

## DRAEGER MEDICAL CANADA, INC.

### TERMS AND CONDITIONS OF SALE

**1. GENERAL.** These terms and conditions are integral to the agreement governing the sale and purchase of goods (“Goods”) and service (“Service”) between the seller, Draeger Medical Canada, Inc. (“Draeger”), and the purchaser (“Customer”). Goods and Service are referred to herein collectively as “Product.” The agreement governing this sale and purchase of Product (“Agreement”) consists of the following, all of which are hereby incorporated herein by reference: (i) these terms and conditions, (ii) the written sale or service agreement, if any, signed by Draeger and Customer (referred to herein singularly as “Party” and collectively as the “Parties”), including schedules thereto, that is in effect on the date the applicable Purchase Order (“PO”) is delivered to Draeger, and any amendments thereto (“Contract Document”), (iii) any price quote (“Quote”), and (iv) any PO or other document issued by Customer with respect to a Quote that has been accepted by Draeger; provided, however, Draeger shall not be bound by any terms, conditions, or other provisions in a PO or other document issued by Customer that are different from, in addition to, or inconsistent with, the other provisions of this Agreement.

#### **2. PRICES.**

(a) Prices are as stated in the Contract Document. If no Contract Document is in effect at the time the order is filled, the prices shall be as stated on the applicable Quote; provided, that such Quote is valid at that time. In all other cases, prices are those currently in effect on Draeger’s standard price list at time of shipment. Unless otherwise stated in writing by Draeger, prices include the cost of standard domestic packing. Prices exclude charges for freight, unloading, storage, insurance, taxes, fees, or other charges related to Product. Customer shall bear the cost of all applicable sales, use, property, and manufacturer’s taxes and any license or similar fees, which may be imposed upon the sale, use, or performance of the Product.

(b) If this Agreement is for multiple years, then the prices set forth herein are fixed only for the first 12 months hereof. Thereafter, Draeger may adjust the prices (“Price Adjustment”), pursuant to a proposed Price Adjustment notice (“Price Adjustment Notice”). Draeger shall provide the Price Adjustment Notice to Customer, in writing, specifying the Price Adjustment, no less than 90 days in advance of a proposed Price Adjustment (“Price Adjustment Notice Period”). If Customer objects to the proposed Price Adjustment during the Price Adjustment Notice Period, then, notwithstanding anything else in this Agreement to the contrary, Draeger may cancel this Agreement with 60 days’ notice without penalty (“Price Termination Notice”). During the 60-day Price Termination Notice period, Customer may continue to purchase Products at the then-current price. If Customer does not object to the proposed Price Adjustment, then such proposed Price Adjustment shall go into effect on the date stated in the proposed Price Adjustment Notice and shall be incorporated herein by reference. Draeger shall fill all POs received prior to the effective date of the Price Adjustment or, if earlier, the termination of this Agreement, at the then-current prices. Unless otherwise agreed to by Draeger and Customer, all other terms, conditions, and provisions of this Agreement shall continue unchanged and remain in full force and effect after any such Price Adjustment. A Price Adjustment does not obligate any of the Parties to agree to any other modification of this Agreement.

#### **3. PAYMENT TERMS.**

(a) Unless otherwise agreed in writing, Customer shall make payment in full without any set-off (for any reason) no later than 30 days from the date of invoice in Canadian Dollars (“CAD”). Partial shipments of Goods shall be invoiced as shipped. Draeger reserves the right to require (i) payment in advance, (ii) cash on delivery, or (iii) a modification of credit terms.

(b) Notwithstanding the foregoing, payment on advance orders paid by credit card shall be charged and paid for at that time of the order. All payments made with personal credit cards may include an administrative fee of up to 2.8% of the value on the invoice. Payments made through corporate purchasing credit cards may include an administrative fee of up to 2.5% of the value on the invoice.

(c) Draeger reserves the right in the event of late payment: (i) to suspend all deliveries or Service or to cancel any of its outstanding obligations under this Agreement; or (ii) to charge interest on the late payment calculated on a day-to-day basis until the actual date of payment at the lower of (A) an annual rate of 12% or (B) the maximum rate allowed by law. Such remedies are in addition to any other rights or remedies available to Draeger under the law.

