

ARDIAN, INC. STANDARD TERMS AND CONDITIONS OF SALE

ALL SALES OF PRODUCTS ("PRODUCTS") BY ARDIAN, INC. ("ARDIAN") TO THE BUYER ("BUYER") AND BUYER'S USE THEREOF ARE EXPRESSLY CONDITIONED ON BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. ARDIAN WILL NOT BE BOUND BY ANY TERMS OF BUYER'S PURCHASE ORDER THAT ARE INCONSISTENT WITH THE TERMS HEREIN. THESE TERMS MAY ONLY BE AMENDED OR WAIVED WITH ARDIAN'S WRITTEN CONSENT.

- 1. Order and Acceptance.** All orders for Products shall be made by written or electronic purchase order or by telephonic means with a confirmation by written or electronic means delivered to ARDIAN within five (5) days of Buyer's placement of the original order. No order shall be binding upon ARDIAN unless and until accepted by ARDIAN in writing, under these terms and conditions, and ARDIAN shall have no liability to Buyer with respect to purchase orders that are not accepted. Buyer shall submit purchase orders to ARDIAN in accordance with ARDIAN's then current lead times.
- 2. Delivery.** ARDIAN will use commercially reasonable efforts to deliver Products at the times specified in its acceptance of Buyer's purchase order, provided, however, that all delivery dates are estimates only and deliveries may be in installments. All Products delivered hereunder will be shipped FOB (UCC) ARDIAN's point of shipping for domestic shipments and FCA (Incoterms 2000) Ardian's facilities for international shipments (either the "Delivery Point," as applicable), at which time risk of loss and title pass to Buyer. All standard freight, insurance and other shipping expenses from the Delivery Point will be borne by Ardian (expedited available at Buyer's expense). If ARDIAN fails to deliver an order to Buyer within a reasonable period of time following the delivery date provided in its acceptance, ARDIAN's sole liability and Buyer's sole remedy will be to cancel the delayed order free of charge. Buyer shall be deemed to accept Products upon delivery.
- 3. Prices, Taxes, and Payment.** ARDIAN reserves the right to change the prices and specifications of Products at any time without notice. Any tax, duty, custom or other fee of any nature imposed upon this transaction by any federal, state, or local government authority shall be paid by Ardian in addition to the price quoted or invoiced. Unless otherwise stated, payment terms for all products and services shall be net thirty (30) days from date of shipment. An interest charge equal to the lesser of 1¹/₂% per month or the greatest amount allowed by law will be added to past due invoices. ARDIAN reserves the right, in its sole discretion, to require C.O.D. payment terms from any Buyer.
- 4. Conflicting Terms and Conditions.** If ARDIAN and Buyer have entered into a formal written agreement regarding Buyer's purchase of Products and the terms and conditions of the formal written agreement conflict with the terms and conditions set forth herein, the terms and conditions of the that formal written agreement will govern and supersede the terms and conditions set forth herein.
- 5. Capital Equipment.** To the extent that any Products purchased by Buyer constitute capital equipment, Buyer shall provide ARDIAN access to such Products to inspect, service and maintain such Products and collect any data therefrom. Notwithstanding the foregoing, nothing herein shall require or obligate ARDIAN to perform any routine inspections, servicing or maintenance of any Products sold to Buyer. In the event ARDIAN provides Buyer with such Products for use as part of a clinical evaluation program, Buyer shall be held to the terms of ARDIAN's clinical evaluation agreement.
- 6. Limited Warranty.** Product warranty information is as specified in the Product documentation. No other warranty, whether express or implied is made with respect to the Products or the accompanying written materials.
- 7. Returned Goods.** Buyer may only return Product that is defective and covered by ARDIAN's warranty for exchanges unless agreed to in writing by Ardian. To exchange such Product, Buyer shall first contact ARDIAN to obtain a Return Goods Authorization Number ("RGA"). After receiving the RGA from ARDIAN, Buyer shall ship the nonconforming Product to ARDIAN FOB (UCC) ARDIAN's facility pursuant to the shipping and other requirements specified by ARDIAN with the RGA prominently displayed on the shipping container for the nonconforming Product. If ARDIAN confirms that the returned Product fails to conform to the applicable warranty, if any, ARDIAN will exchange the Product within thirty (30) days of ARDIAN's receipt.
- 8. Technical Advice.** ARDIAN may, at Buyer's request, furnish technical assistance, advice and information with respect to the Products, if and to the extent that such advice, assistance and information are conveniently available. It is expressly agreed that there is no obligation to provide such information which is provided without charge at the Buyer's risk, and which is provided subject to the warranty disclaimers set forth in Section 6 above.
- 9. Limitation of Liability.** ARDIAN will not be liable for any loss, damages or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of ARDIAN, including but not limited to, supplier delay, force majeure, act of God, labor unrest, fire, explosion or earthquake. In any such event, the delivery date will be deemed extended for a period equal to the delay. **IN NO EVENT SHALL ARDIAN OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF ARDIAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 10. Buyer Indemnification.** Buyer shall defend, indemnify, and hold harmless ARDIAN from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any claims, suits, or proceedings arising out of or relating to the use (including, without limitation, use under Section 11 below) or other exploitation of the Products, unless proximately caused by the sole gross negligence or willful misconduct of ARDIAN.
- 11. Limitations on Use.** The Products supplied hereunder are for use by Buyer and its affiliates and shall not be resold. Buyer will use the Product(s) in compliance with all applicable laws and regulations.
- 12. Trademarks.** ARDIAN owns all right, title and interest in and to the Product trademarks, and other identifying marks and any associated good will ("Trademarks"). ARDIAN does not grant and Buyer shall not receive any right, title or interest in or to any of the Trademarks. Furthermore, ARDIAN and its licensors retain all proprietary rights in and to all designs, engineering details, and other technology and information pertaining to the Products. The Products are offered for sale and are sold by Seller subject in every case to the condition that, other than as provided in Section 5, such sale does not convey any license, expressly or by implication, to manufacture, duplicate, or otherwise copy the products.
- 13. General.** The contract formed by Buyer's ordering of Products and consequent acceptance of the terms and conditions herein may be modified and any breach thereunder may be waived only by a writing signed by the party against whom enforcement is sought.
- 14. Entire Agreement.** The terms and conditions set forth herein constitute the entire agreement between ARDIAN and Buyer with respect to the subject matter hereof.
- 15. Waiver.** The failure by ARDIAN to enforce at any time any of the provisions herein, or to require at any time the performance by Buyer of any of the provisions herein, will not in any way be construed as a waiver of such provisions.
- 16. Applicable Law.** This contract will be governed by the laws of the State of California without regard to its conflicts of law principles.
- 17. Force Majeure.** Delay in or failure to carry out the duties imposed upon either party (except Buyer's duty to make payments to ARDIAN) under this contract shall not constitute hereunder to give rise to any claim for damages if such delay or failure results directly or indirectly from acts of God, acts of any civil or military authority, civil disturbances, war, strikes, or other labor disputes, shortages of labor materials, fire, transportation contingencies, laws, regulations, acts or orders of any government or agency, catastrophes or any other similar occurrences beyond such party's reasonable control.
- 18. Assignment.** Neither party may assign or delegate the contract formed by this acceptance of Buyer's order without the prior written consent of the other party, provided that ARDIAN may assign this contract to a person or entity into which ARDIAN has merged or which has otherwise acquired all or substantially all of ARDIAN's business or assets pertaining hereto and further provided that ARDIAN may assign rights to receive payments from Buyer to a third party.