

DRAEGER MEDICAL CANADA, INC. TERMS AND CONDITIONS OF SALE

1. GENERAL.

1.1 **Contract Formation.** These terms and conditions exclusively govern the sale by Draeger Medical Canada, Inc. ("Draeger"), and the purchase and use by customer ("Customer"), of the goods ("Goods") and/or services ("Services," and collectively with Goods, "Products") identified on any invoice, confirmation order, purchase order, or packing slip issued by Draeger in response to an order from Customer for the purchase of any Products (these terms and conditions, together with any of the foregoing, may hereinafter be referred to as the "Agreement"). Draeger shall not be bound by, and specifically objects to, any terms, conditions or other provisions, both written and oral, which are different from, in addition to or inconsistent with the provisions of this Agreement which is set forth in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise of, or by, Customer. All sales are subject to, and expressly conditioned upon, the terms and conditions contained herein and fulfillment of Customer's order shall not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend the terms and conditions contained herein. All Customer orders are subject to Draeger credit approval.

1.2 **Third Party Products.** If this Agreement includes the sale of third party products not manufactured by Draeger or its affiliate, then Customer agrees that (a) Customer has made the selection of these products at its sole discretion and without instruction or recommendation from Draeger, (b) these products are being acquired by Draeger solely at the request of Customer, in order to eliminate the need for Customer to issue a separate purchase order to the manufacturer of the third party products, (c) no representation, warranty, or guarantee has been made by Draeger with respect to the third party products, (d) the obligation of Customer to pay Draeger for the third party products is absolute and unconditional, and (e) Customer waives and releases Draeger from all claims, damages, and losses arising out of such third party products.

2. PRICES AND ACCEPTANCE.

2.1 **Prices, Quotations, and Taxes.** Unless otherwise agreed to in writing or set forth in the quotation, all prices quoted by Draeger are in Canadian dollars, include standard packaging, and are valid for thirty (30) days from the date of quotation. In addition to the purchase price, Customer shall be responsible for, and will pay, all applicable sales, use, property, excise, and manufacturer's taxes, and any duties, license or similar fees, which may be imposed upon the sale, use, or performance of the Products or with respect to the purchase of the Products hereunder.

2.2 **Acceptance of Products.** Unless otherwise agreed by Draeger in writing, Customer shall inspect all Goods delivered to Customer upon receipt. Goods shall be deemed to have been accepted by Customer on the earlier of (i) the date Customer first uses the Products for patient use, (ii) fifteen (15) days after delivery of a Good that is not to be installed by Draeger, or (iii) five (5) days after a Good has been installed by Draeger, unless, prior to such acceptance date, Customer has provided written notice to Draeger that goods received are Nonconforming Goods (and promptly provide any other documentation required by Draeger to support such claim of nonconformity). "Nonconforming Goods" means only the following: (i) the Goods shipped are different than those identified in Customer's purchase order; or (ii) a Good's label or packaging incorrectly identifies its contents. If Customer timely notifies Draeger of any Nonconforming Goods, Draeger shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods (Customer shall bear risk of loss and cost of shipment of replacement), or (ii) credit or refund the price for such Nonconforming Goods (such credit shall include any reasonable shipping and handling expenses incurred by Customer in connection with return of Goods), so long as in each such case Customer complies with the process set forth in Section 6 of this Agreement. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to the facility instructed by Draeger. If Draeger exercises its option to replace Nonconforming Goods, Draeger shall, after receiving Customer's shipment of Nonconforming

Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point. Customer acknowledges and agrees that the remedies set forth in Section 2.2 are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Sections 2.2 and 6 of this Agreement, all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Draeger. Subject to the warranty set forth in Section 8.2, Services are deemed to be accepted by Customer upon completion of their performance by Draeger.

