

Sunrise Medical Canada Inc.
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Terms and Conditions of Sale

Effective Date of Terms and Conditions; Modification; Sunrise Website	<p>These Terms and Conditions of Sale (“Terms”) are effective for all Purchase Orders (defined below) placed by any buyer (“Buyer”) with Sunrise Medical, Canada Inc. (“Sunrise”) on or after July 1, 2016 (the “Effective Date”). Except as to any security agreements, or unless otherwise agreed in writing by Sunrise, on and after the Effective Date, these Terms will supersede all prior terms and conditions regarding the purchase by Buyer and sale by Sunrise of and any all medical equipment and other medical products manufactured or sold by Sunrise (the “Products”). Sunrise reserves the right to further modify these Terms from time to time (the “Modified Terms”) either upon written notification to Buyer by Canada Post, electronic mail or by posting any changes on the Sunrise website (www.sunrisemedical.ca) (the “Sunrise Website”), with the most current Terms on the Sunrise Website and the Effective Date of these Terms to be at the time Buyer thereafter places a Purchase Order. THE MODIFIED TERMS SHALL BE EFFECTIVE FOR ALL PURCHASE ORDERS PLACED BY BUYER WITH SUNRISE ON OR AFTER THE EFFECTIVE DATE SET FORTH THEREIN. BUYER SHALL BE DEEMED TO HAVE ACCEPTED THESE TERMS AND ANY MODIFIED TERMS UPON THE EARLIER TO OCCUR OF (I) BUYER SIGNING OR OTHERWISE AUTHENTICATING THESE TERMS, OR (II) BUYER CONTINUING TO USE THE SUNRISE WEBSITE AND/OR PLACING A PURCHASE ORDER WITH SUNRISE BY ANY METHOD AFTER THE APPLICABLE EFFECTIVE DATE. PLEASE NOTE THAT BY ACCESSING OR USING ANY PART OF THE WEBSITE OR PLACING ANY PURCHASE ORDERS, BUYER AGREES THAT BUYER HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS AND ANY MODIFIED TERMS, INCLUDING THE DISPUTE RESOLUTION PROCEDURES. IF BUYER DOES NOT AGREE TO BE SO BOUND, BUYER SHOULD NOT ACCESS OR USE THE WEBSITE OR PLACE ANY PURCHASE ORDERS.</p>
Purchase Orders	<p>Buyer may order Products and parts by telephone (Sunrise’s invoice to Buyer for the Products without further written confirmation shall be conclusive evidence of such order), facsimile, online through the Sunrise Website or other written communication except as provided below (each, a “Purchase Order”), identifying the Products or parts by number, quantity, purchase price, address for delivery, requested date of shipment and any special shipping instructions. All Purchase Orders are subject to acceptance by Sunrise in its sole discretion. Any terms or conditions in any Purchase Order, which are inconsistent with, or are in addition to these Terms, shall be null and void. Sunrise shall use reasonable efforts to timely fill orders accepted by Sunrise subject to availability, demand, inventory and other factors. On any Purchase Order accepted by Sunrise, but not yet shipped, Sunrise shall use its reasonable efforts to accommodate Buyer’s request for cancellations or alterations; provided that Sunrise may impose a reasonable material, labour, storage or cancellation charges.</p>
Products and Pricing	<p>Sunrise reserves the right to change, without prior notice, the design, construction, and type of materials used in the manufacture of any of its Products. Sunrise further reserves the right to discontinue, without prior notice, any of its Products and/or replacement parts therefore. Sunrise may further change the prices of its Products at any time and without prior notice unless otherwise agreed in writing by Sunrise to expressly provide prior notice to Buyer. Sunrise will make reasonable effort to provide advance notice when possible. Billing and payment shall be in Canadian Dollars.</p>
Payment Terms	<p>Buyer must pay for all Products in accordance with the payment terms set forth on Sunrise’s invoice unless otherwise agreed in writing by Sunrise. Any payment not made when due shall accrue interest up to the rate of 1.5% per month (18% A.P.R.) until paid in full. In the event Buyer fails to make a payment when due, Buyer shall pay all reasonable costs of collection, including reasonable attorneys’ fees. Buyer agrees to pay a \$25.00 service charge on any returned check. Sunrise reserves the right to institute a fee to be paid by the Buyer for using a credit or debit card to pay for product. In the event that Sunrise does start to charge Buyer a fee for paying for product by credit or debit card Sunrise will notify the Buyer in advance, within a reasonable period of time, of said charges. If a payment is not made in accordance with the applicable payment terms, Sunrise may suspend all further deliveries, or require full or partial payment in cash, in advance, on new orders. All prompt pay discounts must be taken at the time of payment of the invoice, with no backdating allowed. Credit card payments will not apply to or be eligible for prompt pay discounts. Unless specifically directed to the contrary, all payments will be applied to the oldest unpaid invoice first.</p>
