



## **PARTS, SERVICE, PM, RENTAL, EQUIPMENT, AND DISPOSABLE TERMS AND CONDITIONS**

### **1. Acceptance**

This document, which includes the Quotation, Purchase Order, Invoice, and other terms/agreements specified herein are the complete and final agreements of customer identified in such documents ("Customer") and the party selling and or renting the goods and services ("Company") supplied as described in this document ("Goods"). These terms and conditions will apply to all transactions between Company and Customer, and may not be added to, modified, superseded, or altered except by written agreement or modification signed by Company's authorized representative, notwithstanding any terms and conditions which may now or in the future appear on Customer's acknowledgement or other forms, and notwithstanding any shipments, tenders of delivery, acceptance of payments, or other similar act of Company. Any acceptance of any performance by Company shall be taken as Customer's assent to and acceptance of these terms and conditions. The delivery or transmittal of a purchase order by Customer to Company upon receipt of Company's proposal constitutes acceptance of the Customer to the terms and conditions herein and an agreement to be bound by said terms and conditions as they appear, unmodified with no amendments. No person (except an officer of Company) is authorized to bind Company to any order except according to these terms and conditions. This document supersedes any previous version of the terms and conditions received by Customer.

### **2. Quotation**

Unless otherwise specified, quotations are for information only, and are not intended as an offer. Company reserves the right to revise all quotations including prices, delivery dates, terms, quantities or specifications, without notice to Customer, prior to Company's acceptance of Customer's order. **ALL SALES ARE FINAL**

3. Completion Date and Delivery. The forecasted shipment date, where stated, is approximate only and is not guaranteed. Company will use reasonable efforts to meet mutually agreed upon date and delivery. Company shall not be liable for any failure to perform or for any delay in the delivery or shipment of the Goods or for any damages or costs of any kind or nature suffered by Customer by reason thereof, when such failure or delay is directly or indirectly caused by, or in any manner arises from acts of God, acts of Customer, acts of Vendor, acts of any third party, war, terrorism, riots, fires, explosions, floods, strikes, lockouts, unavailability of labor, injunctions, accidents, government interference, failure in production or production equipment, inability to obtain adequate supplies, or any other cause or causes beyond the reasonable control of Company.

### **4. Availability of Supplies**

Delivery of the Goods is contingent upon Company's ability to obtain supplies, raw materials and services through its regular and usual sources. If for any reason beyond Company's control, Company is not able to meet anticipated deliveries, Company will not be liable therefore and may



postpone the delivery date(s) under this Document for a period of time which is reasonable under all the circumstances.

## **5. Freight-Transportation**

Unless otherwise agreed in writing by Company, delivery of the Goods shall be made F.O.B. Destination, with transportation expenses paid by Customer, and risk of delay during transit to be assumed by Customer. Title to Goods sold will pass to Customer upon Company's tender of delivery of the Goods to the carrier. If the Goods are held by Company subject to receiving instructions from Customer, Company may invoice the Goods and Customer agrees to make payment in accordance with this Document. Goods invoiced and held at any location by Company will be held at Customer's risk and Company may charge for (but is not obligated to carry) insurance and storage. Customer will accept and pay for partial deliveries at contract prices and terms. If Customer has declared or manifested an intention not to accept delivery in accordance with this Document, no tender will be necessary but Company may, at its option, give notice to Customer that Company is ready and willing to deliver and such notice will constitute a valid tender of delivery.

## **6. Limited Warranty; Disclaimer of Warranties; Limitation of Damages**

Company makes no warranties with respect to any Goods except to the extent, if any, of any warranties expressly set forth on Company's invoice, purchase agreement or rental agreement and except that the Goods will be operational under normal and reasonable operating conditions, reasonable wear and tear excepted (the "Warranty"); provided that the Warranty shall not be of any force or effect to the extent that the Goods are used inconsistently with any governing guidelines or specifications applicable to the Goods. Except as set forth herein, Company makes no other warranties concerning the Goods whatsoever. The Warranty and any other warranties, if any, made by Company as set forth on Company's invoice, purchase agreement or rental agreement, are made solely to Customer and are not transferable by Customer. **COMPANY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT COMPANY IS AWARE OF CUSTOMER'S INTENDED USAGE OF THE GOODS.** Pertaining to products NOT manufactured by Company, in the event of a recall or upgrade of the Goods, any Warranty or obligation of the Company as described in this paragraph 6 is null and void, and such recall or upgrade will not constitute damage or defect of the Goods. Customer acknowledges and agrees that (i) Goods may be subject to recall or upgrade by product manufacturers, (ii) the warranty does not cover any recall or upgrade of the Goods, (iii) Company has no responsibility or liability to Customer whatsoever with respect to any recall or upgrade of the Goods, (iv) Company is not responsible to communicate any upgrade or recall information to Customer prior or subsequent to receipt of Goods and (v) it is Customer's responsibility to maintain contact with product manufacturers regarding any information with respect to product recalls or upgrades. Customer agrees that Company's obligation described in this paragraph 6 will be **CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE GOODS WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED IN CONNECTION WITH THE GOODS. COMPANY NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME ANY OTHER**



