expense and Seller, at no charge, will make its premises available for this purpose and provide any necessary assistance to make the procedures safe and convenient. No inspections and/or tests by Buyer will relieve Seller of its obligations to inspect and test the Goods. Records of all inspections performed by Seller shall be made available to Buyer during the performance of an Order and for seven (7) years after completion of an Order. Goods are subject to final inspection and acceptance at Buyer's plant, notwithstanding any other inspection, unless stated otherwise in the Order. Inspection and acceptance by Buyer shall not relieve Seller of its other obligations hereunder, including but not limited to the warranty terms. If Buyer finds any Goods to be defective or not in conformity with its specifications or requirements, it may return them at Seller's risk for a refund of the purchase price, require Seller to repair or replace them, or correct the defects itself or through third parties, and Seller will reimburse Buyer for all resulting costs. Seller is responsible for all inspection and any costs related to non-conforming Goods.
- 7. PAYMENT.** All payments shall be due within sixty (60) days of receipt of invoice. Payment by Buyer for Goods supplied hereunder shall not constitute acceptance thereof if subsequent inspection discloses defective material or workmanship or a failure to meet the specifications or instructions of Buyer or a breach of Seller's warranties (express or implied). Buyer will process payment for Goods when shipped in a manner acceptable to Buyer and when entered

into Buyer's system. Buyer may withhold or set off from any payment any amount as to which a dispute exists under any Order or against any amount due Buyer under any other transaction with Seller.

- 8. WARRANTY.** Seller makes the following warranties for the Goods to the Buyer, its successors, assigns, customers and the user of their respective customers' products and all such warranties shall be in addition to any and all other warranties, express or implied, which may be prescribed by law or in equity: (a) Seller shall, at the date of delivery, have full, good and marketable title to the Goods; (b) the Goods shall be free and clear of any and all liens, restrictions and encumbrances; (c) the Goods shall be new, fit and sufficient for their intended uses, and conform to specifications, drawings, and other descriptions supplied by Buyer and shall be free from defects (patent or latent) in materials and workmanship; (d) to the extent the Goods are not manufactured pursuant to detailed designs furnished by Buyer, the Goods will be free from defects in design; (e) Seller has complied with all quality standards and procedures furnished by Buyer or generally applicable in the industry and all applicable laws, regulations, standards, ordinances and orders in performing the Order; and (f) the prices charged to Buyer for the Goods are and will remain no less favorable than Seller's prices to other customers for the same or comparable goods or services and Seller will reduce its prices under this Order if necessary at any time to maintain this warranty. Such warranties, including warranties prescribed by law, shall run to the Buyer, its successors, assigns, and customers, and to users of the Goods, for a period of one (1) year after delivery unless otherwise stated.

In the event of breach of the warranty, Buyer, at its option, may: (i) cancel the Order as to such Goods, in which case Seller will refund to Buyer all amounts paid for such Goods within thirty (30) days of Buyer's cancellation; (ii) require Seller to promptly replace such Goods with conforming Goods without additional charge to Buyer; (iii) repair or replace the Goods in which case Seller shall reimburse Buyer for all costs related to such repair or replacement. Goods shall be removed after notification of rejection. Seller shall bear all risk of loss of rejected Goods.

- 9. INDEMNIFICATION.** Seller shall indemnify, defend and hold Buyer, its successors, assigns, customers, affiliates, employees, agents, and users (collectively, the "Indemnified Parties"), harmless from and against any and all claims, liabilities, losses, fines, penalties, damages and expenses (including reasonable attorneys' fees and court costs) which the Indemnified Parties may sustain or incur as a result of any claim of damage, loss, injury or death to any person or entity or property of any person or entity relating to or resulting from (i) the Goods; (ii) claimed infringement of any patent, trademark, trade secret, copyright, or other proprietary right of any other party based on use of the Goods; or (iii) any other act or omission of Seller or its subcontractors related to the Order.
- 10. TERMINATION FOR CONVENIENCE.** Buyer may terminate any Order in whole or in part, at any time for its convenience, by notice to Seller in writing. Upon receipt by Seller of such notice, Seller shall stop work and the placement of subcontracts and terminate work under outstanding subcontracts. In such event, Buyer shall pay to Seller, without duplication the (1) amounts due for Goods delivered and accepted or services completed in accordance herewith prior to the effective date of termination; plus (2) actual costs incurred by Seller to the terminated portion of the Order excluding any charges for material or parts which may be delivered to other orders. Such termination claim shall be submitted to Buyer within thirty (30) days after the effective date of the termination. In no event shall Buyer be liable for any profits on Goods not completed.

If, after notice of termination of the Order under the provisions of Section 11, it is determined for any reason that the Seller was not in default under the provisions of that paragraph, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to this Section.

