



SOUTH DAKOTA PARTNERS INC PURCHASING GENERAL TERMS AND CONDITIONS

1. **Entire Agreement.** The agreement ("Agreement") relating to the purchase and sale of goods and/or services (collectively, "Goods") by SOUTH DAKOTA PARTNERS INC and its affiliates (collectively, the "Buyer") from the seller of the Goods (the "Seller") consists of this document, any purchase order issued by Buyer to Seller, and any blanket purchase agreement issued by Buyer to Seller along with any Release issued by Buyer to Seller under a blanket purchase agreement. The Agreement is legally binding on Buyer and Seller, and contains all of the terms and conditions relating to the purchase and sale of between Buyer and Seller. The Agreement may not be modified except pursuant to a written amendment that is signed by both Buyer and Seller. Buyer and Seller are individually referred to herein as a "Party" and collectively as the "Parties".
2. **Orders.** From time to time Buyer may submit a purchase order or blanket purchase agreement (collectively, an "Order") for Goods with Seller. If Buyer submits a blanket purchase agreement for Goods with Seller, then from time to time Buyer may submit individual purchase order releases for the Goods covered by that blanket purchase agreement as described in the blanket purchase agreement (a "Release"). Any Order or Release submitted by Buyer to Seller shall be subject to and deemed to incorporate the terms and conditions of this document. Any Release submitted by Buyer to Seller shall also be subject to and deemed to incorporate the terms and conditions of the applicable blanket purchase agreement to which it relates. Unless agreed to in writing by a duly authorized representative of Buyer, Buyer objects to, and is not bound by, any term or condition that differs from or adds to the Agreement. Seller's acceptance of, or commencement of performance under, an Order or shipment of any part of the Goods covered by an Order shall be deemed to constitute assent to the Order and the terms and conditions herein.
3. **Price.** Buyer shall pay Seller the price for the Goods shown in the Order. The price on a purchase order is firm and not subject to increase without Buyer's prior written consent. The price on a blanket purchase agreement is firm until Buyer purchases the dollar 'target amount' of products stated on the blanket purchase agreement, unless an 'effective end date' is stated in the blanket purchase agreement, in which case the price shall be firm until the 'effective end date'. Buyer is not required to purchase the dollar 'target amount' of products stated on the blanket purchase agreement. Seller shall be required to sell a quantity of the products specified on a blanket purchase agreement up to the dollar 'target amount' of products stated in the blanket purchase agreement, unless an 'effective end date' is stated in the blanket purchase agreement, in which case Seller shall be required to sell products to Buyer under all Releases issued by Buyer to Seller up to the 'effective end date' but not in excess of the dollar 'target amount' of products stated on the blanket purchase agreement. If the price is omitted in the Order, the Goods shall be billed at the lesser of the price last paid or quoted, or at the prevailing market price.
4. **Taxes.** Unless specified in an Order, the prices stated do not include sales, use or similar taxes directly applicable to the Goods sold to Buyer. Notwithstanding the foregoing, Buyer shall only be responsible for such taxes when Seller is required by law to collect such taxes from Buyer. Such taxes shall be separately stated on Seller's invoice. Seller shall not add such taxes to Seller's invoice if Buyer has furnished a valid tax exemption certificate to Seller.
5. **Payment.** Buyer shall pay Seller the price for the Goods within 60 days after delivery of the Goods to Buyer's facility, unless other payment terms are stated on an Order or agreed upon in writing. Seller shall send Buyer a detailed invoice for each purchase order and Release. Buyer shall make payment to Seller by check or electronic funds transfer.
6. **Delivery.** Seller shall deliver Goods in accordance with the schedule in Buyer's purchase order or Release. Time is of the essence in the performance of each purchase order and Release. Buyer may select the mode of transportation and the carrier for the Goods. Seller shall pre-pay shipping charges and add such charges as a separate line item on the invoice, unless otherwise agreed in writing. If Buyer requests that Goods be shipped 'collect', Seller shall use a Buyer approved transportation carrier and Seller shall not pre-pay shipping charges. Seller shall be responsible for excess transportation costs resulting from any deviation from Buyer's shipping instructions. If, prior to the delivery of the Goods, Seller has reason to believe that it will be unable to meet the delivery schedule in Buyer's purchase order or Release, then Seller shall immediately notify Buyer in writing, indicate the cause of delay, and use its best efforts to cure the anticipated delay. Upon receipt of notice of the anticipated delay or upon occurrence of an actual delay in performance, Buyer may (i) direct expedited shipment of the Goods with excess costs paid by Seller, or (ii) cancel the purchase order or Release. Buyer may return at Seller's expense Goods delivered early to Buyer. Goods shall be delivered by Seller to the delivery location specified in the purchase order or Release, or if a delivery location is not specified in the purchase order or Release then to Buyer's place of business from which the Goods were ordered. Risk of loss of the Goods while in transit shall remain with Seller until the Goods are delivered to Buyer's facility.