844-DIAL-J2S

WWW.J2SMEDICAL.COM

**LIABILITY IN CONNECTION WITH THE GOODS.** If Customer notifies Company in writing of Customer's claim that the Goods are damaged or defective in such a manner as to be covered by the Warranty within 10 days of the discovery of the damage or defect (which such discovery must be made within the applicable warranty period), Company will review Customer's claim, and if valid, Company will, at its option, either repair (with non-OEM, after market, preowned or new parts at Company's discretion) or replace the Goods with same or similar Goods; however, for parts manufactured by Company, Company may, at its option either replace the part or credit Customer's account on a pro-rata basis, meaning Customer will be credited an amount equal to the number of months remaining on the warranty divided by the warranty period (in months) and multiplied by the purchase price at the time of purchase (for example : (months remaining on warranty / total warranty period) x purchase price). The warranties here within apply only to hardware components of the Device that are not subject to accident, misuse, neglect, fire or other external causes, alterations, repair, or commercial use. J2S Medical offers a limited warranty on all Gas analyzing devices. This limited warranty applies to any part/subassembly and/or repair of component(s) that may have contact with patient fluids. Replaced Goods are warranted for either 30 days or the remainder of the original warranty period, whichever is longer. Any remedy of Customer against the Company shall be barred unless notice is given in accordance with the foregoing provision. All Actions by Customer for breach of warranty against Company shall be brought within (1) year after the cause of action thereon accrues.

## **7. Inspection and Acceptance of Goods**

Each delivery of Goods will be inspected promptly by Customer for damage, defects and conformity with the Goods ordered. Customer will notify Company, in writing, of all claimed damage, defects or Goods received in error, within five (5) days of Customer's receipt of the Goods. If Customer fails to so inspect or notify Company, Customer will be deemed to have "accepted" (in accordance with, but not limited to, Section 1 and 2 of this entire agreement) the Goods, and to have waived any damage, defect or inaccuracy in the filling of the order, including any damage or defect covered by the Warranty. No Goods shall be subject to return or cancellation after order has been accepted by Customer pursuant to the terms of this Document. If Customer receives Goods requested in error through no fault of the Company, Company may opt to accept and arrange for a return of Goods. Company may provide credit, minus a restocking fee, completely at Company's discretion. For trial, loaner, or demo Goods, should the Customer NOT return the equipment, one (1) month from date of receipt, then it will be deemed that the Customer has accepted the Goods received, of which the prevailing fair market Sale Price (Sale Price quoted on the applicable price quotation) shall be applied.

## **8. Taxes**

Company reserves the right to collect sales, use or other taxes on the Goods unless a tax-exempt or direct pay certificate is provided. Since Company may not have nexus in Customer's state, any sales, use, or similar taxes on the purchase or rental of Goods hereunder which may be due in any political subdivision that is not collected by Company shall be paid by Customer. It shall be the responsibility of Customer to promptly make payment of such taxes or to advise Company of any taxes due. Customer hereby agrees to reimburse the company for any sales or use tax not charged to or paid by the customer for which a state or political subdivision may deem due at a later date.



844-DIAL-J2S

WWW.J2SMEDICAL.COM

## 9. Payment and Credits

The terms of payment are United States dollars and set forth on the face of the Purchase Agreement or invoice. If full payment is not received by Company within the terms, Customer shall pay interest to Company at the rate of eighteen (18) percent per annum. **COMPANY RESERVES THE RIGHT TO MODIFY PAYMENT TERMS, WITH CUSTOMER'S CONSENT, FOR PURPOSES OF ACCOMMODATING CUSTOMER OR ANY OTHER PURPOSE IN COMPANY'S DISCRETION, WITHOUT SAID MODIFICATION BEING DEEMED A NEGOTIATION OR MODIFICATION OF THE ENTIRE EXISTING CONTRACT.** Company may, at its option, cancel and/or sell any unshipped Goods should Customer fail to fulfill the complete terms of payment. Customer will have no right to offset any amounts against any payment or other obligation which Company may owe to Customer. Company reserves, and Customer hereby grants to Company, a security interest in the Goods sold to secure Customer's payment of the purchase price and any other charges owed by Customer and Customer agrees that Company may (but is not obligated to) take appropriate actions to evidence and perfect such interest and that Customer will cooperate with Company in the taking of such actions. Credits not taken by Customer within 1 year of credit date are not eligible for refund or allowed to be utilized toward future purchases.