(d) If Customer pays less than the full amount due, the payment will be applied toward the outstanding balance. Draeger’s acceptance of part of the amount due shall not interfere with Draeger’s right to recover the balance of the amount due or right to pursue any other right or remedy under the law.

(e) All POs are subject to credit approval by Draeger.

#### **4. DELIVERY, INSTALLATION, RISK, AND TITLE.**

(a) Title to, and risk of loss for, the Goods shall pass to Customer upon delivery as determined on the basis of DAP (INCOTERMS 2020) (destination) prepay and Draeger will add all related transportation and insurance costs as a separate line item to the invoice to Customer unless Customer provides their own transportation provider and/or account number in which case the delivery is determined on the basis of EXW (INCOTERMS 2020) (location provided on Quote). Upon passage of title to the Goods from Draeger to Customer or, if earlier, the date as of which Draeger makes a commercially reasonable attempt to deliver Goods, Customer shall be responsible and liable for, and agrees to defend and indemnify Draeger against, all claims, injuries, losses, fines, penalties, damages, or costs, including legal fees (on a solicitor-client basis)

resulting from Customer’s storage, handling, disposal, release, use, or resale of the Goods or their containers.

(b) Delivery, installation, and completion dates are only approximate and Draeger will not be liable for failure to meet such dates. Notwithstanding the foregoing, Draeger shall use reasonable efforts to meet quoted delivery, installation, and completion dates. Partial shipments may be made at Draeger’s sole discretion or, with Draeger’s consent, at Customer’s request.

(c) Customer shall use commercially reasonable efforts to allow for timely delivery of Goods, including, without limitation, providing instructions, granting access during Customer’s business hours (or such other time agreed by the Parties), and obtaining any required licenses or permits.

(d) Installation costs, if applicable, are included in the price of Goods, unless indicated as a separate Service on the Contract Document or Quote.

(e) Customer is responsible for ensuring that the installation site is fully prepared prior to installation and for bearing all costs necessary to prepare site for installation in accordance with Draeger’s instructions, including, without limitation, (i) engaging in any required labour, (ii) acquiring any required materials, (iii) to the extent applicable, ensuring that the Customer’s network (A) meets any Draeger specific requirements, and (B) is fully functioning as mandated by all manuals and other instructions requested of Customer by Draeger, and (iv) ensuring compliance with all governmental requirements, including without limitation, all certifications and approvals for installation and operation. Customer shall provide to Draeger or its subcontractor, as applicable, access to the installation site and, if required, safe and secure space on site for storage of Goods and equipment prior to and during installation.

**5. ACCEPTANCE.** Customer shall inspect Goods received and notify Draeger of any Nonconforming Goods prior to acceptance. Goods shall be deemed to be accepted by Customer 15 days from date of delivery; provided, however, that (i) if earlier, acceptance shall occur immediately on the first day Customer uses Product, or (ii) with respect to Goods requiring installation (other than connection to Customer network), acceptance shall occur on the earlier of 5 days after installation or 30 days after delivery. Installation shall be deemed to be completed upon final verification under Draeger’s standard procedures that Goods meet all applicable written performance obligations. For this purpose, “Nonconforming Goods” means (i) Goods that are different from those identified on the PO confirmation or (ii) Goods with label or packaging that incorrectly identifies contents. Draeger shall, at its sole discretion, replace Nonconforming Goods with conforming Goods or credit or refund the price of Nonconforming Goods. Such remedy is the exclusive remedy for Nonconforming Goods. Draeger shall bear the shipping costs related to return and replacement of Nonconforming Goods.

#### **6. CHANGES AND RETURNS.**

(a) POs may not be changed or canceled after PO is accepted by Draeger.

(b) Draeger reserves the right, subject to written notice, to substitute Goods or change specifications of Goods, which, in Draeger’s judgment, does not materially affect the installation, performance, function, or price thereof. Goods may only be returned with prior authorization from Draeger. Eligible returns must follow the Customer Material Return Process in effect at the time of return as specified at <https://www.draeger.com/Content/Documents/Content/RMA-Process-Medical-2024-DMCL.pdf> and which is hereby incorporated herein by reference (“RMA Process”). Unless warranty applies or in the case of a Nonconforming Good, restocking fees of up to 25% may apply at Draeger’s sole discretion.

