

# Stryker's Sustainability Solutions division standard terms of sale

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# Stryker's Sustainability Solutions division standard terms of sale

## **Stryker Sales Corporation** **Acting through its Sustainability division**

### **Standard Terms of Sale**

#### **Definitions**

All sales of Products distributed by the Sustainability division of Stryker Sales Corporation ("Stryker") are subject to the following terms and conditions. In this "Standard Terms of Sale", Disposables sold by Stryker are referred to as "Products", the purchaser of the Products is referred to as the "Customer" and the relevant sales contract between Stryker and Customer with respect to the Products is referred to as the "Agreement." In the event of a conflict of terms, the individual agreement will control.

#### **1. Standard Terms for Reprocessed Products**

##### **a. Regulatory Compliance**

Under the Agreement, Stryker will perform Services in accordance with applicable U.S. Food and Drug Administration's (FDA) Quality System Regulation (QSR) and the Canadian Medical Device Regulation and offer Customer and Participants Stryker's standard warranty, limitation of liability and return policy, set forth on Schedule D, for all Reprocessed Products.

##### **b. Collection of devices**

Stryker offers different collection system options for various collection locations. Customer and Participants may use any combination of collection systems:

##### **EP and Diagnostic Ultrasound Catheters.**

Services offered under this system may require some level of decontamination and sorting of collected Reprocessed Products on the part of Customer and Participants prior to shipment to Stryker for reprocessing.

##### **Operating Room and Patient Care Reprocessing.**

Services offered under this program require no decontamination on the part of Customer or Participants prior to shipment to Stryker for reprocessing

##### **c. Reprocessed Product Failure During Use**

In the event a Reprocessed Product that has been reprocessed by Stryker fails during use and such failure contributed or could have contributed to the injury of a patient, Customer and each Participant agrees to promptly notify Stryker's Sales Representative or Product Complaint Hotline 1-888-763-8803 within twenty-four (24) hours of the time Customer or Participant learns of such claim.

##### **d. Reprocessed Product Failure During Reprocessing**

Stryker will dispose of any Products that Stryker reprocesses that do not meet Stryker's specifications. There will be no additional charge to Customer or any Participant for reprocessing or disposal of Products rejected by Stryker. Stryker reserves the right to decline the Products delivered by Customer and/or any Participant for reprocessing hereunder.

##### **e. Waste Disposal and Removal**

Stryker shall determine, in its sole discretion, whether or not any Products or other materials delivered to

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it hereunder are suitable for reprocessing. If Stryker determines that any such materials are waste, Stryker will sort, decontaminate and/or destroy such waste as it deems necessary at no extra charge to Customer. Stryker will also ensure that waste is destroyed by a licensed medical waste facility and will keep the required documentation on file to indicate that such waste was destroyed as required by applicable federal and state regulations.

### f. Representations by Customer and Participants; Title

#### Representations.

Customer and each Participant represents and warrants to Stryker that it has good and valid ownership of and title to each of the Reprocessed Products that are delivered to Stryker hereunder. Customer and each Participant further represents and warrants to Stryker that the Services to be provided with respect to each of such Reprocessed Products will not conflict with or be in violation of any contractual obligations Customer or any Participant has with any third party, including the original equipment manufacturers of such Reprocessed Products. Without limiting the foregoing, Customer and each Participant represents and warrants to Stryker that there are no license terms or other contractual restrictions with respect to such Reprocessed Products that prohibit or restrict the Services contemplated by the Agreement.

#### Ownership of Reprocessed Products for Stryker's Services.

Customer, Participants and Stryker agree that ownership of all Reprocessed Products for the Service performed hereunder shall be deemed to be transferred to Stryker upon receipt of such Reprocessed Products at Stryker's facilities. Customer and each Participant represents and warrants to Stryker that the Reprocessed Products transferred hereunder will be transferred to Stryker free and clear of all mortgages, deeds of trust, liens, loans and encumbrances or other restrictions or limitations on their subsequent use.

### g. New Services

As Stryker adds new services to its product line, Stryker may provide additional documentation to Customer. Documentation may include the product release package, collection recommendations and/or any other information Stryker deems appropriate or applicable for Customer and Participants to know. Stryker will provide Customer and Participants with appropriate training with respect to such new product services. The new product service will be added to the Agreement at Stryker's published price or appropriate fee schedule.