## 10. Disputes

Any controversy or claim arising out of or relating to this Document, or the breach thereof, shall be governed by the laws of the State of Ohio. Further, Customer and Company hereby submit to the sole and exclusive jurisdiction and venue of the state and federal courts in Cincinnati, Hamilton County, Ohio over any controversy relating to or arising from this Document. Notwithstanding the foregoing, Company's right to institute or defend any proceedings in any jurisdiction regarding Customer shall not be limited.

## 11. Credit Approval

Company may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Company.

## 12. Information Regarding the Goods

Customer acknowledges that it has received and is familiar with Company's and any other manufacturer's labeling and literature concerning the Goods and will forward such information to its employees, agents, and customers. Customer will be responsible for the content and maintenance of all stored Data/information in devices where this is applicable.

## 13. Default

As used herein, a "Default" means any one or more of the following: Customer is delinquent on any of its obligations hereunder or under any order or transaction with Company, Customer becomes insolvent or a receiver under Title 11 U.S.C. as amended ("Bankruptcy Code") is appointed for or on behalf of Customer or a case under any chapter of the Bankruptcy Code is commenced for, by or against Customer, Customer suspends or terminates business or makes an assignment for the benefit of creditors, or any event occurs, whether or not similar to the foregoing, which in Company's good faith belief materially impairs the prospect of payment or performance by Customer hereunder. If a Default occurs, Company



844-DIAL-J2S

WWW.J2SMEDICAL.COM

may do one or more of the following: (a) Company may cancel or terminate this Document and/or any other agreement that Company has entered into with Customer; (b) Company may require Customer to pay immediately to Company, as compensation for loss of Company's bargain and not as a penalty, a sum equal to the Stipulated Value; (c) Company may require Customer to deliver the Goods to Company as set forth in this Document; (d) Company or its agent may peacefully repossess and remove the Goods from its then location without judicial process, and Customer will not make any claims against Company for damages or trespass or any other reason; and (e) Company may exercise any other right or remedy available at law or in equity. Customer agrees to pay all of Company's costs of enforcing Company's rights against Customer, including, without limitation, reasonable attorney's fees. If Company takes possession of the Goods, Company may sell or otherwise dispose of the Goods with or without notice, at a public or private sale, and apply the net proceeds (after deducting all costs related to the sale or other disposition of the Goods) to the amounts that Customer owes Company. Customer agrees that if notice of sale or other disposition is required by law to be given, ten (10) day notice shall constitute reasonable notice. Customer will remain responsible for any amounts that are due after Company has applied such net proceeds. As used herein, "Stipulated Value" means for particular Goods shall be an amount equal, as of any date, to: (i) the total of all amounts due to Company with respect to such Goods as of the date of payment of the Stipulated Value, plus (ii) all future amounts with respect to such Goods plus (iii) the then estimated fair market value of such Goods (as determined by Company) as of the end of the Term. Company's rights after a Default may be exercised by Company without liability.

#### **14. Safety**

Customer warrants that it will comply with all laws, regulations, standards and requirements which are applicable to the use of the Goods and Customer's business. Customer will be responsible for the content and maintenance of all stored Data/information in devices where this is applicable.

#### **15. Miscellaneous**

If any of the provisions of this Document are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby. No right or interest in the contract arising from this Document may be assigned by Customer and no delegation of any obligation owed by Customer may be made without the prior written permission of Company. Company may, without notifying Customer, sell, assign, or transfer this Document, any rights, titles or interest in this Document and/or any of its rights, titles, or interests in the Goods. Customer agrees that, upon any such assignment, such assignee ("Assignee") will have the same rights, remedies and benefits that Company has now under this Document and all references in this Document to Company shall include Assignee, but Assignee will not be liable for any obligations or liabilities of Company under this Document or otherwise. The rights of Assignee will not be subject to any claim. Customer further agrees that for a period of one year from the execution of the last transaction between Customer and Company, to which the terms herein pertain, hereof Customer will not hire any employee of Company. The rights and remedies of Company herein will be cumulative and additional to any other or further rights and remedies provided in law or equity. Waiver by Company of Customer's performance or inaction with respect to customer's breach of any provision of this document or failure of Company to enforce any provision of this Document, will not be deemed a waiver of future compliance therewith or a course of performance modifying such provision, and such provision will