7. **Expediting.** When an expedited shipping fee is pre-approved in writing by Buyer and charged by Seller, Seller shall assure delivery on or before the specific delivery date required by Buyer. If delivery is not made on or before the specific delivery date, the expedited shipping fee shall not be due or payable by Buyer.
8. **Packing.** The Goods to be furnished on the Order shall be suitably packed to protect the Goods from damage, prepared for shipment to secure the lowest transportation rates possible (unless a premium shipment method is specified on the

purchase order or Release), and comply with carrier regulations. No charges shall be allowed for packing, crating, expedited shipping or cartage unless authorized on the purchase order, blanket purchase agreement, or Release.

9. **Inspection.** Buyer may inspect Goods at Seller's premises during the manufacturing process, and Seller agrees to cooperate with Buyer during such inspection. Any inspection shall be performed in such manner as not to unreasonably delay or interfere with the work. All shipments shall be subject to final inspection and/or testing by Buyer at the delivery location. After receipt of Goods, Buyer shall have a reasonable time, but not less than thirty days, in which to inspect and accept or reject any Goods not conforming to the instructions, specifications, drawings, or data furnished under an Order or a Release or conforming to the warranties, express or implied. Rejected Goods shall be returned to Seller. For all rejected Goods, Seller, at Buyer's election, shall provide Buyer full credit or a refund for, or replacement of the Goods, at Seller's risk and expense, including transportation costs both ways. Acceptance by Buyer of part of the defective Goods shall not bind Buyer to accept the remainder thereof.
10. **Warranties.** Seller warrants that all Goods delivered pursuant to an Order or Release shall strictly conform to the terms, conditions, specifications, descriptions, drawings, and data specified in the Order or Release and shall be of good design, material, and workmanship, free from defects, merchantable and fit for their intended purpose, and shall meet applicable governmental safety standards. Seller further warrants that Buyer shall have free and clear title to the Goods and the right to sell the Goods at the time of delivery to Buyer. All Goods shall be new and unused (unless otherwise specified in the Order or Release) at the time of delivery to Buyer. Seller shall also without any additional charges assign or otherwise transfer to Buyer all warranties on Goods and services incorporated into the Goods. All warranties herein mentioned shall survive any intermediate or final inspections, delivery, acceptance or payment by Buyer, and all such warranties shall run to Buyer, its successors, assigns, customers, and users of the Goods. No warranties hereunder shall be deemed disclaimed or excluded except in writing signed by an authorized representative of Buyer. If Buyer deems the Goods defective, Seller, at Buyer's election, shall promptly repair or replace the defective Goods, or give Buyer a credit or refund for the price paid for the defective Goods, at any time within Seller's standard warranty period for the Goods (which in no event shall be less than one year from the date of delivery). Alternatively, Buyer may repair defective Goods at Buyer's facility and charge Seller the reasonable cost thereof. Seller shall be responsible for all shipping charges (both to and from Seller's facility) for Goods which are repaired or replaced by Seller.
11. **Modification.** Buyer may at any time, by written notice to Seller, make changes in the specifications, quantities, delivery schedules and shipping instructions in a purchase order or Release. Seller shall notify Buyer within 10 days if any such change increases or decrease Seller's cost of performing the purchase order or Release or the time required for its performance in which case an equitable adjustment shall be agreed upon by the Parties. Any stenographic or clerical errors of Buyer in any Order or Release are subject to correction by Buyer.