#### **7. DELAY OR FAILURE TO PERFORM OBLIGATIONS.**

(a) Draeger shall not be deemed to be in breach or otherwise liable for any delay or failure in performance of any of its obligations under this Agreement caused, in whole or in part, by any act or omission of Customer or Customer’s agents, subcontractors, or employees.

(b) Neither Party shall be liable for failure to perform obligations (except for payment obligations) under this Agreement to the extent that such failure arises out of events beyond its reasonable control including, but not limited to, acts of government or compliance with any governmental laws, rules or regulations, acts of God, war, terrorist threats or acts, civil disturbance, fire, or other casualty, pandemic, strike, labour dispute, or unavailability of labour, carriers, raw materials, power, or supplies. Any delivery date may be extended, at Draeger’s option, to the extent of any delay resulting from any such event.

**8. SECURITY INTEREST.** Customer grants to Draeger a security interest in all of the right, title, and interest of Customer to Goods (and all accessories and replacements thereto and all proceeds thereof), until full payment is made for such Goods. If Customer fails to pay for Goods when due, in whole or in part, Draeger may, in its sole discretion, declare all obligations of Customer immediately due and payable. In such event, Draeger will have all the rights and remedies of a secured party under applicable law. Customer irrevocably authorizes Draeger or its agent to file, at any time, applicable personal property security act financing statements naming Customer as debtor and describing any Goods, and any other documentation relating to the security interest granted hereunder. In addition, Customer specifically authorizes Draeger to file financing statements in appropriate jurisdictions naming Customer as the debtor and describing Goods as “all assets.” Customer agrees (a) to keep Goods in working order until the purchase price has been paid and (b) not to attempt to transfer any interest in Goods until the purchase price is fully paid.

## 9. WARRANTY.

(a) *Goods.* Draeger warrants that under normal use and with prescribed maintenance, storage, and care, Goods are free from defects in material and workmanship for the warranty period. Except as provided in a separate warranty statement in Goods manual or otherwise provided with Goods, the warranty period for new capital equipment is 12 months from date of delivery and disposable and consumable Goods (excluding sensors) are warranted at time of delivery only. All software is warranted for 90 days from the date of implementation sign-off, or first productive use. All other Goods are warranted for 12 months from the date of delivery or the expected life of the Goods, whichever is less. Warranty is conditioned on (i) Customer providing immediate written notice of warranty-related claim to Draeger and following RMA Process, (ii) no repairs, modifications, or alterations being made to Goods other than by Draeger or its authorized representatives, (iii) Customer handling, using, storing, installing, operating, cleaning, and maintaining Goods in compliance with the instructions and specifications provided with Goods or incorporated into this Agreement, (iv) use of Goods only for the use intended by Draeger, (v) defect not related to the attachment of Goods to non-Draeger supplied equipment or to Customer's network issues, (vi) Customer having fulfilled its payment obligations for Goods, and (vii) an inspection by Draeger that reveals that Customer's claim is valid under the terms of the warranty. Customer's remedy for a breach of this warranty is limited to repair, replacement, credit, or refund, at the sole option of Draeger. Repair or replacement may be with parts or product that are new, used, or refurbished. Repairs or replacements shall not interrupt, extend, or prolong the warranty period.

(b) *Service.* Draeger warrants that the Service shall be performed in a professional manner in accordance with generally recognized industry standards for similar service. Claims for breach of this Service warranty must be submitted to Draeger in writing within 90 days of the completion of Service. Customer's remedy for breach of Service warranty is limited to reperformance, credit, or refund, at the sole option of Draeger.

(c) *Third-Party Product.* If this Agreement includes the sale of third-party products not manufactured by Draeger or any of its affiliates, such products are provided to Customer solely at the direction of Customer with no recommendation by Draeger. Draeger makes no warranty for any third-party product. Customer's sole warranty for any third-party product, if any, is the original manufacturer's warranty, which Draeger agrees to pass on to Customer, as applicable. The obligation of Customer to pay Draeger for the third-party product is absolute and unconditional, and Customer waives and releases Draeger from all claims, damages, and losses arising out of such third-party product regardless of any claims Customer may have regarding such third-party product.