844-DIAL-J2S

WWW.J2SMEDICAL.COM



remain in full force and effect as written. Company may terminate this agreement upon 30-day notice to Buyer. As used in this Document, “Customer” and “Company” include the respective heirs, executors, personal representatives, successors and permitted assigns of each. **IN ALL CASES, CLERICAL ERRORS ARE SUBJECT TO CORRECTION.**

## **16. Rental Terms**

The terms and conditions set forth in this paragraph 16 apply to a rental of Goods from Company to Customer. With respect to rental of Goods, the rental agreement billing period for each of the rented Goods begins the date the Goods are shipped from Company’s location. Company is responsible for rental Goods maintenance and will bear the cost of such maintenance, with exception of Customer negligence, abuse or misuse of the Goods. Customer will be charged for parts and labor to get the Goods in working condition. In the event of loss of the Goods, Customer shall be responsible for remitting payment to Company for an amount that is equal to fair market value of the Goods or replace the Goods with goods that are of the same make and model but not older than the lost Goods. Customer shall keep in effect an “All Risk” extended coverage property insurance policy covering the Goods for their full replacement value. Customer will keep and use the Goods only at the location to which the Goods were delivered (the “Goods Location”), and Customer will not abandon the Goods; provided that Customer may move the Goods from the Goods Location in the ordinary course of Customer's business. Company is the owner of and will hold title to the Goods and any parts, repairs, accessories, and devices attached to, incorporated in, or made part of the Goods. Customer will keep the Goods free of all liens, claims and encumbrances except those in favor of Company or those created by Company. At the end of the applicable rental period, Customer will immediately deliver the Goods to Company to any place in the United States that Company specifies to Customer and Customer will be responsible for proper packing of the Goods and freight charges back to Company. As a precaution if the transaction underlying this Document is deemed to be an agreement intended for security, and without limiting or negating Company’s ownership of the Goods, Customer hereby grants Company a security interest in the Goods (including, without limitation, any replacements, substitutions, additions, accessions, and attachments), all general intangibles associated therewith, all supporting obligations, and all proceeds thereof, whether now owned or existing or hereafter acquired or arising, to secure the payment and performance of all of its liabilities, indebtedness and obligations of Customer to Company under this Document. Customer authorizes Company to file Uniform Company under this document. Customer authorizes Company to file Uniform Commercial Code financing statements against Customer that indicate the foregoing. Company may inspect the Goods at any reasonable time. Should Customer be in breach of this Document, Company shall have all rights and remedies available to Company under this Document and applicable law, including, but not limited to, the right to enter onto Customer’s premises and repossess the Goods. Unless the context of this Document is evident that it is to apply solely to a sale, as opposed to a rental of the Goods, the terms and conditions set forth herein apply to a rental of Goods from Company to Customer.

### **16A. Terms Applicable to Rental of Goods – Non-Fixed Term Rental Agreements**

In addition to the terms applicable to rental of Goods generally, the following terms apply to the rental of Goods that are not under Fixed Term Rental Agreements: Once Customer wishes to return the



844-DIAL-J2S

WWW.J2SMEDICAL.COM

Goods to Company, Customer agrees to call or email Company to terminate the rental of the Goods, at which time a Company representative shall email to Customer a return authorization form (“RA”) with shipping instructions. If Customer does not contact Company for a RA, Customer will be deemed to have elected to extend the rental term of the Goods and to have agreed to pay Company additional rental fees for additional days Customer has kept the Goods. Rental period concludes when rental Goods are received and acknowledged by Company. Calculation of rental fees for partial months is as follows: the quoted full-monthly rental price divided by 30 days multiplied by the days rented. All rentals are billed in arrears on the first of the following month.

#### **16B. Terms Applicable to Rental of Goods – Fixed Term Rental Agreements**

In addition to the terms applicable to rental of Goods generally, the following terms apply to the rental of Goods that are under Fixed Term Rental Agreements: Customer has an *UNCONDITIONAL OBLIGATION* to make all payments due under this Fixed Term Rental Agreement; Customer cannot withhold, set-off or reduce any payments due under this Fixed Term Rental Agreement for any reason unless Company or Customer notifies the other in writing prior.



844-DIAL-J2S

WWW.J2SMEDICAL.COM