Freight and Handling Terms	<p>All freight and handling terms applicable to the purchase of Products and parts by Buyer from any division of Sunrise shall be posted on the Sunrise Website (www.sunrisemedical.ca) and available to Buyer upon Buyer’s request and may be modified by Sunrise from time to time without additional notice to Buyer. The applicable freight and handling terms for each order shall be the freight and handling terms posted on the Sunrise website on the date the goods are ordered.</p>
Partial Shipments	<p>Sunrise will attempt to combine multiple orders for a single shipment. However, Sunrise reserves the right to make delivery in installments, which will be separately invoiced, and Buyer shall make payment for installment per invoice terms without regard to subsequent deliveries. Delay in delivery of any installments shall not relieve Buyer of its obligations to accept remaining deliveries.</p>
Delivery and Risk of Loss	<p>Unless otherwise agreed in writing by Sunrise and Buyer, all Products will be sold “Ex works,” Sunrise’s works, factory, warehouse, or distribution center. However, Sunrise shall be responsible for loading of the Products on departure to Buyer’s carrier. Delivery of Products to Buyer’s carrier shall constitute delivery to Buyer; thereafter, all risk of loss or damage shall be Buyer’s responsibility, with claims submitted to Buyer’s carrier.</p>

Inspection	Claims for shortages, errors in delivery or defects apparent on visual inspection must be made in writing to Sunrise within ten (10) days after receipt of shipment. Buyer's failure to give timely notice of the same shall constitute unqualified acceptance of such shipment.
Post Audit Claims	Post-audits must be performed on transactions no older than two (2) years prior to the current date. All post-audits must include all documentation used to substantiate claims. Any pricing or promotional claims must include all invoices, purchase orders and promotion requests/deal sheets approved by our staff pertaining to each individual deduction. Post-audits submitted that do not meet these requirements will not be accepted or allowed.
Security Interest; Default Remedies	To secure all of Buyer's obligations to Sunrise hereunder and under any other agreement between Buyer and Sunrise, Sunrise hereby reserves and Buyer hereby grants to Sunrise a purchase money security interest in all Products and parts purchased by Buyer from Sunrise, all inventory consisting of Products purchased from Sunrise, together with any and all proceeds and other amounts from time to time paid or payable under or in connection with any of the foregoing, upon sale, lease, rental or other disposition or otherwise, whether permanent or temporary and whether voluntary or involuntary, including, without limitation, any and all rents, lease payments, money, cash or cash equivalents, accounts receivable, contract rights, chattel paper, documents, instruments, deposit accounts and general intangibles now existing or hereafter arising from or related to such property. Buyer hereby authorizes Sunrise to file any and all documents or instruments, including without limitation, financing statements and continuation statements, which are reasonably necessary to perfect or continue such security interest. Buyer may, pursuant to a separate instrument, grant Sunrise a security interest in collateral other than the equipment mentioned above and, to the extent that the Buyer provides this instrument, those security instruments will be in addition to, and not in conflict with, the security interest granted herein. Upon the occurrence of any default by Buyer under these Terms, the Modified Terms and/or any other agreement between Buyer and Sunrise, Sunrise shall have all rights provided by the Companies' Creditors Arrangement Act (CCAA) otherwise available by law.
Discounts	If Buyer submits a claim or request for funding agency payment for Products purchased from Sunrise, Buyer is responsible for fully and accurately reporting to applicable government agencies all discounts, rebates, incentive payments, bonuses and the like applicable to such Products, including those reflected herein and others which may apply.
Taxes/Fees	Buyer shall be responsible for any duty tax, fee or charge of any nature imposed by any governmental authority upon the sale of Products to Buyer. In the event Sunrise is required to pay such tax, fee or charge, Buyer shall reimburse Sunrise within ten (10) days.