### h. Warranty for Reprocessed Products

Stryker warrants the Services, subject to the exceptions provided herein, and until the expiration date set forth on the Product packaging ("Warranty Period"), to be free from defects in reprocessing and to substantially conform to the product specifications contained in the documentation provided by Stryker with the Reprocessed Products for one use in accordance with the instructions for use of such Reprocessed Product.

STRYKER SHALL NOT BE LIABLE FOR ANY DAMAGES TO THE EXTENT CAUSED BY ANY DEFECT IN MATERIAL, WORKMANSHIP OR DESIGN BY THE ORIGINAL MANUFACTURER OF THE REPROCESSED PRODUCT OR ANY ACT OR OMISSION OF THE ORIGINAL MANUFACTURER OF THE REPROCESSED PRODUCT. TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE REPROCESSED PRODUCTS AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

This warranty shall apply only to the original end-user purchaser of Reprocessed Products directly from Stryker or a Stryker authorized distributor. This warranty may not be transferred or assigned without the express written consent of Stryker.

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This warranty does not apply to: (1) Reprocessed Products that have been misused, neglected, modified, altered, adjusted, tampered with, improperly installed or refurbished; (2) Reprocessed Products that have been repaired by any person other than Stryker personnel without the prior written consent of Stryker; (3) Reprocessed Products that have been subjected to unusual stress or have not been maintained in accordance with the instructions in the user manual or as demonstrated by a Stryker representative; (4) Reprocessed Products on which any original serial numbers or other identification marks have been removed or destroyed; or (5) Reprocessed Products that have been repaired with any unauthorized or non-Stryker components.

If a valid warranty claim is received within thirty (30) days of the expiration of the applicable Warranty Period, Stryker will, in its sole discretion: (1) replace the Reprocessed Product at no charge with a product that is at least functionally equivalent to the original Reprocessed Product or (2) refund the purchase price of the Reprocessed Product. If a refund is provided by Stryker, the Reprocessed Product for which the refund is provided must be returned to Stryker and will become Stryker's property. In any event, Stryker's liability for breach of warranty shall be limited to the replacement value of the defective or non-conforming part or component.

Reprocessed Products and Reprocessed Product components repaired or replaced under this warranty continue to be warranted as described herein during the initial applicable warranty period or, if the initial warranty period has expired by the time the Reprocessed Product is repaired or replaced, for thirty (30) days after delivery of the repaired or replaced Reprocessed Product. When a Reprocessed Product or Reprocessed Product component is replaced, the item provided in replacement will be the Customer's or Participant's property and the replaced item will be Stryker's property. If a refund is provided by Stryker, the product for which the refund is provided must be returned to Stryker and will become Stryker's property.

### i. Indemnity

Stryker agrees to indemnify and defend Customer from any third-party claims related to bodily injury or damage to personal property which Customer may suffer solely as a result of (i) a defect in workmanship or design of the Products or (ii) the gross negligence or willful misconduct or violation of applicable law by Stryker, its employees and authorized agents in their performance under the Agreement. This indemnification does not apply to liability and/or damages arising from: (a) the negligence of any person other than an employee or agent of Stryker; (b) the failure of any person other than an employee or agent of Stryker to follow any labeling, manuals and/or instructions for use of the Product; or (c) the use of any product not purchased from Stryker, or Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Stryker. Stryker will have no liability hereunder unless it is notified promptly of any such claim and given control of the defense and any settlement thereof.

### j. Limitation of Liability for Reprocessed Products

EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER THE SECTION HEREOF ENTITLED INDEMNITY, STRYKER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THE AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) WILL NOT EXCEED THE PURCHASE PRICE, CURRENT MARKET VALUE OR RESIDUAL VALUE OF THE PRODUCTS WHICHEVER IS LESS. NEITHER PARTY SHALL BE ENTITLED TO, NOR SHALL EITHER PARTY BE LIABLE FOR, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE.

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## 2. Standard Terms for Non- Reprocessed Products

### a. Warranty

Stryker warrants all Non-Reprocessed Products, subject to the exceptions provided herein, to be free from defects in materials and workmanship and to substantially conform to the product specifications contained in the documentation provided by Stryker with the Non-Reprocessed Products for a period of one year from the date of purchase or the balance of the Non-Reprocessed Product's shelf life, whichever comes first (the "Warranty Period"). This warranty shall apply only for single use of the Non-Reprocessed Product. This warranty may not be transferred or assigned without the express written consent of Stryker.

