

**STANDARD TERMS AND CONDITIONS OF SALE
HARMAC MEDICAL PRODUCTS, INC. (“HARMAC”)**

- 1 ACCEPTANCE: All sales of goods (collectively, the “Goods”) and any services (collectively, the “Services”) delivered or provided by Harmac to the purchaser hereunder (“Purchaser”) are made pursuant to the following terms and conditions, which terms and conditions shall supersede any and all terms and conditions that might appear on Purchaser’s purchase order form or elsewhere. Acceptance by Harmac of an order submitted by Purchaser to Harmac is expressly conditioned on Purchaser’s consent to all of the terms and conditions stated herein. No different or additional terms or conditions are or will be accepted by Harmac, and are expressly rejected and objected to by Harmac. Any failure by Harmac to object to any of the provisions contained in any purchase order form of Purchaser or elsewhere shall not be construed as an acceptance by Harmac of such provisions nor as a waiver by Harmac of the terms and conditions stated herein.
- 2 COMPLETE AGREEMENT: The terms and conditions set forth herein constitute the final agreement of Harmac and Purchaser, are a complete and exclusive statement of the terms of such agreement, and supersede any and all previous or contemporaneous communications, negotiations, representations, or agreements, whether oral or written, with respect to the purchase/sale of the Goods and/or Services. The terms and conditions set forth herein cannot be changed, altered or amended in any manner except by a writing signed by Harmac. Notwithstanding the foregoing, in the event of any conflict or inconsistency between any of the terms and conditions set forth herein and any written supply agreement or similar agreement between Harmac and Purchaser, the terms and conditions of such supply agreement or similar agreement shall control.
- 3 WARRANTY AND LIMITATIONS: Harmac warrants to Purchaser that the Goods shall, at the time of delivery in accordance with Section 5 and for a period of twelve (12) months thereafter, conform in all respects with the specifications regarding the Goods supplied by Purchaser from time to time and agreed to in writing by Harmac (the “Specifications”). If any Good fails to meet such warranty, Harmac shall, at its sole discretion, repair or replace the defective Goods at Harmac’s cost and expense, or as an alternative to repair or replacement, reimburse Purchaser for the amounts paid by Purchaser to Harmac with respect to the defective Goods. The warranty set forth above does not apply to (a) defects or deficiencies resulting from (i) misuse, (ii) abuse, (iii) neglect, (iv) improper installation, operation or maintenance, (v) acts of God, (vi) power failures or surges, or (vii) alteration, modification, or repairs by any party other than Harmac, or (b) or defects or deficiencies relating to any raw material or component purchased from any vendor or supplier for which Harmac was required by Purchaser or the Specifications to purchase such raw materials and/or components. Harmac warrants to Purchaser that all Services will be provided in a competent manner. Harmac shall re-perform any Services not conforming to such warranty **EXCEPT AS EXPRESSLY SET FORTH ABOVE, HARMAC DOES NOT MAKE OR PROVIDE ANY WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF DESIGN, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE PRACTICE, WITH REGARD TO ANY GOOD OR SERVICE DELIVERED OR PROVIDED HEREUNDER, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND CONSTITUTE PURCHASER’S SOLE REMEDIES AGAINST HARMAC FOR ANY BREACH OF ITS WARRANTY. IN NO EVENT SHALL HARMAC’S OBLIGATIONS TO PURCHASER EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO HARMAC FOR THE DEFECTIVE GOODS AND/OR SERVICES. IN NO EVENT SHALL HARMAC BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, MULTIPLE, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR LOSS OF PROFITS OR LOSS OF USE.**
- 4 INSPECTION: Purchaser acknowledges that fifteen (15) days after receipt of the Goods will provide Purchaser with a reasonable amount of time to inspect the Goods. Therefore, the Goods shall be subject to final inspection and acceptance by Purchaser within thirty (30) days after receipt of the Goods by Purchaser. Purchaser’s failure to inspect the Goods within such thirty (30) day period shall constitute a waiver by Purchaser of its rights of inspection and rejection. Purchaser’s right of rejection hereunder shall be limited to non-conforming Goods. Upon any inspection of the Goods within said thirty (30) day period, Purchaser shall immediately notify Harmac in writing as to any non-conforming Goods that

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Purchaser intends to reject and particularize in detail the reasons for such rejection. If, upon inspection, Purchaser fails to immediately notify Harmac as to which non-conforming Goods it intends to reject, such failure to notify shall be deemed an acceptance of the Goods by Purchaser. All non-conforming Goods not properly rejected by Purchaser hereunder shall be deemed accepted by Purchaser.