(d) *No Other Warranties.* **THE WARRANTIES IN THIS SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE WITH RESPECT TO PRODUCT. DRAEGER MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, TITLE, THIRD-PARTY NONINFRINGEMENT, COURSE OF DEALING, AND USAGE OF TRADE. DRAEGER DOES NOT WARRANT OR GUARANTEE THAT ANY PRODUCT WILL BE SECURE FROM CYBER THREATS, HACKING, OR SIMILARLY MALICIOUS ACTIVITY. DRAEGER DOES NOT WARRANT ANY CUSTOMER OR THIRD-PARTY PROVIDED NETWORK OR THE PERFORMANCE OF PRODUCT AS IMPACTED BY SUCH NETWORK CONNECTION.**

**10. INDEMNITY.** To the extent permitted under applicable law, Draeger and Customer (each as "**Indemnitor**") shall indemnify the other Party and its affiliates, (collectively "**Indemnitee**") from and against all third-party claims alleging bodily injury, death, or damage to the third-party's tangible property, but only to the extent caused by the Indemnitor's negligence or willful misconduct. No part of Customer's sites is considered third-party property for purposes of this indemnity. Indemnitee shall provide Indemnitor with prompt written notice of any third-party claims covered by this Section 10. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense or settle the claim on the Indemnitee's behalf; subject to Indemnitee's consent, which shall not be unreasonably withheld or delayed. Indemnitor shall not make any admissions that might be prejudicial to the Indemnitee.

**11. INSURANCE.** If during the term of this Agreement Draeger may need access to Customer's premises to perform Service or for other reasons, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability in a sum no less than \$1,000,000 CAD per occurrence and \$5,000,000 CAD in the aggregate with financially sound and reputable insurers. Upon Draeger's request, Customer shall provide Draeger with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Agreement and which names Draeger as an additional insured. Customer shall provide Draeger with 30 days advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Draeger's insurers and Draeger.

**12. LIMITATION OF LIABILITY. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY OR THEIR AFFILIATES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY, OR ANY OTHER LEGAL THEORY, FOR LOST PROFITS OR**

**LOST STORED, TRANSMITTED, OR RECORDED DATA, OR FOR ANY INDIRECT, AGGRAVATED, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WITH RESPECT TO ANY MATTERS RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. DRAEGER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY DRAEGER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM.**

**13. PATENT, TRADEMARK, AND OTHER INFRINGEMENT CLAIMS.** In the event of any claim, suit, or proceeding brought against Customer alleging any Draeger manufactured Good violates any patent, trademark, industrial design or copyright about which Customer notifies Draeger in writing within 5 days after Customer becomes aware of the allegation, Draeger shall, at its option and expense, (i) defend such claim, suit, or proceeding, (ii) procure the Customer's right to use the Good, (iii) remove or modify the Good to avoid infringement, or (iv) allow Customer to return the Good and refund the purchase price paid to Customer less reasonable depreciation for Customer's use of the Good. In the event of defense of such claim, suit, or proceeding, Customer shall give Draeger information, assistance, and exclusive authority to fully control the defense and settlement of such claim, suit or proceeding. This indemnity shall not apply if Customer modifies or combines, operates, or uses the Good with any product, data, software, apparatus, or program not provided by Draeger and Customer shall indemnify and hold Draeger harmless against any claims, injuries, losses, fines, penalties and costs including reasonable legal fees (on a solicitor-client basis) incurred by Draeger in connection therewith.

**14. RIGHTS IN SOFTWARE, DOCUMENTATION, AND INTELLECTUAL PROPERTY.** To the extent software, data, or other documentation or information (collectively, "**Software**") is embedded in or delivered with any Goods sold under this Agreement, the sale of such Goods shall not constitute the transfer of the ownership rights in such Software. The Software shall remain Draeger's property and Draeger grants to Customer a non-exclusive, non-transferable license solely to use the Software for the purpose, and in the manner, for which the Software was designed and produced. Customer shall not modify, reverse engineer, or create derivative works based on any of the Software, or permit any third party to do so. In addition, to the extent any third-party software is included in the Software, Customer will comply with any third-party software license terms provided by Draeger to Customer. Software that is provided separately to Customer as a Product is not included under this Section 14, but is governed under a separate license agreement, and may be subject to a licensing fee.