Stryker's liability for breach of warranty shall be limited to the replacement value of the defective or non-conforming part or component.

This warranty does not apply to: defects resulting from improper or inadequate maintenance by Customer or any Participant; third party supplied interfacing or consumables; unauthorized modification; improper use of the Non-Reprocessed Product; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorized maintenance or repair. This warranty does not include any service necessary due to: a design specification; the failure of anyone other than Stryker or Stryker's subcontractor to comply with Stryker's written instructions or recommendations; any alteration or improper storage, handling, use or maintenance of the Non-Reprocessed Product by anyone other than Stryker or Stryker's subcontractor.

### b. Limitation of Liability

**EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER THE SECTION HEREOF ENTITLED INDEMNITY, STRYKER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THE AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) WILL NOT EXCEED THE PURCHASE PRICE, CURRENT MARKET VALUE OR RESIDUAL VALUE OF THE PRODUCTS WHICHEVER IS LESS. NEITHER PARTY SHALL BE ENTITLED TO, NOR SHALL EITHER PARTY BE LIABLE FOR, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE.**

## 3. Product Liability Insurance

During the term of the Agreement, Stryker shall maintain commercial general liability insurance, including coverage for products and completed operations liability, to cover its performance under the Agreement with limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate. Stryker may maintain such insurance as part of a self-insurance program. Upon request by Customer, Stryker shall furnish a certificate of insurance evidencing this coverage to Customer.

## 4. Delivery and Risk of Loss

Delivery terms for Products are F.O.B. origin, with freight and handling charges prepaid and added to the invoice. Customer will assume and be responsible for all freight and delivery charges and risk of loss on all Products shipped to and from Customer. Shipments will be sent standard or "ground" delivery by common carrier.

## 5. Payment and Sales Terms

Unless Stryker has agreed otherwise in writing, payment in full of the mutually agreed upon price is due thirty (30) days after the date of Stryker invoice, except that (a) Stryker will not make a sale to Customer if the sale would cause to be exceeded any credit limit that Stryker shall have extended to Customer under the

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next paragraph, and (b) if at any time Stryker determines that Customer's financial condition or credit rating does not justify a sale on credit or if Customer is at any time in default in any indebtedness or obligation that Customer owes to Stryker, then Stryker may require advance payment or may ship C.O.D. Payment must be made to Stryker at Stryker's Sustainability Solutions division PO Box 29387, Phoenix, AZ 85038-9387 or at such other location requested by Stryker.

### **6. Credit Policies**

Based upon Customer's financial position and payment history, Stryker may, in Stryker's sole discretion, assign Customer a credit limit. Customer's total in-house orders and outstanding accounts payable to Stryker must remain within the amount of the credit limit. Stryker may at any time, in Stryker's sole discretion, modify or discontinue Customer's credit limit or modify Stryker's credit terms and other credit policies. Neither this paragraph nor any other provision of the Agreement makes Customer a dealer or distributor of Stryker or obligates Stryker to sell any Products to Customer

### **7. Return Policy**

Only Products purchased under the Agreement may be returned under this return policy for non-functionality to Stryker within 90 days of Customer's or Participants' receipt of the Product, for a credit or a refund of the purchase price paid, less shipping and handling and a restocking fee; provided, however that such Product has not been resold, modified, altered or treated by Customer, Participant or any other party. Products that fail after the first 90 days may be covered by and are subject to the terms of applicable product warranty. Sterile Non-Reprocessed Products may not be returned for credit or refund unless they are in their Stryker original, unopened packaging or unless they are in breach of the applicable warranty.

#### Restocking Fees:

Unless the Product is defective, or the return is the direct result of a Stryker error, a restocking fee of 25% may be charged on all returned Product.