- 11. TERMINATION FOR CAUSE.** Buyer may terminate an Order or any part thereof by written notice of default to Seller under any of the following circumstances: (1) If Seller fails to comply with any dates specified for delivery of Goods; (2) If Seller fails to comply with other provisions of the Order, or so fails to make progress as to endanger performance of the Order in accordance with its terms; and (3) If Seller becomes insolvent, or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors, or in the event a receiver is appointed for Seller's property or business. In the event of such termination, Buyer may purchase or manufacture similar supplies and/or require Seller to transfer title and deliver to Buyer to any and all property produced or procured by Seller related to the Order, and Seller shall be liable to Buyer for any excess cost to Buyer. Any termination by Buyer, whether for default, or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Seller shall continue performance of the Order to the extent not terminated.
- 12. LIMITATION OF LIABILITY.** IN NO EVENT WILL BUYER BE LIABLE TO SELLER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE LEGAL THEORY ON WHICH ANY LIABILITY CLAIM IS MADE. In no event will Buyer's liability to Seller exceed the amount due under the applicable Order for the Goods.

- 13. ASSIGNMENT.** Seller may not transfer, assign, subcontract or delegate its rights and obligations under this Order without Buyer's prior written consent, and any attempted transfer, assignment or delegation will be void and of no force or effect. This Order will bind and inure to the benefit of the parties hereto and their respective successors, permitted transferees, and permitted assigns.
- 14. CONFIDENTIAL INFORMATION.** Except as necessary to perform this Order, as required by law (upon prior written notice to Buyer), or with Buyer's prior written consent, Seller will, at all times, keep confidential all information, drawings, specifications and data furnished by Buyer (whether in writing, electronically, orally, or visually) or derived or developed by Seller for the purpose of performing this Order (collectively, "Confidential Information"). Seller agrees to take all reasonable steps to protect the confidentiality of Buyer's Confidential Information. Seller will not disclose such Confidential Information, use it for its own benefit or for the benefit of any other party, copy it, or permit copies to be made without the prior written consent of Buyer. Upon termination of this Order, and, at any time upon written request, Seller will return all copies of Buyer's Confidential Information to Buyer. These confidentiality obligations do not apply to information lawfully known by Seller at the time of disclosure by Buyer or obtained by Seller from a third party entitled to disclose it, or to information that becomes public knowledge other than through disclosure by Seller. Seller will not publish or advertise the existence or nature of this Order without Buyer's prior written consent. Seller acknowledges that a breach of this Section may cause irreparable harm and money damages would not be a sufficient remedy and that Buyer may seek injunctive relief in addition to other remedies available at law or equity. Seller's obligations under this Section shall survive termination or completion of an Order.
- 15. INSURANCE.** During the term of the Order, at its own expense, Seller will maintain insurance coverage for workers' compensation, and general liability (including contractual liability and products liability) in amounts and with insurers satisfactory to Buyer. On request, Seller will furnish Buyer with certificates of insurance that evidence this coverage, name Buyer as an additional insured, and prohibit the cancellation or reduction of coverage without 15 day's prior written notice to Buyer. At Buyer's option, Seller may furnish evidence of self-insurance. Compliance with this Section will not relieve Seller of its other obligations under this Agreement.
- 16. FORCE MAJEURE.** Neither party will be liable for any failure or delays in its performance of any of its obligations under this Order due to causes beyond its reasonable control (including, without limitation, acts of God, fire, flood, acts of war, and acts of sovereign governments). If Seller's delay continues for more than 15 days, Buyer may, without liability to Seller, cancel the Order in whole or part by written notice to Seller.
- 17. MISCELLANEOUS.** Seller is an independent contractor and not Buyer's employee, agent, partner or joint venturer. Seller does not have the authority to act as legal representative of Buyer, or bind Buyer in any respect. Buyer's remedies herein are cumulative and in addition to any other or further remedies available to it at law or equity. Any failure by Buyer to enforce any of the provisions of this Order will not be construed as a waiver of such provisions or the right of Buyer thereafter to enforce each and every such provision. All notices pursuant to this Order shall be in writing and may be sent by e-mail, fax, certified mail, or overnight mail to the last known address of the other party. All notices shall be effective on the date indicated on the delivery receipt. In the event any provision of an Order is found to be invalid or unenforceable, the parties hereby agree that the court shall enforce such provision to the extent permitted by law and, to the extent such provision is not enforceable, shall enforce the remainder of an Order as if such provision were not included in the Order. All Orders will be interpreted and enforced under the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law provisions. The state and federal courts in Allegheny County, Pennsylvania will have exclusive jurisdiction to resolve any dispute related to this Order unless Buyer, in its sole discretion, brings a claim against Seller in another court of competent jurisdiction. Seller consents to the jurisdiction of such courts and agrees to appear in any such action upon written notice thereof. In no event will the provisions of the U. N. Convention on the International Sale of Goods apply to this Order. Except as expressly provided herein, an Order may be modified only by a written amendment executed by a duly authorized officer or representative of Buyer.