3. PAYMENT TERMS.

3.1 Due Date. Unless otherwise set forth in the quotation or a signed agreement between the parties, the purchase price for the Products and all other amounts due hereunder are due net thirty (30) days from the date of invoice. All amounts payable hereunder are payable in Canadian dollars. Partial shipments of Good(s) shall be billed as shipped. Customer shall have no right to withhold any amount due Draeger under this Agreement because of a claim Customer may have against Draeger or for any other reason. Draeger reserves the right to require payment in advance or C.O.D. and otherwise to modify credit terms. If Customer fails to comply with these payment terms, all Customer's obligations to Draeger shall become immediately due and payable.

3.2 Failure to Pay. If Customer fails to pay any amounts due hereunder or breaches any obligation hereunder, Draeger may exercise its rights and remedies under applicable law, including, but not limited to, any one or more of the following remedies: (a) the entire amount of any monies due Draeger under this Agreement, and interest thereon shall become immediately due and payable without notice or demand; (b) Draeger may enter upon the premises where the Goods are located, and take possession of the Goods without notice or demand, and without legal proceedings; (c) Draeger may sell or dispose of all, or any portion, of the Goods, and apply the proceeds thereof against any amounts due Draeger under this Agreement, and Customer shall pay any balance remaining after collection by Draeger on the Products; (d) Draeger may charge Customer a service charge of 1% per month (12% per annum), not to exceed the maximum rate allowed by

law, on Customer's outstanding balance, which is not paid within thirty (30) days after the invoice date; and (e) Draeger may suspend delivery or performance of any Products, withdraw credit, or suspend, cancel or terminate this and/or any other agreement between Draeger and Customer. Further, Customer shall pay all costs and expenses incurred by Draeger (i) in connection with the restoration of any Goods, which are returned to Draeger pursuant to this paragraph, and which are damaged or nonfunctional and (ii) in enforcing the terms of this Agreement against Customer (including, without limitation, reasonable attorneys' fees, court costs, and other legal expenses).

3.3 Payment of Lesser Amount. If Customer pays a lesser amount than the full amount due under this Agreement, such payment shall be applied on account of the earliest amount due Draeger. Draeger may accept any cheque or payment in any amount, without prejudice to Draeger's right to recover the balance of the amount due, or to pursue any other right or remedy. No endorsement or statement on any cheque or payment elsewhere shall constitute, or be construed as, an accord or satisfaction. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Draeger, whether relating to Draeger's breach, bankruptcy or otherwise

4. DELIVERY, RISK OF LOSS, IMPEDIMENTS TO PERFORMANCE.

4.1 Delivery Date. Delivery and completion schedules are approximate only, and are based on conditions at the time of acceptance of Customer's order by Draeger. Draeger shall make every reasonable effort to meet the delivery or performance date(s) quoted or acknowledged, but shall not be liable for any failure to meet such date(s).

4.2 Risk of Loss, Title. Unless otherwise agreed to in writing, risk of loss and title shall pass to Customer (i) DAP(2010 INCOTERMS) destination for capital equipment sales ("Delivery Point"), and (ii) DAP (2010 INCOTERMS) shipping point for all spare parts, sensors, accessories, complementary products, and expendable, disposable, and consumable Goods, with respect to monitoring and infrastructure WI Product (Section 8.1) installations, risk of loss and title shall pass to Customer upon acceptance. All freight charges and

other transportation, packing, custom duties, and other similar charges shall be the sole responsibility of Customer, unless otherwise agreed to in writing by Draeger. In the event of any loss or damage to any of the Goods during shipment, Draeger, on behalf of Customer, will make claim against the carrier with proceeds payable to Draeger and Customer as their interests may appear. It is the responsibility of Customer to arrange for and obtain insurance coverage for the Products, if so desired.