A Returned Goods Authorization (RGA) number must be obtained from Stryker before returning product. To obtain an RGA number, please contact Stryker Customer Service at 1.888.888.3433

Please send any returned Products to:

Stryker's Sustainability Solutions division  
Attn: Returns Bay N-5  
5300 Region Court  
Lakeland, FL 33815

Or

Stryker's Sustainability Solutions division  
Attn: Returns  
10232 S 51st St  
Phoenix, Az. 85044

With the return, please include the following:

- a. RGA number (please mark on the outside of the box and include with the following inside the box)
- b. Purchase order number
- c. Original invoice number
- d. Name, address, and account number (of the organization returning the product)
- e. Itemized list of the items being returned
- f. Reason for the return
- g. Product Experience Report/Complaint number, if applicable

Please carefully package the Product being returned. Credit will not be given for Products that are damaged in return shipment due to inadequate packaging. Stryker does not accept any COD returns. Return shipping

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costs are borne by Customer unless Stryker specifically agrees otherwise. It is unlawful to transport bio-contaminated products through interstate commerce, unless they are properly packaged and labeled as such. Stryker reserves the right to destroy contaminated Products at the Customer's expense and charge the Customer for a replacement unit. If a return does not comply with these terms, Stryker reserves the right to destroy the Product at the Customer's expense. Any replacement would be at Customer's expense.

All "Protected Health Information" as defined in the Health Insurance Portability and Accountability Act of 1996 shall be removed by Customer from Products prior to returning them to Stryker.

### **8. Confidentiality**

Stryker, Customer each, recognize and acknowledge that, by virtue of entering into the Agreement and providing or accepting services hereunder, each may have access to certain information of the other that is confidential and constitutes valuable, special and unique property of the other party. Each party agrees that the receiving party shall not, at any time either during or subsequent to the term of the Agreement, disclose such confidential information to a third party, other than Customer's consultants, officers, directors, employees, agents, or those individuals who need to know the confidential information to further the Purpose of the Agreement (the "Recipients") and only then if those Recipients are made aware of the confidentiality obligations herein and are bound by same without prior written authorization of the disclosing party, except as may be required by law or by lawful order of any applicable government agency. For the avoidance of confusion, disclosure of the terms of the Agreement to anyone other than the Recipients shall void the Agreement. In addition, Customer represents and warrants that it has the authority to bind each Participating Facility to the same obligations herein.

### **9. Acknowledgement of Ownership**

Customer represents and warrants that it has good and valid ownership of and title to each of the Products that are delivered to Stryker. Customer further represents and warrants that the services to be provided with respect to each Product will not conflict with or be in violation of any contractual obligations Customer or Participating Facilities may have with any third party, including the original equipment manufacturers of such Products. Customer agrees that ownership of all Products for reprocessing shall be deemed to be transferred to Stryker upon shipment at Participating Facility's location. Customer represents and warrants that the Products transferred hereunder by the Participating Facilities will be transferred to Stryker free and clear of all mortgages, deeds of trust, liens, loans and encumbrances or other restrictions or limitations on their subsequent use.

### **10. Termination**

Either party may terminate the Agreement at any time, with or without cause, upon one-hundred and eighty (180) days written notice to the other party. During the notice period, Stryker shall continue to collect devices and Customer shall continue to purchase these devices. Upon termination of the Agreement, for any reason, Customer shall (a) pay Stryker, in accordance with the terms of the GPO Agreement, for any and all Products shipped but not yet paid for as of the date of termination, at the applicable prices, and (b) within ten (10) days after the effective date of the termination, deliver as directed by Stryker all instrumentation then in Customer's possession or control.

### **11. Proper Reporting**

Regulations implementing the federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b(b), include a "safe harbor" for "discounts" (see 42 C.F.R. § 1001.952(h)). Rebates or other price reductions received under the Agreement may constitute discounts on the Products and must be fully and accurately reported on all claims for payment filed with third party payors, including applicable Medicare and Medicaid cost reports (42 C.F.R. Part 1001.952(h)). Each Participating Facility must claim the value of all discounts in either the

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fiscal year in which the discount was earned or the immediately following fiscal year. Customer agrees to properly report all Products, pricing and discounts received from Stryker on its claims for payment and cost reports, to retain a copy of the Agreement, all end of year notices, and all other communications from Stryker regarding any rebate together with the invoices for purchase, and to permit agents of the U.S. Department of Health and Human Services or any state Medicaid agency access to such records upon request. Customer further represents and warrants that (i) it shall make on behalf of its Participating Facilities, or cause such Participating Facilities to make on its own behalf, all required cost reports, (ii) it has the corporate power and authority to make or cause such cost reports to be made, (iii) it has full authority from the Participating Facilities to receive rebates on behalf of such Participating Facilities and (iv) it owns and operates the Participating Facilities and has the authority to bind such Participating Facilities to the obligations hereunder.

