Diversatek™
Healthcare

SALES TERMS AND CONDITIONS

1. Acceptance; Contrary Terms; Entire Agreement. The Order is accepted by Seller only on the terms and conditions contained herein and Seller's acceptance is conditioned upon Buyer's assent to these terms and conditions. If any of these terms and conditions are not acceptable to Buyer, Seller must be notified promptly. Unless otherwise set forth in a Seller's Quotation to Buyer to the contrary, this writing is intended by Seller and Buyer to be the complete, exclusive, and final statement of their agreement. Any changes to this Agreement must be in writing and signed by Seller and Buyer. Without limiting the foregoing, Seller expressly objects to all contradictory terms and conditions specified in the Order, including without limitation those regarding warranty and indemnity.

2. Taxes and Fees. All sales, excise and similar taxes that the Seller may be required to pay or collect with respect to the Products will be for the account of the Buyer, except as otherwise provided by law. Except as otherwise provided herein or in a Seller's Quotation to Buyer, Seller will not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included in the price, any increase in rates effective after the date hereof will be for the account of Buyer. Buyer will also pay Seller any collection fees and reasonable attorney's fees incurred by Seller in enforcing this Agreement of defending against any claim for breach of this Agreement.

3. Excuse From Performance. Seller is excused from performance if performance is rendered impracticable by any accident; war; delay, or interruption in or failure of sources or subcontractors to supply materials and equipment; labor or transportation problem; act of God; or other causes and conditions that are beyond Seller's reasonable control; or any governmental orders, contracts, priorities, directives, requisitions or requests, whether or not voluntarily assumed.

4. Cancellation. Buyer may not cancel all or part of the Order without Seller's written consent.

5. Warranty of Quality Goods and Services. Seller expressly warrants that the Products: a) shall be merchantable in the trade as goods strictly of the kind and quality required to be furnished by Seller; b) shall be new, unused and of good quality and free from latent or patent defects in design, material, manufacture, and workmanship; c) shall be safe for use; and d) shall be fit for the particular purpose as defined in the Product Instruction for Use (IFU).

6. Claims. Claims for warranty as defined in Section 5 must be made within thirty (30) days of receipt of goods. Claims for damages, shortages, Seller error, or Buyer error must be made within seven (7) days of receipt of the Products. THE BUYER'S FAILURE TO MAKE ANY CLAIM WITHIN THE SPECIFIED TIME PERIOD WILL RESULT IN THE UNCONDITIONAL WAIVER OF SUCH CLAIM. Seller reserves the right to accept or reject any claim in whole or in part.

7. Risk of Loss; Shipment. Unless otherwise specified on Seller's Quotation to Buyer, all shipments are F.O.B. shipping point. Shipping dates on the Order are estimates only. Seller will use

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commercially reasonable efforts to meet the estimated shipping date. Seller will not be held responsible for failure to meet such estimated dates. Seller may make delivery in installments. All installments will be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay any installment when due will excuse Seller from making future deliveries.

8. Prices; Payment Terms. Unless specifically held open for a length of time on Seller's Quotation to Buyer, all prices are subject to change without notice. Unless otherwise set forth in Seller's Quotation to Buyer, invoices are payable in full thirty (30) days following the invoice date. If by terms of sale credit is extended to Buyer, Seller reserves the right to revoke such credit if Buyer fails to pay for any Products when due, and Seller may demand payment before any further shipment.

9. Exclusion of Warranties. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

10. Limitation of Remedies and Damages. If Buyer makes a valid and timely claim under Section 6, Seller's liability and Buyer's remedies under this Agreement will be limited solely to replacement or credit, at Seller's option, with respect to Products returned to Seller at Buyer's expense within thirty (30) days after Buyer's receipt of the Product. SELLER'S LIABILITY WILL IN NO EVENT BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS. SELLER WILL NOT BE LIABLE, UNDER ANY CIRCUMSTANCE, FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LABOR COSTS OR LOST PROFITS RESULTING FROM THE USE OF OR INABILITY TO USE THE PRODUCTS OR FROM THE PRODUCTS BEING INCORPORATED IN OR BECOMING A COMPONENT OF ANY OTHER PRODUCT. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.

11. Controlling Law. The validity, construction and enforcement of the Agreement will be governed by and interpreted under the local, domestic law of the State of Wisconsin, including its provision of the Uniform Commercial Code.

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