

## **GENERAL TERMS AND CONDITIONS OF SALE**

These General Terms and Conditions of Sale (this "Agreement") shall apply to sales of products by Neitz Instruments Co., Ltd., a corporation established and existing under the laws of Japan having its head office at 36-13 Wakamatsu-cho, Shinjuku-ku, Tokyo 162-0056, Japan ("Seller") and the buyer of such products ("Buyer") (collectively the "Parties" or individually a "Party").

### **RECITALS**

WHEREAS, Buyer desires to purchase medical instruments and related products from Seller from time to time based on Individual Contracts (as defined below), and Seller desires to sell such products to Buyer in such manner;

NOW, THEREFORE, the Parties mutually agree to enter into this Agreement in accordance with the terms and conditions stated herein.

### **Article 1. Definitions**

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 "Business Days" shall mean Monday through Friday, excluding national holidays in Japan, the period from December 29 to January 3, and Seller company holidays during the summer as notified through Seller's webpage or other means.

1.2 "Delivery Date" shall have the meaning set forth in Article 5.1.

1.3 "Individual Contract" shall have the meaning set forth in Article 2.3.

1.4 "Products" shall mean medical instruments and related products marketed by Seller, which Seller may change from time to time during the term of this Agreement.

### **Article 2. Sale of Products/Individual Contracts**

2.1 Buyer shall purchase from Seller and Seller shall sell to Buyer the Products. The specific sales transactions shall be performed through the execution of Individual Contracts as explained below.

2.2 From time to time, Buyer will place orders for Products to Seller by issuing a Purchase Order by facsimile or email, specifying the Product names, quantities, prices, requested delivery date, ship-to address, etc. Seller will inform Buyer, by facsimile or email, whether or not it is able to accept each order within three (3) Business Days after its receipt of the order. If Seller accepts an order, it shall issue an Order Acceptance to Buyer that confirms all particulars of the order, including but not limited to Product names, quantities, prices, delivery date, and ship-to address. If Seller is able to accept only a part of the order, and Buyer agrees to such reduced order, Buyer shall issue a revised Purchase Order to Seller, and Seller shall issue a corresponding Order Acceptance to Buyer.

2.3 The Parties' exchange of the Purchase Order and Order Acceptance shall create a contract for the sale and purchase of the subject Product(s) in accordance with the agreed-upon order terms (an "Individual Contract"). Once an Individual Contract is created between the Parties, Buyer shall not have the right to cancel the order.

2.4 The Parties intend for this Agreement to set forth terms and conditions applicable to all Individual Contracts. Therefore, (i) the terms and conditions of this Agreement shall be deemed to be incorporated into each Individual Contract, and (ii) the Purchase Order and Order Acceptance forms used by the Parties in connection with the formation of the Individual Contracts shall not contain preprinted purchase terms and conditions. For any given Individual Contract, if the Parties mutually desire to apply terms and conditions that are inconsistent with those in this Agreement, they shall state such terms and conditions in the Purchase Order and Order Acceptance for the subject Individual Contract, and such terms and conditions will supercede those in this Agreement as to the subject Individual Contract.

### **Article 3. Resale of Products**

Buyer shall have the non-exclusive right to resell the Products purchased under this Agreement to its customers in the country where Buyer's head office is located. If Buyer changes the country of its head office, it shall seek approval from Seller to change its non-exclusive distribution territory to the new country, and Seller shall have sole discretion to decide whether to approve such change. Any resale of the Products by Buyer outside of its authorized territory shall constitute a breach of this Agreement.

### **Article 4. Prices**

Prices for the Products quoted by Seller to Buyer shall be EXW (Incoterms 2010) Seller's warehouse in Tokyo, Japan.

### **Article 5. Deliveries and Inspection**

5.1 Seller shall deliver the Products under the Individual Contracts to the carrier designated by Buyer at Seller's warehouse in Tokyo, Japan on or before the promised delivery date. The date the Products are actually delivered to the carrier shall be referred to herein as the "Delivery Date". If Seller pays for any charges that are the responsibility of Buyer, Seller will include such charges in its invoice to Buyer for the order. Seller shall have the discretion to divide the delivery for an Individual Contract into multiple deliveries.

5.2 Upon Buyer's receipt of the Products for an Individual Contract, it shall conduct a visual inspection of the Products. If, as a result of the visual inspection, Buyer discovers a defect in the delivery (e.g. wrong quantity, wrong Product), it shall inform Seller of the defect within ten (10) days after the Delivery Date, and Seller shall thereby promptly remedy the situation, at its own expense. If Seller remedies the situation by providing a refund or replacement Product, Seller shall provide the refund/replacement Product after receiving the original Product back from Buyer in undamaged condition.

Any defects that cannot be ascertained by a visual inspection (e.g. defects that become apparent only upon the use of the Product) shall be subject to the applicable Seller warranty.

## **Article 6. Payment**

Buyer shall pay the entire price for Products and other charges for an Individual Contract prior to delivery of the Products, upon its receipt of an Order Acceptance from Seller. Buyer shall pay the invoice amount by telegraphic transfer, in Japanese Yen, into the bank account designated by Seller. Seller shall not be obligated to deliver the Product to Buyer until such pre-payment has been received and confirmed, regardless of the delivery date stated in the Individual Contract.

