



## OCULUS SURGICAL, INC. TERMS & CONDITIONS

These terms and conditions of sale shall apply to any and all offers, purchase orders, or any other sales transactions between the Buyer and OCULUS Surgical, Inc. (herein after OSI). In the event of any conflict between these terms and conditions of sale and any purchase orders or any other procurement documents issued by the Buyer, both parties agree that these terms and conditions shall control. The following terms and conditions constitute an agreement between OSI and the Buyer (hereinafter, "Agreement"), and shall be binding upon both parties as further set forth herein for any and all transactions entered into between OSI and Buyer. OSI's acceptance of any purchase order of Buyer is strictly conditioned upon Buyer's acceptance of the terms of this Agreement. Buyer shall be conclusively deemed to have accepted the same upon any of the following by Buyer, its agents or representatives: (i) written or electronic acknowledgment or acceptance of this Agreement, (ii) transmission to OSI, its agents or representatives of any order for OSI's Products or services, or (iii) acceptance of or payment for any product or service covered hereby. OSI's failure to object to any provision contained in any document or communication from Buyer shall not be deemed a waiver of any of OSI's rights hereunder, or in law or in equity. Any changes in the terms and conditions of this Agreement, or any document or agreement referred to herein, must be specifically agreed to in a writing signed by an authorized corporate officer of OSI before becoming binding on either party. No order will be binding upon OSI unless and until accepted in writing on OSI's behalf by an authorized official of OSI. OSI may accept or reject any order in OSI's sole discretion.

### 1. PRICING / PAYMENT

Quotations are valid for thirty (30) days from the date of issuance unless a further period is expressly agreed in writing by OSI and are subject to withdrawals or revision by OSI at any time prior to acceptance of orders by OSI. All invoices and charges for products and services will be at the price indicated in OSI's written order acknowledgement, or other mutually agreeable form of order acceptance by OSI. In the event that the acceptance price indicated on OSI's written order acknowledgment differs from the price originally quoted to Buyer, Buyer may cancel such order without liability so long as it gives written notice thereof to OSI within five (5) days following the date of OSI order acceptance notice. Unless otherwise specified or required by law, all prices are exclusive of any sales, use, revenue or excise tax, import duty (including brokerage fees) or other tax (excepting only taxes based on Seller's income), fees or other charges of any nature imposed by any public authority (national, local, state, or other) applicable to the products and services described in the contract of sale. Such taxes, when applicable, shall be added to the purchase price and be paid by Buyer, unless Buyer delivers to OSI tax exemption documentation acceptable to OSI and the applicable taxing authority prior to accepting delivery. The terms of payment are net thirty (30) days from the invoice date, subject to the approval of OSI credit department at the time of shipment. OSI reserves the right to require payment in advance, C.O.D. or guarantee by letter of credit, and otherwise modify credit terms at its discretion based upon the financial condition of Buyer. If Buyer fails to make payment on the due date the total price of the invoice becomes immediately due and payable and we may claim interest at the rate of 1.5% per month on any late payment, unless otherwise limited by law. Failure to make any payment when due in accordance with the terms hereof shall constitute a default by the Buyer.

### 2. INSPECTION AND RETURNS

Buyer shall promptly inspect all products upon receipt and shall accept or reject products (where permitted pursuant to the terms of this Agreement set forth below) within thirty (30) days following receipt of shipment. Once a product has been opened, used during a surgical procedure and/or sterilized, OSI is not able to accept any returns or exchanges. In the event that Buyer fails to notify OSI in writing of rejection and the specific grounds therefore within such time period, Buyer shall be conclusively deemed to have accepted received products. Buyer shall obtain a Return Material Authorization (RMA) for any returnable items within the return window, with prior pre-approval of OSI, before returning any equipment. The equipment shall be shipped to OSI, prepaid at Buyer's expense. Warranty replacement items (as set forth below) will be shipped to Buyer via UPS Ground service at Buyer's expense. Buyer shall be charged OSI standard evaluation fee for all items determined by OSI to be out-of-warranty or non-defective in addition to all shipping charges, such fee will be communicated to the Buyer by OSI prior to equipment being sent to the Buyer. OSI is unable to accept any returns of any consumable or single-use/disposable products, regardless of condition. A 15% restocking fee applies to all approved returns. Products returned without original packaging are not guaranteed to be accepted for return, and may be subject to additional restocking fees in OSI's sole discretion.