4.3 Partial Shipments. Draeger may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.

4.4 Inability to Deliver. If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to Draeger's notice that the Goods have been delivered at the Delivery Point, or if Draeger is unable to deliver the Goods at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Goods shall be deemed to have been delivered; (ii) risk of loss to the Goods shall pass to Customer; and (iii) Draeger, at its option, may store the Goods until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 Non-Delivery of Goods. The quantity of any installment of Goods as recorded by Draeger on dispatch from Draeger's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary. Draeger shall not be liable for any non-delivery of Products (even if caused by Draeger's negligence) unless Customer gives written notice to Draeger of the non-delivery within five (5) days of the date when the Products would in the ordinary course of events have been received. Any liability of Draeger for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

4.6 Impediments to Performance. Draeger's performance of Services is conditioned upon Customer's (i) cooperation with Draeger in all

matters relating to the Services and providing such access, office accommodations, and other facilities reasonably necessary for performing the Services; (ii) prompt response to Draeger's requests to provide direction, information, approvals, authorizations or decisions as are reasonably necessary for Draeger to perform Services in accordance with the requirements of this Agreement; (iii) timely provision of such Customer materials or information as Draeger may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; (iv) timely provision of access to Customer's employees and equipment as reasonably required to enable Draeger to perform the Services, and (v) obtaining and maintaining all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to commence.

4.7 Buyer's Acts or Omissions. If Draeger's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Draeger shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. SECURITY INTEREST. Customer grants to Draeger a purchase money security interest in all of the right title and interest of Customer in, to and under the Goods (and all accessories and replacements thereto and all proceeds thereof), wherever located, and whether existing now or in the future, as well as all proceeds (including insurance proceeds) of the foregoing, until payment is made in full by Customer. Default in payment when due, in whole or part, shall permit Draeger, in its sole discretion, to declare all obligations of Customer immediately due and payable, and in such event, Draeger shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Draeger is expressly authorized, at its discretion, to file one or more financing statements or other notices under applicable law naming Customer as debtor and Draeger as secured party. Customer agrees to execute such documents requested by Draeger to

record and otherwise perfect this security interest. Customer agrees that (a) Customer will keep the Goods in working order until the purchase price has been paid, and (b) Customer will not attempt to transfer any interest in the Goods until the purchase price has been paid.

6. CHANGES, CANCELLATION AND RETURN AND REPAIR.

6.1 **Changes.** Customer orders accepted by Draeger under this Agreement are not subject to change or cancellation, except upon written agreement of the parties; except that Draeger may (i) substitute a Product provided that such substitution does not materially detract from the overall form, fit and performance if a Good, or the nature, scope or performance dates if a Service, and (ii) change the manufacture, design, or performance requirements of its Products if, in the judgment of Draeger, such change does not alter the general function of the Products.

6.2 **Repairs.** Goods delivered by and factory repairs made by Draeger are not returnable by Customer except as follows: All Goods to be returned or repaired must have prior authorization for return by Draeger and a valid Return Material Authorization (“RMA”) number must appear on the shipping label, packing slip, purchase order, and any other related paperwork. Goods received without such authorization will be refused at Draeger’s receiving dock and returned immediately to Customer. All goods returned must be cleaned and disinfected by the Customer prior to the return, in the event the goods are not cleaned by Customer upon return, Draeger reserves the right to charge for cleaning and disinfecting of goods. When requesting authorization to return Goods, the following information must be provided:

1. Customer purchase order number and date.
2. Draeger sales order number and shipping date (returns only).
3. Quantity, Draeger product number, and description of Good(s) to be returned.
4. Reason for return or repair.
5. Contact Draeger at +1 866-343-2273 for RMA number

The following are the only accepted reasons for return of Goods:

1. Repair of Products within their warranty period (warranty repairs).

2. Customer order error.
3. Draeger order or shipping error.
4. Products delivered damaged.

Goods returned for warranty repairs are subject to the terms of the Draeger warranty. Goods to be returned that are not under warranty must have been purchased within thirty (30) days of request for return, returned within fourteen (14) days after request, and have prior authorization by Draeger and a valid RMA number. Goods to be returned that are not under warranty must be purchased within thirty (30) days of the request to return and returned within fourteen (14) days after the request unused and in Draeger shipping containers. With the exception of returns which are (a) under warranty, (b) returned due to Draeger error or (c) delivered damaged, all returned Goods are subject to a twenty percent (20%) restocking charge.

The following Goods are not eligible for return:

1. Sterile material, unless shipped in error by Draeger.
2. Goods that have been used, unless under warranty.
3. Specially ordered or manufactured Goods.
4. Products that have been altered or abused by Customer.
5. Goods that are known to be contaminated.

