

**POREX SURGICAL, INC.**  
**Standard Terms and Conditions of Sale**

I. **GENERAL.** The addressee named on the face of this document is herein referred to as "Buyer" and Porex Surgical, Inc., with offices located at 15 Dart Road, Newnan, GA 30265 USA, or its subsidiary identified on the face of this document, as "Seller". These terms and conditions and any agreement signed by Seller to which these terms and conditions are attached or made a part thereof are limited to their express terms, and any modification or additional or different terms proposed by Buyer orally or in writing are hereby objected to and rejected. All orders for goods or materials ("goods") are subject to acceptance by Seller. All orders for and sales of goods are upon the terms herein contained, whether pursuant to Buyer's written or oral request. No waiver or modification hereof shall be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.

II. **SHIPPING AND DELIVERY.** Unless otherwise indicated herein, Seller shall determine, in its discretion, and make arrangement for the shipment of the goods to the location(s) specified herein or otherwise specified in writing by Buyer to Seller. Delivery by Seller to the carrier at the shipping point shall constitute delivery to Buyer in accordance with its order. The signature of Buyer or any of its representatives, on the Bill of Lading or receipt of shipment shall constitute conclusive proof of receipt by Buyer and shall be deemed acceptance by Buyer. All shipments shall be FOB Seller's place of business. All risk of loss, damage, or charge with respect to the goods, including the responsibility to insure the goods, shall pass to Buyer upon delivery by Seller to a carrier at its shipping point.

Shipment or delivery may be made in separate lots or partial shipments. Buyer may not refuse delivery of any lot or partial shipment or refuse payment therefore because of failure to deliver any other lot, nonconformity in any other lot or partial shipment.

III. **PURCHASE PRICE AND PAYMENT TERMS.** The price of each shipment shall consist of the prices charged for the goods plus all applicable loading, freight and insurance charges incurred by Seller. Each shipment will be invoiced separately. Payment shall be made in United States Dollars within the terms specified on Seller's invoice. Payments received shall be applied to the specified invoice; if no invoice is specified on payment, funds will be applied to the oldest obligation owed to Seller. Any payments made later than fifteen (15) days after the due date, as specified on Seller's invoice, may be assessed a late charge of one and one-half percent (1-1/2%) per month, or any portion thereof, or the highest legal rate, whichever is lower. Buyer shall be liable for any and all collection costs and expenses, including attorney's fees, incurred by Seller with regard to delinquent amounts.

Prices are subject to change without notice. Invoices will be based on the list price in effect at the time the order is placed with Seller.

IV. **CREDIT APPROVAL.** Orders are subject to approval by the Credit Department of Seller. Seller shall have the right to modify, change, or withdraw credit terms at any time without notice and to request guarantees, security, or payment in advance. In the event Buyer fails to fulfill the terms of payment or in case Buyer's financial responsibilities shall become impaired or unsatisfactory to Seller, in its discretion, Seller may discontinue further production and/or shipment of goods unless Buyer agrees to revised terms of payment acceptable to Seller.

V. **CLAIMS.** Unless otherwise agreed to in writing, the quality of Seller's goods shall be judged solely on Seller's product specifications. If requested, Seller will send, for Buyer's review,

specifications of the goods to be purchased. Unless these specifications are modified by mutual agreement in writing, these specifications will be deemed the approved specifications. Seller shall only be obligated to replace or accept for credit those goods not complying with Seller's specifications. All returns must be authorized by Seller in accordance with Section VI hereunder. Seller is under no obligation to inform Buyer of special material formulations or changes in the manufacture of the goods as long as the goods meet the approved or published specifications. Such special material formulations are proprietary and confidential technical information and are the exclusive property of Seller.

NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR NON-DELIVERY OF GOODS, SHALL BE GREATER IN AMOUNT THAN, AND SELLER SHALL NOT BE LIABLE FOR MORE THAN, THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH SUCH CLAIM IS MADE; AND IN NO EVENT SHALL ANY CLAIM BE MADE, AND SELLER SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF REVENUE OR PROFITS) WHETHER OR NOT SELLER HAS BEEN PREVIOUSLY APPRISED OF SUCH DAMAGES. Failure of Buyer to give written notice of a claim within thirty (30) days from the date of delivery of the goods in respect to which such claim is made shall constitute a waiver by Buyer of all claims with respect to such goods. Seller's sole liability to Buyer hereunder for breach of warranty shall be limited at Seller's option to the return of the purchase price paid for the non-conforming goods or the repair or replacement of the non-conforming goods.

Seller warrants that the goods comply with Seller's product specifications, are manufactured in accordance with good manufacturing practices consistent with professional and regulatory standards in effect in the U.S. at the time of sale, and are cleared by or have an appropriate exemption or exclusion from the United States Food and Drug Administration or other proper regulatory authority. In no event shall Seller be responsible for any damage, change or effect to the goods resulting from or related to any acts or omissions of Buyer or of any agent, distributor or vendor of Buyer or their respective customers or any intermediary or end user of any product manufactured, distributed or sold by Buyer including, but not limited to, improper storage, handling, modifications, abuse or misuse. Oral statements made by Seller's employees or agents, or statements made in Seller's general advertising or printed material, do not constitute warranties. SELLER MAKES NO OTHER WARRANTIES EITHER EXPRESS, IMPLIED OR OTHERWISE, EXCEPT THOSE HEREIN EXPRESSLY PROVIDED. SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VI. **RETURNED GOODS.** All returned goods must be pre-approved in writing by Seller and must bear a Returned Goods Authorization Number (RGA#), obtained by telephoning Seller's Customer Care Department. Returned goods must be unused, in original unopened packaging and packed in a protective manner similar to original shipment from Seller. Goods approved by Seller to be returned must be received by Seller within sixty (60) days after the issuance, by Seller, of the RGA #.

Returned goods with a value of \$2,000 or greater, with the exception of those goods shipped through Seller's error, shall be subject to a restocking fee of twenty percent (20%) of the price of the goods.

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Customized implants and customized physical models are unique to each patient and therefore are non-returnable. Other non-returnable items are the Surgical Drainage Systems, Surgical Skin Markers, MEDPOR® Coated Tear Drains, Ocular Conformers, ATTRACTOR™ Instrument sets, MCP Instruments sets, Carving Blocks, Sizer Sets, and Nostril Retainers.

**VII. FAIR LABOR STANDARDS.** Seller represents that with respect to the production of the goods, Seller will fully comply with the Fair Labor Standards Act of 1938, as amended.

**VIII. INFRINGEMENT AND INDEMNIFICATION.** Unless made pursuant to Buyer's designs, specifications, or instructions, Seller warrants that the goods will not infringe upon any United States patent covering the goods themselves, but does not warrant against infringement by reason of the use of such goods in combination with any other goods or materials or in the operation of any process, or production of any product.

If Buyer receives a claim that the goods infringe upon a United States patent, or any other claim for which Buyer intends to seek indemnification from Seller, as a condition to Seller's indemnification obligation, Buyer shall notify Seller promptly in writing and give Seller information, assistance and exclusive authority to evaluate, defend and settle such claim. Seller may then at its own expense and sole option as applicable: (1) settle such claim, or (2) procure for Buyer the right to use such goods, or (3) replace or modify the goods to avoid infringement, or (4) accept return of the goods and refund the purchase price, or (5) defend against such claim, or (6) take any combination of the above actions. Seller shall not be held liable to Buyer for any indirect, special, or consequential damages caused by any infringement or alleged infringements.

Each party shall defend, indemnify, and hold harmless the other party, its officers, employees, and agents, from and against all losses, expenses (including attorney's fees), damages, and liabilities of any kind resulting from or arising out of third party claims, to the extent such losses, expenses, damages, and liabilities are due or claimed to be due to a breach by the indemnifying party of these terms and conditions or the negligent or willful acts or omissions of the indemnifying party, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under the indemnifying party's direction and control. Neither party shall be obligated to indemnify the other party against the other party's willful misconduct, breach of law or negligence.