### **12. Tax**

Notwithstanding anything herein to the contrary, to the extent that Customer maintains a tax exempt status and such status exempts Owner (Customer), any Schedule and/or Equipment described therein from otherwise applicable property, sales and/or use taxes, and Customer provides Owner with proof of the same reasonably satisfactory to Owner, then Owner shall not charge Customer for such property, sales and/or use taxes regarding Owner, such Schedule and/or Equipment. Customer acknowledges and agrees that: (i) even though Customer is exempt from certain taxes, such status may not exempt Owner, any Schedule and/or Equipment from applicable property, sales and/or use taxes and Customer will be liable to pay or reimburse Owner for all such applicable taxes, as billed; and (ii) if Customer disagrees with any determination by Owner that a tax exemption is not available for a certain tax, Customer shall pay or reimburse Owner for such tax, as billed, until such time as Customer obtains a ruling or other written determination from the appropriate state or local agency (in a form reasonably satisfactory to Owner) stating that the tax exemption is available for such tax."

### **13. Assignment**

Except as otherwise maybe set forth, Customer shall not transfer or assign any or all of its rights or interests under an Agreement or delegate any of its obligations without the prior written consent of Stryker (which consent shall not be unreasonably withheld). No assignment shall relieve the Customer of the performance of any accrued obligation that may then have under the Agreement. Any attempted assignment of the Agreement without the prior written consent of Stryker shall be of no force or effect.

The foregoing notwithstanding, Stryker may, without Customer's consent, assign the Agreement (i) to and affiliate, (ii) in connection with a sale of all or substantially all of Stryker's assets to which the Agreement relates, or (iii) in connection with Stryker's merger, consolidation, change of control or similar transaction.

### **14. Force Majeure**

If obligations of either party to perform under the Agreement due to any cause which is beyond the non-performing party's reasonable control and/or is caused by matters such as strikes, power shortages of raw material, fire, explosion, war, common carrier failure, government orders or any act of God, or any other shall be excused during each resultant period of delay and is known herein as "Force Majeure." Non-performing party shall not be liable for breach of the Agreement with respect to such Force Majeure. The non-performing party shall be excused for ninety (90) days or as long as such event shall be ongoing and/or continuing, whichever is sooner. Non-performing party shall employ all reasonable efforts to resume performance and assume Agreement obligations and performance as soon as practicable. Parties must notify the other party in writing of the Force Majeure issue.

### **15. Severability**

In the event that any provision of an Agreement is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall



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not affect the validity and enforceability of any other remaining provisions.

### **16. Notices**

All notices and other communications required or permitted to be given under the Agreement and/or a Letter of Participation shall be in writing and shall be deemed to have been duly given, made, and received only when delivered to the other party, as applicable, in person or sent by the United States Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel Service or other nationally recognized overnight carrier. All notices or communications between GPO and Company pertaining to the Agreement and/or a Letter of Participation shall be addressed as follows and shall be deemed delivered and effective on the date it is actually delivered to the following address:

Stryker's Sustainability Solutions division  
1810 West Drake Drive  
Tempe, AZ 85283  
Attn: Legal Counsel  
Ph: 480-763-5300  
Fax: 480-763-5310

### **17. Governing Law**

The Parties agree that laws of the State of Michigan shall govern the validity and construction of the Agreement and any dispute arising out of or relating to the Agreement, without regard to the principles of conflict of laws

### **18. Headings**

The headings to the paragraphs of these Standard Terms of Sale are included only for convenience of reference and shall not be used to interpret the meaning of a provision of these Standard Terms of Sale.

### **19. Amendment**

A change in the Agreement must be made by a written amendment signed by both parties. Stryker sales representatives are not authorized representatives of Stryker for purposes of agreeing to Customer terms and conditions or other agreements, including without limitation, any changes to the Agreement.

### **20. No third-party beneficiaries**

The rights and remedies conferred under the Agreement and under these Standard Terms of Sale apply only to Stryker and Customer and shall not be construed to inure to the benefit of or provide any right of action to any other person, including without limitation any patient or third-party payor.