Upon receipt of authorized returned Goods, an inspection of the Goods will be conducted by Draeger and appropriate action taken. Draeger’s decision regarding disposition of returned Goods is final. All Goods to be returned (including any in need of factory repair) shall be shipped, freight and insurance prepaid, to the following address unless otherwise advised by Draeger:

Draeger Medical Canada Inc.
2425 Skymark Ave Unit 1
Mississauga, ON L4W 4Y6
(Include Return Material Authorization Number.)

It is the responsibility of Customer to disinfect, pack, insure, and ship equipment to Draeger at Customer’s sole expense.

6.3 **Site Visits.** If Service or repair requires a visit to Customer’s site, Customer agrees to an actual time or Service window for Draeger to perform Service. Draeger reserves the right to charge a waiting time fee of not less than two hours if devices are not available at the agreed upon time of service.

7. FORCE MAJEURE. 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 or the public, war, terrorist threats or acts, civil disturbance, fire or other casualty, strike or labor dispute or unavailability of labor, 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. WARRANTY.

8.1 Goods. Draeger warrants that the Goods manufactured by Draeger and sold hereunder shall be free from material defects in material or workmanship under normal use for the warranty period. Unless otherwise set forth in a separate warranty statement covering the Goods to be provided by Draeger, the warranty period shall commence on the date that the Goods are delivered to Customer, and shall continue for twelve (12) consecutive months, except for the following: (a) DMCI's workplace infrastructure products (**'WI Products'**) consisting of the Ponta, Agila, Movita, Gemina, and Pendula are warranted for a period of two (2) years from date of acceptance (as set forth in Section 2), all applicable brake assemblies are warranted for 7 years (b) sensors and accessories are warranted to 12 months or the expected life of the Product, whichever is less (c) spare parts and used/refurbished Draeger Goods are warranted for a period of ninety (90) days from the delivery date, (e) factory repairs and service exchange replacements are warranted for ninety (90) days from the delivery date, (e) expendable/disposable/consumable goods are warranted at time of delivery only, (f) information systems/software will operate in all material respects in conformity with Draeger's published specifications, under normal use, for a period of twelve (12) months from the earlier of implementation sign-off, or first productive use, as set forth in the applicable license, and (g) all applicable third party warranties shall apply, and (h) deviations from published specifications which do not materially affect performance of the Goods covered hereby shall not be deemed to constitute defects of material or workmanship or a failure of the

Goods to comply with such specifications. Subject to Sections 8.4 and 8.5, if any Goods do not conform to the aforementioned warranty during the applicable warranty period, Draeger shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) subject to Customer's compliance with Section 6.2, or (ii) credit or refund the price of such Goods at the pro rata contract rate.

8.2 Services. Draeger warrants that the Services shall be performed (a) using personnel of required skill, experience, and qualifications and (b) in a professional manner in accordance with generally recognized industry standards for similar services. Subject to Sections 8.4 and 8.5, if any Service was not performed in accordance with the aforementioned warranty, then Draeger shall, in its sole discretion, either (i) repair or re-perform the applicable Service, or (ii) credit or refund the price of such Service at the pro rata contract rate.

8.3 Third Party Products. Draeger makes no warranty for any third party or other products unless expressly and unambiguously covered under the terms of this Agreement. Customer's sole warranty for any third party products, if any, is the original manufacturer's warranty, which Draeger agrees to pass on to Customer, as applicable.