**IX. CONFIDENTIALITY, ADVERTISING AND PROPRIETARY INFORMATION.** Buyer shall not disclose any details concerning the subject matter hereof to any third party without the prior written consent of Seller. All specifications, formulations, drawings, designs, manufacturing or process data, or any other information transmitted to Buyer by Seller are the sole and exclusive property of Seller, and Buyer agrees that such items shall not be reproduced, used, or furnished to any other third party for any purpose whatsoever without the prior written consent of Seller. Such items shall be returned to Seller promptly upon its request at any time during or after completion of Seller's performance hereunder. All marks and/or descriptive product words so noted with the designation "™" or "®" are the trademarks and property of Seller. The obligations of this section will survive the cancellation, termination, completion, or fulfillment of any order hereunder for a period of five (5) years; provided that the prohibition against the

disclosure of any confidential information which constitutes a trade secret shall end upon the date on which such information loses its character as a trade secret under applicable law through no fault or action of Buyer or its representatives. POREX SURGICAL service mark is owned by or used under the license of Porex Corporation.

**X. TAXES.** In addition to the price of the goods, Buyer shall pay the amount of any present or future sales or use taxes, excise taxes, taxes on transportation and other direct taxes whether such taxes are federal, state, or local, and whether applicable to the manufacture, sale, delivery, use or other handling of the goods sold hereunder.

**XI. CANCELLATION OR ASSIGNMENT.** Unshipped orders, order modifications, and/or cancellations must be confirmed in writing to Seller and are subject to a cancellation charge, as determined by Seller. Cancellation of unshipped orders for custom made goods, as specified in Section VI, will be reviewed for costs incurred up to the date of receipt by Seller of the written notice, and Buyer will be notified of the related cancellation charges, which will include the cost of any inventories on hand, work in progress, and all other reasonable costs incurred by Seller. Orders and Buyer's rights hereunder cannot be assigned without the written consent of Seller.

**XII. FORCE MAJEURE.** Seller shall not be responsible or liable for any loss or damage occurring by reason of delay in performance or non-performance caused by circumstances beyond Seller's reasonable control including, but not limited to, acts of God, fire, flood, war, government action, accident, labor trouble or shortage, or inability to obtain material, equipment, or transportation. If resulting delay occurs, shipments may be proportionately or wholly suspended and resumed upon removal of such cause. Goods so affected may be eliminated from the order without liability, but the order shall remain otherwise unaffected.

**XIII. GOVERNING LAW, JURISDICTION.** These terms and conditions shall be governed by and construed in accordance with the Uniform Commercial Code as enacted in the State of Georgia and other applicable laws of the State of Georgia. Seller and Buyer each hereby agree that the Federal Court of the Northern District of Georgia, Coweta County, Georgia shall have the exclusive jurisdiction to hear and determine any claims or disputes between Buyer and Seller, pertaining directly or indirectly to any goods or materials supplied pursuant to the terms and conditions herein contained. Buyer expressly submits and consents in advance to such jurisdiction and any action or proceeding commenced in such courts. The exclusive choice of jurisdiction set forth in this paragraph shall not be deemed to preclude the bringing of any action by Seller or the enforcement by Seller of any judgment obtained in any such jurisdiction and any other appropriate jurisdiction.

**XIV. MISCELLANEOUS.** Seller's failure to exercise any of its rights hereunder shall not thereafter waive any of the terms, conditions, or provisions hereof, whether the same or similar type. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision. The rights conferred hereunder shall not be exclusive, but in addition to all other rights conferred under the Uniform Commercial Code as enacted in the State of Georgia or other applicable law. The rights and obligations of Buyer hereunder or under any order for goods may neither be assigned nor delegated without the prior written consent of Seller.