## **Article 7. Termination**

7.1 If either Party commits a material breach of any of its obligations under this Agreement and fails to correct such breach within twenty (20) days after receiving notice of the breach from the non-breaching Party, the non-breaching Party shall have the right to terminate any Individual Contracts for which the Products have not yet been delivered, effective immediately upon written notice to the breaching Party.

7.2 If either Party resolves to liquidate or files for or is the subject of a filing for bankruptcy, reorganization or any comparable procedure in the Party's jurisdiction, any Individual Contracts for which the Products have not yet been delivered shall automatically terminate as of the time of the relevant event, without the need for any notice from the other Party.

## **Article 8. Warranty and Limitation of Liability**

8.1 Seller warrants that the Products will conform to the specifications and descriptions of features listed in its user manuals (the "Specifications") for a period of one (1) year starting from the Delivery Date; provided, however, that this warranty shall not apply (i) to bulbs, LEDs, batteries, other consumable parts contained in the Products and all replacement parts for the Products, whether consumable parts or not, and (ii) if such failure to conform to the Specifications was caused by the failure by the user of the Product to comply with the instructions in the user manuals, the use of replacement parts not provided by Seller, or repairs or modifications of the Product not performed or authorized by Seller. SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. Repairs made to the Products or the replacement of parts shall not extend the period of the warranty for the subject Product, which shall remain at one (1) year starting from the original Delivery Date.

8.2 Any claim by Buyer alleging a breach of the above warranty shall be made within one (1) year after the Delivery Date. Buyer shall provide Seller with appropriate evidence of the breach of warranty, upon Seller's request. Buyer's sole remedy for any

breach of warranty shall be, at the option of Seller, (i) repair of the Product to cause it to conform to the warranty, or (ii) a replacement Product that conforms to the warranty, after Buyer returns the original Product to Seller.

8.3 Any alleged breach of warranty that cannot be duplicated or otherwise objectively confirmed by Seller shall be deemed to not be a breach of warranty.

8.4 Seller shall not be liable to Buyer for any consequential or indirect damages that Buyer, any user of the Product, or any person upon which a Product is used may suffer in relation to the Products, including but not limited to, personal injury, lost profits, lost revenues, or loss of use of the Products.

8.5 Buyer shall defend and indemnify Seller against any claim or legal action brought against Seller by Buyer's customer or any other third party relating to the Products purchased by Buyer under this Agreement.

#### **Article 9. Notices**

All legal notices relating to this Agreement shall be made in writing and shall be sent by registered or certified airmail, with receipt confirmed by signed return receipt or internet tracking, or by facsimile transmission, to the relevant Party. If sent by airmail, the notice shall be deemed to be received ten (10) business days after the date of postmark or on such earlier actual delivery date as is evidenced by the signed return receipt or internet tracking. If sent by facsimile, the notice shall be deemed to be received on the date of transmission. However, if any notice is received or deemed to be received after normal business hours or on a non-business day at the place of receipt, the notice shall be deemed to be received on the following business day.

#### **Article 10. Entire Agreement/Amendment**

10.1 This Agreement contains the complete and entire understanding of the Parties with respect to the subject matter hereof and supersedes any prior negotiations, agreements, and understandings between the Parties with respect to such subject matter. Each Party specifically acknowledges that the other Party has made no representations or promises (written or oral) inducing execution of this Agreement other than those specifically stated herein.

10.2 No amendment or modification to this Agreement shall be effective unless evidenced by a writing executed by both Parties.

#### **Article 11. Force Majeure**

Notwithstanding anything herein to the contrary, neither Party hereto shall be liable for its failure to perform or delay in performing any of its obligations hereunder if precluded by riot, epidemic, power or communication line outage, war (whether declared or undeclared), terrorist act, fire, flood, tidal wave, earthquake, or other natural disaster, nuclear accident, strike, lockout, or other labor trouble, acts or non-acts of any governmental entity or official, or any other cause beyond the reasonable control of the

Party. If either Party wishes to invoke this provision, it shall promptly notify the other Party in writing of the nature of the force majeure and the affected obligations; provided, however, that, if the force majeure prevents the affected Party from being able to so notify the other Party, the affected Party shall so notify the other Party promptly after such impediment is removed. The Party invoking this provision shall use its best efforts to minimize the effect of the force majeure.

#### **Article 12. No Assignment**

Neither Party may assign any of its rights or delegate any of its obligations under this Agreement to a third party without the prior written consent of the other Party. Any purported assignment/delegation made in violation of this provision shall be null and void.

#### **Article 13. Governing Law and Dispute Resolution**

13.1 This Agreement as well as all claims arising out of or in connection with this Agreement or the transactions contemplated by this Agreement (including all tort and other non-contract claims) shall be governed by the substantive laws of Japan, without regard to any conflict of law principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.2 If any dispute arising out of or in connection with this Agreement or the transactions contemplated by this Agreement (including any tort and other non-contract claims) cannot be amicably resolved by the Parties, the exclusive forum for resolution of such dispute shall be an arbitration in Tokyo, Japan in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association, which arbitration award shall be binding on the Parties with no right of appeal. The arbitration shall be conducted in the English language. The prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such arbitration.