8.4 Exclusions. No warranty extended by Draeger shall apply to any Goods that: (a) have been damaged by accident, misuse, abuse, negligence, improper application, or alteration, by a force majeure occurrence, or by Customer's failure to maintain the recommended operating environment and/or network; (b) are defective due to unauthorized attempts by Customer or any third party to repair, relocate, maintain, service, add to, or modify the Products or due to the attachment and/or use of non-Draeger supplied equipment, made without Draeger's prior written approval; (c) failed due to causes from within non-Draeger supplied equipment; and/or (d) have been damaged from the use of operating or cleaning supplies or consumable parts not approved by Draeger. Draeger's obligation under this warranty is limited to the repair or replacement of, or credit for, at Draeger's option, defective parts. Draeger may effectuate such repair at Customer's facility, and Customer shall furnish Draeger safe and sufficient access for such repair. Repair or replacement may be with parts or products that are new, used, or refurbished. Repairs or

replacements shall not interrupt, extend, or prolong the term of the warranty. Customer shall, upon Draeger's request, return the non-complying Product or part to Draeger pursuant to the terms of Section 6 above. Unless Draeger's inspection of the applicable Product or part reveals that Customer's claim is valid under the terms of the warranty set forth in this Section 8, Customer shall pay Draeger its normal charges for service and parts for any inspection, repair, or replacement.

8.5 Notice and Inspection. This warranty is made on condition that immediate written notice of any noncompliance with the Product's warranty is given to Draeger, and provided that Draeger's inspection reveals that Customer's claim is valid under the terms of this warranty.

8.6 No Other Warranties. DRAEGER MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN, OR THAT WHICH MAY BE PROVIDED IN A SEPARATE WARRANTY COVERING THE APPLICABLE PRODUCT. SUCH WARRANTY CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS AND ANY DEFECT, DEFICIENCY, OR NONCOMFORMITY IN ANY GOOD, SERVICE, OR OTHER ITEM FURNISHED UNDER THIS AGREEMENT. TO THE EXTENT PERMITTED BY LAW, SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

8.7 Limited Remedies. CUSTOMER ACKNOWLEDGES AND AGREES THE REMEDIES SET FORTH IN SECTION 8 SHALL BE ITS SOLE AND EXCLUSIVE REMEDY AVAILABLE TO IT WITH REGARD TO THE PRODUCTS AND SERVICE, AND DRAEGER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 8.

9. LIMITATION OF LIABILITY AND DISCLAIMER.

9.1 Limitation of Liability. EXCLUDING THIRD PARTY CLAIMS FOR PERSONAL INJURY OR DEATH ARISING (A) AS A RESULT OF A PROVEN DEFECT IN A DRAEGER GOOD OR (B) DURING THE PERFORMANCE OF A SERVICE BY DRAEGER, IN NO EVENT SHALL DRAEGER'S AGGREGATE LIABILITY TO CUSTOMER HEREUNDER EXCEED THE ACTUAL LOSS OR DAMAGE SUSTAINED BY CUSTOMER, UP TO THE PURCHASE PRICE IN CANADIAN DOLLARS PAID BY CUSTOMER FOR SUCH PRODUCT UNDER THE APPLICABLE INVOICE ISSUED BY DRAEGER.

9.2 No Special Damages. DRAEGER SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE, OR ANTICIPATED PROFITS, LOSS OF STORED, TRANSMITTED, OR RECORDED DATA, OR FOR ANY INCIDENTAL, UNFORESEEN, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, OR THE SALE OR USE OF THE GOODS, OR SERVICE PERFORMED BY DRAEGER, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DRAEGER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT, AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.

10. DELIVERY AND INSTALLATION – ADDITIONAL CHARGES.

10.1 General. If Goods require installation prior to use, unless otherwise agreed in writing by the Parties, the Goods shall be installed by Draeger as a Service at the expense of Customer.

10.2 Installation by Draeger. Subject to fulfillment of the obligations set forth below, Draeger shall install the Products covered hereby and connect the same to the requisite safety switches and

power lines to be installed by Customer. Except as otherwise specified below, if such installation and connection are performed by Draeger technical personnel, prices shown include the cost thereof, provided that the installation and connection can be performed within Canada and during normal business hours. Any overtime charges or other special expenses for the performance of such Services shall be additional charges to the prices shown.

