

## TERMS AND CONDITIONS OF SALE

**1. Terms of Sale.** These Terms and Conditions ("Terms") and the corresponding invoice ("Invoice") govern the sale of the products ("Products") by First Biomedical, Inc. or any of its affiliates (individually or in the aggregate "Seller") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders (collectively, "Purchase Order") or without a purchase order and are a binding contract between Buyer and Seller (the "Sales Agreement"). In case of a conflict between these Terms or the Invoice and the Purchase Order, or in the absence thereof, these Terms and the Invoice prevail except where Seller has expressly agreed to the conflicting term in the Purchase Order in its acceptance or order acknowledgment. In case of a conflict between the Purchase Order and Seller's acceptance or order acknowledgment, the acceptance or order acknowledgment prevails. In case of a conflict between these Terms and the Invoice, the Invoice prevails.

**2. Price.** The price of the Products, as set forth in the Invoice, does not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller expressly states otherwise in writing. In the event Seller is required to pay any taxes, governmental fees, assessments, duties and charges (other than Seller's income taxes) as a result of this transaction, Buyer shall reimburse Seller for any such amounts.

**3. Payment.** Payments must be made to Seller in U.S. dollars within 30 days of Buyer's receipt of the Products or Invoice, whichever is sooner. Payments not received when due will bear interest at the lower of 18 percent per annum or the maximum rate allowed by applicable law. Seller reserves the right to limit or cancel the credit of Buyer, and Seller may require or demand payment or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing the Sales Agreement. Buyer shall pay Seller's attorney fees, costs and expenses incurred in any collection process.

**4. Proprietary Rights.** Possession or purchase of the Products does not convey any express or implied license in the Products and Buyer shall not receive any rights, title or interest in and/or to any intellectual property, or any proprietary rights embodied in the products. Seller makes no representations regarding its right to sell the Products to Buyer or Buyer's right to resell or use the Products.

**5. Packaging.** The methods of packaging the Products, with respect to costs and risk to which the Products are subject, shall be determined solely by Seller.

**6. Shipment.** Seller will deliver the Products FOB shipping point from Seller's facility unless otherwise indicated by Seller in the Invoice. Seller may make partial shipments at its sole discretion. Seller shall endeavor to meet the shipping date specified by Buyer, but time is not of the essence. If Seller is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery.

**7. Title and Risk of Loss.** Seller is not responsible for damage or loss in transit. All risk of loss to the Products passes to Buyer as the Products are loaded onto the carrier. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Seller. Buyer will promptly inspect all Products delivered to it. Any claim against Seller for shortages in the delivered Products shall be deemed waived unless Buyer makes a claim to Seller in writing within 30 days after such delivery. Buyer shall request any proof of delivery within 30 days of delivery.

**8. Warranty.** BUYER IS BUYING THE PRODUCTS "AS IS" AND, EXCEPT FOR SELLER'S 90-DAY WARRANTY SET FORTH BELOW AND SELLER'S STATUTORY WARRANTY OF GOOD TITLE, SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN ADDITION, SELLER IS NOT LIABLE FOR MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. UNLESS EXPRESSLY STATED HEREIN, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF SELLER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER EXCEPT TO THE EXTENT SPECIFICALLY STATED HEREIN. Buyer acknowledges and agrees that the only warranties provided are those provided herein or by the manufacturer of the Products, if any. Buyer further acknowledges such warranties shall only apply if the Products are used for their normal use, in accordance with its labeling for the period specified in the operator's