**15. DATA PROTECTION.** The Parties agree to comply with any applicable privacy and data protection laws, to the extent applicable to the exchange of data between the Parties or storage or exchange of data in connection with Product provided hereunder.

**16. TERMINATION.** In addition to any remedies that may be provided under these terms and conditions, Draeger may terminate this Agreement or any part thereof with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement and such failure continues for 30 days after Customer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any obligations of this Agreement, in whole or in part; (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iv) undergoes a change of control or ownership.

**17. CONFIDENTIAL INFORMATION.** All non-public, confidential, or proprietary information of Draeger disclosed by Draeger to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Draeger in writing. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure without any confidentiality or restriction on use; or (c) rightfully obtained by Customer on a non-confidential basis from a third-party. The obligations in this Section survive termination of this Agreement for any reason.

## **18. OTHER TERMS.**

(a) **Compliance with Laws.** The Parties shall comply with all applicable laws and regulations, including, but not limited to, any laws and regulations relating to the import, or export, of any Product or associated technical data.

(b) **Benefit and Assignment.** Neither Party may assign, subcontract, or delegate any rights or obligations under this Agreement, without the prior written consent of the other Party, unless otherwise stated in this Agreement. Notwithstanding the foregoing, Draeger may assign any of its rights and obligations under this Agreement to one of its affiliates without notice to, or consent of, Customer. This Agreement shall inure to and be binding on the Parties and their respective successors, permitted assigns, and legal representatives. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(c) **Modification.** This Agreement may not be changed, modified, or amended, except in writing signed by duly authorized representatives of the Parties.

(d) **Governing Law, Venue, and Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any conflict of law provisions. The Parties hereto hereby agree that the application of the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is expressly excluded. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be brought before a court of competent jurisdiction located in the Province of Ontario, sitting in the City of Toronto. The Parties irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. **EACH PARTY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT.**

(e) **Integration and Survival.** This Agreement together with any attachments or other documents incorporated by reference herein, constitute the entire agreement of the Parties with respect to the subject matter hereof. The terms of this Agreement that by their nature are intended to survive its expiration or termination will continue in full force and effect after its expiration or termination.

(f) **Severability; Headings.** No provision of this Agreement, which may be deemed unenforceable, will in any way invalidate any other portion or provision of this Agreement. Section headings are for reference only and will have no substantive effect.

(g) **Waiver.** No waiver of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by the Parties. No failure and no delay in exercising, on the part of any Party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

(h) **Relationship of the Parties.** The Parties are independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

(i) **Injunction.** Customer agrees that the remedies at law may be inadequate to protect Draeger against any actual or threatened breach of Sections 14 or 17 of this Agreement, and, without prejudice to any other rights and remedies otherwise available, Draeger will be entitled to seek injunctive relief.

(j) **Limitation of Actions.** Any action against Draeger arising out of this Agreement shall be commenced within one year from the date such cause of action has accrued, otherwise the same shall be barred.

(k) **Notices.** Notices shall be in writing and shall be deemed served upon receipt and shall be delivered in person or by nationally recognized courier or certified mail to Draeger Medical Canada, Inc. 2425 Skymark Ave Unit 1, Mississauga, ON L4W 4Y6, Attention: Managing Director, with a copy to the same address to the attention of General Counsel (such copy shall not constitute service of process).

(l) **Language.** The Parties have agreed that this Agreement and all related documents, be drafted in English, at their express wish. A French version of this Agreement has been provided to the Customer, which has expressed the wish to be bound by the English version only. *Les parties ont convenues que cette convention ainsi que tous les documents qui s'y rattachent, soient rédigés en anglais, selon leur volonté expresse. Une version française de cette convention a été remise au Client, qui a exprimé la volonté d'être lié par la version anglaise seulement.*

## End of Terms and Conditions of Sale