12. **Termination.** Buyer may at any time terminate for its convenience Seller's performance of an Order or Release, in whole or in part, by written notice to Seller, whereupon Seller shall terminate its performance on such date of notice. If Seller has commenced performance of a purchase order or Release, Buyer shall negotiate reasonable termination charges with Seller. Seller shall use best efforts to mitigate its losses as the result of any purchase order or Release termination by Buyer. Buyer may terminate an Order or Release for default with respect to all or any part of undelivered Goods if Seller (a) does not meet the delivery or performance schedule specified in the applicable purchase order or Release, (b) breaches any terms hereof, including warranties, or (c) becomes insolvent or commits or becomes subject to an act of bankruptcy.
13. **Set-Off.** Buyer may set off any amount Buyer owes to Seller against any amount that Seller owes to Buyer.
14. **Infringement.** Seller shall indemnify Buyer for any losses, costs, damages and expenses (including court costs and attorney fees) arising from a claim of infringement of any intellectual property right of a third party relating to any of the Goods delivered. Seller shall defend or settle, at its own expense, any lawsuit or proceeding brought against Buyer by a third party for such infringement. Furthermore, in the event Buyer should be enjoined from the use or sale of the Goods as a result of such lawsuit or proceeding, Seller shall pay all Buyer's costs and expenses including consequential damages and at Buyer's option shall: (a) procure the right for Buyer to continue using and selling the Goods at Seller's expense; (b) replace the Goods with non-infringing Goods at Seller's expense; and/or (c) remove the Goods from Buyer's premises and refund to Buyer the amount paid for the Goods. The provisions of this paragraph shall not apply to any claims, demands, lawsuits or injunctions brought by a third party where the Goods have been manufactured by Seller in accordance with Buyer's specific instructions, specifications, designs or drawings.
15. **Indemnification.** Seller shall indemnify Buyer from and against any and all losses, costs, damages, and expenses (including court costs and attorneys' fees) arising from any claims against Buyer for (i) injury or death to any individual, or damage to property, alleged to have been caused in whole or in part by defective Goods furnished by Seller or by any act or omission, negligence or otherwise, of Seller or any subcontractor of Seller or of any of their respective employees, workmen, or agents, or (ii) Seller's breach of its warranties and obligations hereunder. In no event shall Seller be required to indemnify Buyer for any injury, death, or loss caused solely by the negligence or willful misconduct of Buyer.
16. **Regulatory.** Buyer is a medical device manufacturer and is required to comply with various governmental regulatory requirements. Seller agrees to allow Buyer, its representatives, and governmental regulatory agencies to conduct onsite announced and unannounced audits of Seller's facilities in connection with Buyer's regulated operations. Alternatively, Buyer may elect to send Seller a mail-in audit which Seller agrees to complete and timely return to Buyer. Seller agrees to cooperate with Buyer in any such audit or any follow up to such audit.
17. **Compliance with Laws.** In the performance of work hereunder, Seller shall comply with all applicable international, federal, state, and local laws, rules and regulations. Seller is responsible for ensuring the Goods meet the requirements of all applicable environmental laws, including without limitation, the EU Restrictions of Hazardous Substances Directive 2011/65/EU; EU REACH Regulation June 1, 2007; the Waste Electrical and Electronic Equipment Directive 2012/19/EU of the European Parliament and of the European Council of 24th July 2012 and The Batteries Directive 2006/66/EC of the European Parliament and of the European Council of 6th September 2006 and its amendments Restrictions of Hazardous

Substances Directive 2011/65/EU (RoHS II) RoHS (Restriction of Hazardous Substances) The Directive 2002/95/EC, restricting lead (Pb), mercury (Hg), cadmium (Cd), hexavalent chromium (CrVI), polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE) phthalates (DEHP, BBP, DIBP), and any other environmental product stewardship directives. In the event any of the Goods fail to comply with the requirements of this Section, in addition to any other remedies it may have, Buyer may, at its option, (i) terminate the applicable Order, (ii) defer acceptance of the Goods until they are brought into compliance with these requirements, or (iii) require Seller to replace the Goods with conforming Goods.

18. **Cumulative Remedies.** Any right or remedy of Buyer provided herein is in addition to Buyer's other rights and remedies provided herein or by law, and all of Buyer's rights and remedies hereunder are cumulative and nonexclusive.
19. **Assignment.** Seller shall not assign any of its rights or interest in the Agreement or subcontract its performance of the Agreement, without Buyer's prior written consent. Any prohibited assignment shall be void. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.