manual, the packaging inserts or other documents accompanying the Product or provided by the manufacturer. Buyer's exclusive remedy for any breach of the manufacturer's warranty shall be set forth in such warranty, if any. Seller shall not be liable to Buyer for any breach of those manufacturer warranties. **90-DAY PUMP WARRANTY: ALL PUMPS ARE WARRANTED FOR 90 DAYS FROM THE DATE OF PURCHASE AGAINST MATERIAL DEFECT AND WORKMANSHIP. THIS WARRANTY EXCLUDES INTERNAL BATTERIES, EXTERNAL BATTERY PACKS AND BATTERIES, POWER SUPPLIES, AND CONSUMABLE PARTS.** If Buyer believes a pump has a defect in materials or workmanship within the warranty period (with valid proof of purchase), Buyer must contact Seller's customer care at 1-800-658-5582 for assistance. Seller's customer care will first try to resolve the issue with detailed troubleshooting. Should troubleshooting not resolve the problem, customer care will provide Buyer with a Return Goods Authorization ("RGA") for the return of the defective product. If needed, a loaner pump will be provided and Seller may demand a \$1,250 deposit to a major credit card to ensure the return of the loaner pump. In such event, no charges are made to Buyer's credit card, the deposit is pre-authorized and will stay as a hold on the card until the loaner pump is returned, and Buyer's card will only be charged if the loaner pump is not returned within 10 days after the pump is repaired and returned to Buyer or after Seller requests its return. If Seller, in its sole discretion, determines a pump is defective, it will be replaced with another pump of the same model, if available, or if not available, to a comparable pump as determined by Seller in its sole discretion. If, while repairing the product, it is deemed defective due to improper use of the pump or damage (including dropping the pump or inadequate packaging of the pump for shipping) Buyer will be charged for the repair and all shipping charges. Minimum repair charge is \$45. Standard UPS or FED EX Ground shipping costs for the return of the defective product for repair will be the responsibility of Seller (unless the repair was not covered by warranty). Overnight delivery is available at an additional cost. Seller must receive the defective product within 10 days of issued RGA. It is Buyer's responsibility to package the pump appropriately so no damage will occur during transit (i.e. covered with bubble wrap, flexible film, and foam). If inadequate packaging is used and the product arrives damaged, the warranty will be void and the repair will be charged accordingly. **THIS 90-DAY PUMP WARRANTY DOES NOT APPLY TO DEFECTS RESULTING FROM ANY CUSTOMER OR PATIENT ACTIONS, SUCH AS MISHANDLING AND PRODUCT ABUSE, IMPROPER INTERFACING, OPERATION OUTSIDE OF DESIGN LIMITS, MISAPPLICATION, IMPROPER REPAIR, OR UNAUTHORIZED MODIFICATION. NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE. SELLER'S LIABILITY SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE OF ANY DEFECTIVE UNIT OR UNITS OF EQUIPMENT TO WHICH A CLAIM IS MADE, AND SHALL IN NO EVENT INCLUDE BUYER'S LOST PROFITS OR GOODWILL, OR ANY OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER ON CONTRACT, TORT OR OTHER LEGAL THEORY. BUYER ACKNOWLEDGES AND AGREES THAT THE ONLY WARRANTIES PROVIDED ARE THOSE PROVIDED BY THE MANUFACTURER OF THE PRODUCTS, IF ANY. BUYER FURTHER ACKNOWLEDGES SUCH WARRANTIES SHALL ONLY APPLY IF THE PRODUCTS ARE USED FOR THEIR NORMAL USE, IN ACCORDANCE WITH ITS LABELING FOR THE PERIOD SPECIFIED IN THE OPERATOR'S MANUAL, THE PACKAGING INSERTS OR OTHER DOCUMENTS ACCOMPANYING THE PRODUCT OR PROVIDED BY THE MANUFACTURER. BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OF THE MANUFACTURER'S WARRANTY SHALL BE SET FORTH IN SUCH WARRANTY, IF ANY. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY BREACH OF THOSE MANUFACTURER WARRANTIES.**

**9. Returns.** Any order by Buyer may be cancelled or changed only with the consent of Seller. Prior consent from Seller is required before a return will be accepted. Seller accepts no responsibility for Products returned without prior written authorization. Products must be returned in saleable condition within 30 days from the date of Invoice. Products will not be accepted for return if they are damaged or used; custom manufactured for the Buyer; not in their original packaging (unopened); not purchased from Seller or are otherwise incapable of being resold by Seller. When Products are authorized to be returned for any reason other than for breach of warranty, the amount of credit may be subject to a restocking charge of up to 20%. Returned Products must be sent freight prepaid to the appropriate address indicated by Seller's returns department. Any unauthorized returned Product will be returned at Buyer's expense. If a

Product is returned with such consent, it shall thereupon become the property of Seller. All returns must be accompanied by a valid Return Authorization Number received from Seller.

**10. Liability Limitation.** IN NO EVENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR COST OF "COVER" ARISING OUT OF THE SELECTION, ORDERING, PURCHASE, USE, RESALE OR DISTRIBUTION OF THE PRODUCTS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. IN PARTICULAR, SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFITS, SAVINGS OR REVENUE; DAMAGE TO REPUTATION; LOSS OF USE OF A PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF SUBSTITUTE GOODS, EQUIPMENT, FACILITIES OR SERVICES; DOWNTIME; OR THE CLAIMS OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATIONS, BUYER'S CUSTOMERS OR PATIENTS, ANY MANUFACTURERS, OR ANY PARTIES ALLEGING INTELLECTUAL PROPERTY RIGHTS IN THE PRODUCTS. SELLER'S LIABILITY IN ALL CASES IS STRICTLY LIMITED TO THE AMOUNT PAID BY BUYER FOR THE PRODUCTS.