10.3 Customer's Obligations. Customer shall, at its expense, provide all proper and necessary labor and materials for plumbing service, carpentry work, conduit wiring, and other preparations required for such installation and connection. All such labor and materials shall be completed and available at the time of delivery of the Products by Draeger. Additionally, Customer shall provide free access to the premises of installation and, if necessary, safe and secure space thereon for storage of Goods and equipment prior to installation by Draeger. If any special work of any type must be performed in order to comply with requirements of any governmental authority, including procurement of special certificates, permits and approvals, the same shall be performed or procured by Customer at Customer's expense. Customer shall provide a suitable environment for the Products and shall ensure, at its sole cost and expense, that its premises are free of asbestos, hazardous conditions, and any concealed dangers, and that all site networking requirements, to the extent applicable, are met. In the event that Draeger is requested to supervise the installation of the Products, it remains Customer's responsibility to comply with local regulations. The obligations set forth in this paragraph shall be in addition to those set forth in Section 4.6 above. Customer may incur additional charges if installation is delayed by Customer after Draeger has shipped any Goods(s).

10.4 Completion of Installation. Installation shall be complete upon the conclusion of final calibration and verification under Draeger's standard procedures that the Goods meet applicable written performance specifications. Notwithstanding the foregoing, first use of the Goods by Customer, its agents, or employees for any purpose after delivery shall constitute completion of installation.

11. PATENT, TRADEMARK, AND OTHER INFRINGEMENT CLAIMS.

11.1 Infringement by Draeger. Draeger shall indemnify Customer against all claims in Canada and the United States by third parties alleging that Customer's use of any of the Products manufactured by Draeger and sold hereunder infringes any Canada or United States patent, trademark, or copyright registered as of the delivery date of which Draeger is aware, provided that Customer notifies Draeger in writing of the alleged claim immediately, and no more than five (5) calendar days, after Customer becomes aware of the allegation. As to all infringement claims relating to Products or parts manufactured by Draeger:

(a) Customer shall give Draeger information, assistance, and exclusive authority to fully control the evaluation, defense, and settlement of such claims. Customer shall not undertake any action in response to any infringement or alleged infringement of the Products manufactured by Draeger.

(b) Draeger shall then, at its own expense, defend and/or settle such claims, procure for Customer the right to use the Products, or remove or modify them to avoid infringement. If none of these alternatives are available on terms reasonable to Draeger, then Customer shall return the Products to Draeger and Draeger shall refund to Customer the purchase price paid by Customer, less reasonable depreciation for Customer's use of the Products.

11.2 Infringement by Customer. If some or all of the Products sold hereunder are made by Draeger pursuant to drawings or specifications furnished by Customer, or if Customer modifies or combines, operates or uses the Products with any product, data, software, apparatus, or program not provided by Draeger, then the indemnity obligation of Draeger under Section 11.1 shall be null and void, and should a claim be made that such Products infringe the rights of any third party under patent, copyright, trademark, or otherwise, then Customer shall indemnify and hold Draeger harmless against any liability or expense, including reasonable attorneys' fees, incurred by Draeger in connection therewith.

11.3 Exclusive Remedy. The provisions of this Section 11 state the sole, exclusive, and entire liability of Draeger and its licensors to Customer, and is Customer's sole remedy with

respect to the infringement of third-party intellectual property rights.

12. SOFTWARE LICENSE.

12.1 Product Software. Any drawings, data, designs, software programs, or other information (collectively, the “Product Software”) supplied by Draeger to Customer in connection with the sale of the Products are not included in the sale of the Products to Customer, shall remain Draeger’s property, and shall at all times be held in confidence by Customer. Draeger grants to Customer a non-exclusive, non-transferable license to use the Product Software in the ordinary course of business, and for the purpose, and in the manner, for which the Product Software was designed and produced, subject to the terms of this Agreement. Customer will not translate, modify, reverse engineer, disassemble, decompile, or create derivative works based on any of the Product Software, or permit any third party to do so. The Product Software may not be copied or transferred to another party or made commercially available in any other device, without Draeger’s prior written consent. Protocols may be used to communicate with a device produced by another manufacturer, provided that manufacturer has been licensed by Draeger to use such protocol. In addition, to the extent any third party software is included in the Product Software, Customer may only use the third party software in connection with the use of any Draeger software, and will comply with any third party software license terms provided by Draeger to Customer (whether in click wrap, shrink wrap, or other form).