### 3. WARRANTY AND LIMITATION OF LIABILITY

Buyer hereby expressly acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein. Buyer acknowledges that the only warranty provided by OSI to Buyer, on equipment purchased, shall be a limited warranty for defects arising with the equipment's ordinary use for the period of twelve (12) months from the date of invoice, subject to the limitation of timely notification provided above and the conditions identified below, with exception to the BIOM® drive units (REF# 54405), for which said warranty is limited to a six (6) month period from the date of invoice. Such warranty shall be for parts and labor only at OSI's principal place of business in Port Saint Lucie, Florida. Buyer acknowledges that with respect to any warranty claim and/or work, Buyer is solely responsible for shipping costs of the equipment to and from OSI. Buyer further expressly acknowledges that



Buyer shall not be entitled to any damages relating to such loss of use of the equipment during the warranty repair, Buyer's only compensation shall be parts and labor related to the restoration of the equipment. Buyer further acknowledges that the foregoing limited warranty is contingent upon the following: (a)

Buyer must maintain the equipment as specified by OSI in any manuals pertaining to the equipment and/or other correspondence directed to Buyer by OSI; (b) Buyer agrees to operate/use the equipment in its intended manner and only for its intended purpose; (c) Buyer's agents and/or employees shall not cause damage to the equipment through negligent use or operation; and (d) Buyer will not conduct any repairs by or through an unauthorized repairer and/or utilize unauthorized parts. In the event that Buyer fails to comply with either (a), (b), (c), or (d), then the warranty provided herein shall be void. THE FOREGOING REMEDIES ARE EXCLUSIVE. SELLER MAKES NO OTHER EXPRESS WARRANTY. SELLER DISCLAIMS, AND BUYER WAIVES, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL IN NO CIRCUMSTANCES BE LIABLE IN CONTRACT, IN TORT, OR OTHERWISE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE. NO EMPLOYEE OR REPRESENTATIVE OF SELLER IS AUTHORIZED TO MODIFY THIS WARRANTY, OR SELLER'S STANDARD WARRANTY FOR ANY PRODUCT. Seller shall in no event have any obligations or liabilities to Buyer or any other person for loss of profits, loss of use or incidental, special, or consequential damages, whether based in contract or tort, strict liability, or any other theory, even if Seller has been advised of the possibility thereof, arising out of or in connection with the sale, delivery, use, repair, or performance of any products sold, or any failure or delay in connection with the foregoing. Buyer agrees to defend and indemnify Seller and all Seller's employees or agents from any and all claims, obligations, liabilities, costs, expenses, and judgments which may be asserted against, chargeable to, or recoverable from Seller or any such Seller employee by reason of personal injury or death of any person or persons, or by reason of any loss or destruction of, or damage to, property arising out of or related to the performance of this Agreement.

#### 4. APPLICABLE LAW / JURISDICTION AND VENUE

This Agreement shall be governed by and construed under the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida. Buyer hereby submits to the jurisdiction of the Florida courts for the resolution of any dispute arising directly or indirectly from this Agreement. The exclusive venue of any action, proceeding or dispute resolution procedure arising directly or indirectly from this Agreement shall be Saint Lucie County, Florida. Buyer waives any objection to venue in Saint Lucie County, Florida and waives any right to assert that Saint Lucie County, Florida is an inconvenient forum.

#### 5. MISCELLANEOUS

This Agreement shall be binding upon and inure to the benefit of the successors and of each of the parties hereto, but neither this Agreement, nor any rights hereunder, may be assigned by the Buyer to any third party without the express written consent of the Seller. Nothing in this Agreement shall be construed as to confer upon any person or entity other than the parties to this Agreement any rights or remedies not explicitly afforded herein by reason of this Agreement. This Agreement, together with any quotations, purchase orders, procurement documents, invoices, and/or order confirmations, constitutes the entire agreement of the parties related to the transaction set forth in said documents. No modification or amendment of this Agreement shall be binding unless executed in writing signed by both parties hereto. No waiver by any party of any provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If any term or provision of this Agreement is held to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid or unenforceable, such term or provision shall be deemed stricken from this Agreement with the remainder of the Agreement to remain unaffected.