- 5 **DELIVERY AND DELAYS:** Unless otherwise agreed to by Harmac in writing, all Goods shall be delivered F.O.B. Harmac's facility. Unless otherwise specified by Purchaser in writing, the means of shipment shall be at the sole discretion of Harmac. All delivery dates quoted by Harmac are only an estimated date of delivery. Purchaser's sole remedy for any delay from the estimated delivery date shall be to cancel the order; provided, however, in such event Purchaser shall be obligated to pay for all Goods completed and in process prior to Harmac's receipt of notice of cancellation. Time shall not be of the essence with respect to delivery of the Goods.
- 6 **NON-DELIVERY:** Harmac shall be relieved from manufacturing and/or delivering the Goods if delayed or prevented by any circumstance beyond the control of Harmac, including, but not limited to, fire, explosion, accident, breakdown of machinery or equipment, acts of God, strikes or other labor disputes, riots or other civil disturbances, delays or defaults of vendors, pandemic, epidemic, declarations of emergency, acts of government (including, but not limited to, voluntary or involuntary compliance with any law, order, regulation, recommendation, or request of any government authority, whether or not related to environmental matters, economic stabilization, or materials allocation), or any other cause beyond its control; provided, however, that if manufacture is suspended or terminated for any of the foregoing reasons, Purchaser shall take delivery of and make payments for all such Goods completed and in process at the date of suspension or termination of manufacture.
- 7 **TITLE AND RISK OF LOSS:** Title and risk of loss to the Goods shall pass to Purchaser upon Harmac's delivery of the Goods in accordance with Section 5.
- 8 **PRICES / TAXES:** Prices for the Goods and/or Services do not include any applicable state, local, federal, or foreign taxes (including, but not limited to, sales, use, and excise taxes, and tariffs), duties, customs fees or similar charges. All such taxes, duties, customs fees, or other similar charges shall be paid by Purchaser. Prices quoted are subject to change without notice unless indicated specifically otherwise by Harmac. Without limiting the generality of the immediately preceding sentence, Harmac may raise the prices for the Goods in the event of any increase in prices of raw materials and/or components due to an increase in excise taxes, tariffs, duties, customs fees or similar charges.
- 9 **MOLDS, DIES, OR OTHER TOOLING:** Except where Purchaser has specifically paid for the cost of any molds, dies, tooling or other equipment necessary for the manufacture of the Goods, Purchaser shall not have any ownership or other rights in any of the molds, dies, tooling or other equipment paid for by Purchaser.
- 10 **INDEMNIFICATION:** Purchaser agrees to indemnify, defend and hold harmless Harmac and its affiliates from and against any and all liabilities, claims, suits, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees) arising from or relating to (a) any representation, warranty, promise, or description of the Goods made by Purchaser, other than those expressly set forth on this agreement, (b) the possession, use, operation or sale of the Goods by any person (whether for breach of warranty, strict liability in tort, negligence, or otherwise), including, but not limited to, a claim that any Good caused property damage or caused death or personal injury to any person (other than claims that the Goods were not manufactured in accordance with the Specifications), (c) any defect in the Specifications or design of the Goods, (d) any defect or deficiency relating to any raw material or component purchased from any vendor or supplier for which Harmac was required by Purchaser or the Specifications to purchase such raw material and/or component, or (e) any claim of a third party for infringement of any copyright, patent, trademark, registered design, trade secret or similar proprietary right. Purchaser shall cooperate with Harmac in investigating any injury or damage allegedly caused in whole or in part by any of the Goods, and in the defense of any claims arising therefrom.
- 11 **MINIMUM ORDER QUANTITIES:** Purchaser acknowledges that Harmac may be required to procure raw materials in minimum or economic order quantities to meet the pricing and volume of the Goods and/or supplier requirements. Purchaser will in all cases be responsible for the residual costs for any such minimum order quantities so procured by Harmac.
- 12 **CANCELLATION:** Except as expressly otherwise provided herein, Purchaser may cancel an order only

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upon the written approval of Harmac. In the event that cancellation of an order is so approved by Harmac, Purchaser shall purchase from Harmac: (a) at Harmac's cost, all of Harmac's remaining in-stock raw materials (including any minimum order quantities) relating to the Goods; (b) at Harmac's cost, all raw materials required to be purchased by Harmac pursuant to non-cancellable orders or agreements (and Harmac shall, at the option of Purchaser, deliver such raw materials to Purchaser or dispose of or destroy such raw materials in any reasonable manner prescribed by Purchaser); and (c) at the price per finished Good set forth in the applicable order accepted by Harmac, all of Harmac's inventory of finished Goods existing as of the date of cancellation.

- 13** PAYMENT: Unless otherwise agreed to by Harmac in writing, payment of the entire price for the Goods and/or Services is due within thirty (30) days from the invoice date. Time for payment shall be of the essence. Each delivery made hereunder shall constitute a separate sale. Purchaser shall reimburse Harmac for any and all costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Harmac to obtain late payment of any invoice. In the event that at any time Harmac has reasonable grounds to question Purchaser's ability or willingness to comply with the terms of payment set forth herein, or in the event of Purchaser's insolvency or bankruptcy, Harmac may, in addition to its other rights under applicable law, cancel any outstanding order and receive the amounts set forth in Section 12, require payment in advance or upon delivery, defer late shipments, ship on any other terms and conditions satisfactory to it, or require other assurances of such terms of payment.
- 14** WAIVER: Any failure by Harmac to enforce at any time any provision of any of these terms and conditions shall in no way be construed to be a waiver by Harmac of such provision. No waiver by Harmac of any breach of these terms and conditions shall be construed to be a waiver of any other or subsequent breach.
- 15** ACTIONS: Any action against Harmac (including, but not limited to, any action for breach of these terms and conditions) must be commenced by Purchaser within one (1) year after the earlier of: (a) the date any alleged claim accrues; or (b) the date of delivery of the Goods to Purchaser in accordance with Section 5 or delivery of the Services. Any action to enforce, arising out of, or relating in any way to, any of the provisions of this agreement shall be brought and prosecuted in a court located in Buffalo, New York or the Western District of New York, and Harmac and Purchaser hereby consent to such jurisdiction.
- 16** CONSTRUCTION: The existence of any contract hereunder and the terms thereof and hereof, and the terms and conditions of the purchase/sale of the Goods, shall be governed by the laws of the State of New York without reference to principles of conflict of laws. All captions contained herein are for convenience only and are not to be deemed a part of the context hereof.