**11. Export.** All exports and re-exports of the Products are subject to US export control laws and regulations, including without limitation the US Export Administration Act and its associated regulations, and may be subject to export or import regulations in countries other than the United States. Accordingly, Buyer and its employees shall not export or re-export the Products without first obtaining an appropriate license, exemption or similar authorization in accordance with all applicable US export control laws or regulations. Buyer agrees that it will not directly or indirectly export or re-export, or otherwise transmit or retransmit, the Products or related technical data (or any part thereof) or any service that is directly related to the Products, to any country which such export, re-export, transmission or retransmission is restricted by any applicable US export control laws or regulations without the prior written consent, if required, of the Bureau of Export Administration of the US Department of Commerce or such other government entity as may have jurisdiction over such export, re-export or transmission.

**12. Termination.** In the event of a breach by Buyer, Seller may terminate the Sales Agreement upon giving 5 business days' written notice of termination. If the Sales Agreement is terminated by Seller because of Buyer's breach, Seller is entitled to payment for any Products already delivered to Buyer.

**13. Excusable Delays.** Seller is not liable or responsible for delay or failure to perform any of Seller's obligations under the Sales Agreement to make delivery of Products occasioned by (i) any cause beyond its reasonable control, including, without limitation, labor disputes, industry disturbances, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God, or (ii) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement ("Excusable Delays"). The date of delivery must be extended for a period equal to the time lost by reason of any of the Excusable Delays.

**14. Indemnification.** To the maximum extent allowed by law, Buyer must defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including attorneys' fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (ii) any infringement or alleged infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer; (iii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product import/export, safety, labeling, packaging and labor practices; (iv) Buyer's breach of the Sales Agreement and (v) Buyer's breach of any of the terms, conditions and requirements of the manufacturer.

**15. Entire Agreement.** The Sales Agreement comprises the complete and final agreement between Seller and Buyer and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. No other agreement, quotation or acknowledgment in any way purporting to modify any of the terms of the Sales Agreement is binding upon Seller unless made in writing and signed by Seller's authorized agent. The Sales Agreement may not be altered or modified except by written agreement of Seller and Buyer. Any other representations or warranties made by any

person, including employees or other agents of Seller, that are inconsistent with the Sales Agreement are not binding upon Seller. If any model or sample were shown to Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the Products would necessarily conform to the model or sample.

**16. Successors and Assigns.** The Sales Agreement binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without Seller's prior written consent.

**17. Governing Law.** The validity, construction and performance of the Sales Agreement shall be governed by, and construed in accordance with, the law of the state of Kansas without regard to its conflicts of law provisions. The U.N. Convention on Contracts for the International Sales of Goods does not apply to the Sales Agreement and all of its terms must be construed in accordance with the Uniform Commercial Code of the State of Kansas.

**18. Jurisdiction and Venue.** Buyer irrevocably submits and agrees to the jurisdiction of the state and federal courts of the state of Kansas in any action, suit or proceeding related to, or in connection with, the Sales Agreement and, to the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (i) that Buyer is not personally subject to the jurisdiction of the state and federal courts of Kansas; (ii) that the venue of the action, suit or proceeding is improper; (iii) that the action, suit or proceeding is brought in an inconvenient forum; or (iv) that the subject matter of the Sales Agreement may not be enforced in or by the state or federal courts of the state of Kansas. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process to the Buyer at the address set forth in Section 22.

**19. Waiver.** The waiver by Seller of any breach by Buyer of any provision of the Sales Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Sales Agreement.

**20. Severability.** If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.

**21. Notices.** Any notice or other communication regarding the Sales Agreement must be in writing and delivered in one of the following manners: (i) personally delivered, (ii) transmitted by facsimile (with a receipt acknowledgment), (iii) transmitted by electronic computer mail, (iv) transmitted by a recognized courier service, or (v) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address: (a) If to Seller - For First Biomedical, Inc.: Attention Customer Service, 11130 Strang Line Rd., Lenexa, KS 66215, Phone 800-658-5582, Facsimile 913-764-5282; For InfuSystem, Inc.: Attention Customer Service, 31700 Research Park Drive, Madison Heights, MI 48071, Phone 800-962-9656, Facsimile 248-658-6471; and (b) If to Buyer, at its address designated on the face of the Invoice. Except as otherwise specified in the Sales Agreement, all notices or communications are deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) on the date of transmission if delivered by facsimile, (iii) on the date of transmission if transmitted by electronic computer mail, (iv) one day after pickup by courier if delivered by courier, or (v) five days after mailing if delivered by the postal service. Either party may change its address by notice to the other party.

**22. Construction.** The headings of the Sections in these Terms are provided for convenience only and may not be considered in the interpretation of the Sales Agreement. The provisions of the Sales Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Sales Agreement.

**23. Survival.** The terms of the Sales Agreement that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, including, but not limited to, Sections 8, 9, 10, 11, 12, 15 and 18 and this Section 23, survive the expiration or termination of the Sales Agreement.