

STRYKER MEDICAL (ACUTE CARE)
CAPITAL PURCHASE TERMS & CONDITIONS

1. Definitions. For purposes of this Agreement, the term "Product" will mean commercially available products sold by the Stryker Medical division from time to time.
2. Ordering and Pricing; Payment Terms; Taxes.
 - (a) *Orders.* Customer will order Products either through Stryker's local sales representative or through the appropriate Stryker Customer Service Department and Customer will fill or arrange to have filled these orders in accordance with Stryker's normal procedures.
 - (b) *Price.* Purchase prices for the Products purchased by Customer during the term of this Agreement shall be based on the prices identified in Schedule A.
 - (c) *Payment Terms.* Unless otherwise indicated on Stryker's invoice, each invoice shall be paid in full by Customer net thirty (30) days. Any amount not paid on time may be subject to a late fee of 1½% per month prorated (18% per annum), or the maximum interest rate allowable by law whichever is the highest.
 - (d) *Taxes.* Unless otherwise indicated on Stryker's invoice, prices do not include, and Customer is responsible for and agrees to pay (unless Customer shall provide Stryker at the time an order is submitted with an exemption certificate or other documents acceptable to taxing or custom authorities), all sales, use, value added, excise and all other federal, state or local or foreign taxes, import or customs fees and duties associated with an order, however designated, except for Stryker's franchise taxes and taxes on Stryker's net income. If applicable, a separate charge for taxes will be shown on Stryker's invoice.
3. Shipment and Delivery. Unless otherwise provided on the face of an invoice, freight and handling charges *are* prepaid and added to the invoice. In the event that Customer does not specify the carrier, the carrier may be at Stryker's option. Title of the Products sold hereunder shall pass to Customer upon delivery by Stryker to the carrier.
4. Proper Reporting. Customer will comply with all applicable laws and regulations relating to the accounting and application of discounts, including but not limited to all Federal and State laws and regulations regarding reimbursement and proper reporting of discounting and pricing, such as the requirements of the discount "safe harbor" located at 42 C.F.R. 1001.952(h). Pricing under this Agreement may constitute discounts on the purchase of Products, and must be properly reported and appropriately reflected as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports.
5. Warranty and Indemnification.
 - (a) Stryker warrants its products in accordance with the terms of the limited warranties located at: http://tech.med.strykercorp.com/Terms_Conditions/index.html
 - (b) Stryker will hold Customer harmless from and will indemnify Customer for any and all liability incurred resulting directly from a defect in workmanship or design of a Product. This indemnification applies only if the instructions outlined in the labeling, manual, and/or instructions for use are followed. This indemnification will not apply to any liability arising from (i) an injury due to the negligence of any person other than an employee or agent of Stryker, (ii) the failure of any person other than an employee or agent of Stryker to follow any instructions for use of the Product, or (iii) the use of any product not purchased from Stryker or Product that has been modified, altered or repaired by any person other than an employee or agent of Stryker. Except as specifically provided herein, Stryker is not responsible for any losses or injuries arising from the selection, manufacture, installation, operation, condition, possession, or use of a Product. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i), (ii), or (iii) above arising as a result of Customer's or its employees', representatives' or agents' actions.
 - (c) Except for third party damages related to Stryker' indemnity obligations under subsection 5(b) hereof, Stryker's liability arising in connection with or under this 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. Customer shall in no event be entitled to, and Stryker shall not be liable for, direct, indirect, special, incidental, consequential or punitive damages of any nature, including, but not limited to, loss of profit or revenue.
6. Insurance. Stryker will maintain adequate general liability insurance, including coverage for Products and completed operations, and workers compensation and employer's liability insurance against any claim or claims, which might arise out of Products purchased by Customer from Stryker under the Agreement. Stryker has the right to self-insure to comply with this requirement. When requested by Customer, Stryker will furnish an insurance certificate signed by an authorized agent evidencing the above referenced insurance coverages.
7. Confidential Information. The parties hereto shall hold in strictest confidence any information and materials that are related to the business of the other party hereto or are designated by any such party as proprietary and confidential, herein or otherwise ("Confidential Information"). The parties hereby covenant that they shall not disclose such Confidential Information to any third party without prior written authorization of the party to whom such information relates.

8. HIPAA Compliance. All medical information and/or data concerning specific patients, including, but not limited to Protected Health Information, derived from or obtained during the course of the Agreement, will be disclosed by Customer solely in compliance with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published other than as required or permitted under applicable laws.
9. Warranty of Non-Exclusion. Each party represents and warrants that as of the Effective Date, neither it nor any of its employees, are or have been excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Each party further represents to Customer that no final adverse action by the federal or state government has occurred or is pending or threatened against the party, its affiliates, or, to its knowledge, against any employee, Stryker, or agent engaged to provide items or services under this Agreement. Each party also represents that if during the term of this Agreement it, or any of its employees becomes so excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs, such will promptly notify the other party. Each party retains the right to terminate or modify this Agreement in the event of the other party's exclusion from a federal or state health care program.
10. Cancelation; Inspection and Acceptance.
 - (a) Cancellation of orders must be received 30 days prior to the agreed upon delivery date. If the order is cancelled within the 30-day window, a fee of 25% of the total purchase order price and return shipping charges will apply.
 - (b) Upon receipt of the Products and/or Services, Customer agrees to inspect and/or test the Products and/or Services. The Products and/or Services shall be deemed accepted by Customer unless Customer provides Stryker a timely written notice specifically noting any defects or discrepancies in the quality or quantity of the Products and/or Services received. All notices regarding nonconforming Product and/or Services, shortages, damage, rejection or revocation of acceptance must be made in writing and received by Stryker no later than thirty (30) days from the date of Stryker's invoice, which Customer agrees is a reasonable time frame within which to diligently inspect and provide notice to Stryker. Customer waives any right to reject the shipment or revoke acceptance thereafter.
11. Force Majeure. Neither party to this Agreement will be liable for any delay or failure of performance that is the result of any happening or event that could not reasonably have been avoided or that is otherwise beyond its control, provided that the party hindered or delayed notifies the other party describing the circumstances causing delay. Such happenings or events will include, but not be limited to, terrorism, acts of war, riots, civil disorder, rebellions, fire, flood, earthquake, explosion, action of the elements, acts of God, inability to obtain or shortage of material, equipment or transportation, governmental orders, restrictions, priorities or rationing, accidents and strikes, lockouts or other labor trouble or shortage.
12. Data. Customer acknowledges and agrees that Stryker may use any data related to the performance or use of the Products or services.
13. Miscellaneous.
 - (a) This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan, without giving effect to the principles of choice of law principles.
 - (b) Neither party may assign this Agreement without the prior written consent of the other party, except that Stryker shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by successors and assigns of the parties to this Agreement.
 - (c) Any notice required under this Agreement shall be in writing sent by registered mail, postage prepaid, and addressed to the parties at their respective addresses.
 - (d) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and any modification or amendments to this Agreement must be in writing and signed by both parties. No waiver, alteration, or modification of the terms and conditions set forth herein shall be binding unless Stryker expressly agrees in writing. Stryker expressly rejects any different, additional or conflicting terms or conditions set forth in Customer's purchase order or any other document issued by Customer; the terms of the invoice and these terms and conditions shall exclusively govern the purchase of Products and/or Services from Stryker.
 - (e) This Agreement and any exhibit, schedule or other attachments hereunder may be executed and delivered in multiple counterparts, including via facsimile or Adobe Acrobat or ".pdf" format, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.