12.2 Other Software. Diagnostic/maintenance software is not included under this Section 12, but is available under a separate license agreement, and may be subject to a licensing fee.

13. TERMINATION.

13.1 Termination Right. In addition to any remedies that may be provided under these terms and conditions, Draeger may terminate this Agreement 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 thirty (30) days after Customer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of this

Agreement, in whole or in part; or (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.

13.2 Survival. Provisions of this Agreement which by their nature should apply beyond its termination or expiration will remain in force after any termination or expiration of this Agreement including the following: Sections 3 (Payment Terms), 5 (Security Interest), 6 (Changes, Cancellation and Return and Repair), 8 (Warranty), 9 (Limitation of Liability), 11 (Patent, Trademark and other Infringement Claims) 13.2 (Survival), 14 (Confidential Information) and 16 (Other Terms).

14. CONFIDENTIAL INFORMATION. All non-public, confidential or proprietary information of Draeger, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, 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; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

15. INSURANCE. During the term of this Agreement and for a period of twelve (12) months thereafter, 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 per occurrence and \$5,000,000 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. The certificate of insurance shall name Draeger as an additional insured. Customer shall provide Draeger with thirty (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.

16. OTHER TERMS.

16.1 **Compliance With Laws.** Customer shall comply with all applicable laws and regulations, including, but not limited to, any laws and regulations relating to the import, export, or re-export of any Product or associated technical data.

16.2 **Assignment.** Customer may not assign, subcontract, or delegate any rights or obligations under this Agreement without the prior written consent of Draeger, and any attempt to do so shall be null and void. Draeger may assign any of its rights and obligations under this Agreement 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.

16.3 **Modification.** This Agreement may not be changed, modified, or amended, except in writing signed by duly authorized representatives of the parties.

16.4 **Governing Law, Venue, and Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the laws of Ontario, Canada, 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 Ontario, Canada. 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.

16.5 **Integration and Survival.** These terms and conditions, together with any attachments or other documents expressly incorporated by reference herein, constitute the entire agreement and the complete and exclusive statement of agreement with respect to the subject matter hereof, and

supersede any and all prior agreements, understandings, and communications between the parties with respect to the Products. The terms of this Agreement that by their nature are intended to survive its expiration will continue in full force and effect after its expiration.

16.6 **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.

16.7 **Waiver.** No waiver by Draeger of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Draeger. 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.

16.8 **Relationship of the Parties.** The relationship between the parties is that of 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.

16.9 **Injunction.** Customer agrees that the remedies at law may be inadequate to protect Draeger against any actual or threatened breach of Sections 12 and 14 of this Agreement, and, without prejudice to any other rights and remedies otherwise available, Draeger will be entitled to seek temporary, preliminary and permanent injunctive relief and specific performance without the posting of any bond or other security, or if required, then the minimum bond or security required.

16.10 **Limitation of Actions.** Any action against Draeger arising out of this Agreement shall be commenced within one (1) year from the date such cause of action has accrued, otherwise the same shall be barred.

16.11 **No Third-Party Beneficiaries.** 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.

16.12 Notices. Notices or other communications shall be in writing and shall be deemed served upon receipt, if delivered personally, delivered by nationally recognized courier, or if mailed, by certified or registered mail, postage prepaid, to the intended recipient at its address specified on the face of the invoice, or confirmation, or purchase order to which these terms and conditions are attached.

16.13 Miscellaneous. The singular includes the plural and vice versa. “Including” (and “include”) means (i) including without limiting the generality of any description preceding such term and (ii), with respect to any description following such term, means “including, without limitation” or “including, but not limited to.” The words “shall” and “will” have equal force and effect. The words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article. All documentation to be supplied under this Agreement shall be provided in the English language.

16.14 English Language. The parties have agreed that this Agreement and all related documentation be drafted in the English language. *Les parties ont convenues que cette convention ainsi que toute documentation connexe soit rédigée en langue anglaise.*