20. **Applicable Law.** The Agreement shall be governed by laws of the State of South Dakota, United States of America, without regard to conflict of law principles thereof. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. The Parties expressly consent, and submit themselves, to the exclusive jurisdiction of the state and federal courts of South Dakota, and it is agreed that the County of Deuel is a proper venue for the adjudication of any claim, action or dispute arising out of the Agreement.
21. **Confidentiality.** Seller shall not, except as required in performance of an Order or Release, disclose or use at any time any information which is not publicly known about Buyer's products, processes or services and which is disclosed to or learned by Seller prior to or during such performance. Seller shall, upon demand by Buyer, surrender to Buyer any and all confidential or proprietary documents and other information of Buyer in whatever form which are in Seller's possession or control.
22. **Buyer's Information.** Buyer retains title to all information and materials (including, but not limited to, all drawings, designs, specifications, technical data and production or product 'know-how') furnished to Seller to facilitate performance of an Order or Release, and the same shall be (i) treated as Buyer's confidential information, (ii) used exclusively by Seller to complete the Order or Release, and (iii) returned to Buyer at Buyer's direction or upon completion, termination, or cancellation of the Order or Release, along with all copies or reproductions thereof, unless otherwise agreed to in writing by Buyer. Seller shall thereafter make no further use of any such drawings, designs, specifications, technical data and production or product "know-how" or of any information derived therefrom in the performance of work for any other customer without Buyer's prior written consent.
23. **Buyer's Property.** All property of Buyer furnished or made available to Seller for performance of work under any Order or Release, including without limitation any special tooling purchased by Seller with Buyer's prior written consent, shall remain the property of Buyer and shall be segregated from Seller's property and be individually marked and identified as Buyer's property. Such property shall be exclusively used for performance of work for Buyer and shall be returned to Buyer at Buyer's written request, or upon termination, cancellation, or completion of the applicable Order or Release, unless otherwise agreed in writing by Buyer. Seller agrees to (i) maintain such property in good condition and assume all risks and liability for loss or damage thereto excepting normal wear; (ii) permit inspection of such property by Buyer during normal business hours; and (iii) at Buyer's request, furnish detailed inventory statements of such property.
24. **Equal Employment Opportunity.** Seller shall comply with Executive Order No. 11246, dated September 24, 1965, as amended, and all administrative regulations issued pursuant thereto; said Executive Order is hereby incorporated by reference herein and Seller agrees to be bound by paragraphs (1) through (7) of Section 202 thereof. Seller certifies that it does not maintain any segregated facilities for its employees and that it shall not permit its employees to perform services at any location where segregated facilities are maintained. If applicable, and not otherwise exempt, Seller agrees to be bound by 48 C.F.R. 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (29 U.S.C. 4212) and 48 C.F.R. 52.22236 Affirmative Action for Workers with Disabilities (29 U.S.C. 793), which are hereby incorporated herein by reference.
25. **OSHA.** Seller warrants that any Goods sold pursuant to the Agreement comply in all respects with the Occupational Safety and Health Act of 1970 (OSHA), and amendments thereto, and all applicable regulations, rulings, orders, and standards promulgated thereunder. In the event that the Goods sold hereunder do not conform to OSHA standards or requirements, Buyer may return the Goods for correction or replacement at Seller's expense.
26. **C-TPAT Requirements.** For Seller's Goods to be imported into the United States, Seller shall accept, implement, and comply with all applications, recommendations or requirements of U. S. Customs and Border Protection's (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) initiative (for information go to <http://www.cbp.gov>). At Buyer's and/or CBP's request, Seller shall certify in writing (on company letterhead signed by an officer of Seller) its acceptance, implementation, and compliance with the minimum security criteria of the C-TPAT program and any accompanying recommendations and guidelines. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorneys' fees or other professional fees) arising from or relating to Seller's acceptance, implementation, or compliance with CTPAT requirements.
27. **No Publicity.** Without Buyer's prior written consent, Seller shall not release any news release or publicity regarding the Agreement or the fact that Seller is furnishing Goods to Buyer.
28. **Non-Waiver.** No waiver of any provision of the Agreement or any right or obligations of either Party shall be effective, except pursuant to a writing signed by the Party waiving compliance, and any such waiver shall be effective only for the specific instance and purpose stated in such writing.