Warranty	A written warranty statement is supplied with each Product (" <u>Written Warranty Statement</u> "). A copy of the Written Warranty Statement is also available from Sunrise upon request. If the condition of the Product is such as it might or would (subject to these Terms) entitle Buyer to claim damages, to repudiate the Purchase Order, or to reject the Product, Buyer shall first make written request to Sunrise to fulfill any applicable warranty obligations. To the extent a valid warranty obligation exists, as determined by Sunrise, Sunrise shall then be entitled to take corrective actions within a reasonable time in the manner it deems appropriate, including, but not limited to repair or replacement of the Product or refund the price paid for the Product. If Sunrise takes corrective action, then Sunrise shall not be liable for any loss or damage of any nature whatsoever arising from and after the initial delivery of the Product or the performance of its warranty obligations. Buyer shall not extend to any end-user warranty terms, which are different than Sunrise's standard warranty terms.
Limitation of Liability	EXCEPT AS EXPRESSLY PROVIDED IN SUNRISE'S WRITTEN WARRANTY STATEMENT FOR THE PRODUCT AND THIS AGREEMENT, THE PRODUCT IS SOLD "AS IS", AND SUNRISE MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AND THE PARTIES EXPRESSLY EXCLUDE ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND PRODUCT QUALITY. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY INDEMNIFICATION OR OTHERWISE, SHALL SUNRISE BE LIABLE TO BUYER OR ANY CUSTOMER OF BUYER FOR ANY, DIRECT (EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT) INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DAMAGES OF ANY KIND ARISING OUT OF THE SALE, FUNCTIONING, OR THE USE OF ANY OF THE PRODUCT PROVIDED HEREUNDER, EVEN IF SUNRISE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUNRISE SHALL HAVE NO LIABILITY TO BUYER (EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT) OR TO ANY CUSTOMER OF BUYER HEREUNDER, AND BUYER AGREES TO HOLD HARMLESS AND INDEMNIFY SUNRISE FOR ANY SUCH CLAIMS. In addition to the foregoing, Sunrise shall not be liable for (a) any claims arising by reason of death or personal injury except so far as the death or injury is attributable to a failure by Sunrise to exercise reasonable care; or (b) any lost profits; or (c) any lost revenue or goodwill. As more fully set forth in Sunrise's warranty policy, Sunrise warranty obligations shall not apply to the negligence of Buyer, or end-users of the Products, including without limitation: (i) any use, modification, maintenance, repair or combination with other devices not in accordance with written instructions; (ii) exposure of the Product to accident or natural causes (such as fire, flood, wind, water, power failure); or (iii) operation of the Product beyond its normal useful life.
Returns	All terms applicable to the return of Products including, without limitation, authorization requirements for return, short shipment, freight damage, general return goods policy and restock fees (the " <u>Sunrise Return Policy</u> ") shall be posted on the Sunrise Website (www.sunrisemedical.ca) and may be modified by Sunrise from time to time without additional notice to Buyer. The applicable Sunrise Return Policy shall be the Sunrise Return Policy posted on the Sunrise Website on the date the goods are ordered. Consistent with the Sunrise Return Policy, Products may be returned to Sunrise only with prior written permission from an authorized representative of Sunrise (the " <u>Approved Returns</u> ").

	All Approved Returns must be shipped at Buyer's cost as directed in the Sunrise Return Policy, and must be properly packaged as instructed by Sunrise. Product returns which are not Approved Returns, not prepaid, or not otherwise consistent with the Sunrise Return Policy will not be accepted by Sunrise.
Indemnity	Buyer agrees to indemnify, defend and hold Sunrise and its parent, subsidiary, or affiliated companies (" <u>Affiliates</u> "), shareholders, directors, officers, employees, agents and assignees harmless from and against any expenses incurred by or claims made against Sunrise arising out of any negligent actions of Buyer including but not limited to the maintenance, repair or alteration of any Product, or the improper assembly or incorporation of the Product into any other device, actual or alleged breach or violation of any contract, law, rule, regulation, or by-law; libel, slander or other form of defamation; breach of any provision of these Terms; and acts, errors or omissions of Buyer or any of its agents, servants, employees, contractors, partners, shareholders, Affiliates or representatives. For purposes of this indemnification, the term "expenses or claims" shall mean and include (i) all losses, obligations, expenses, actual and consequential damages, taxes and costs reasonably incurred in preparing for, defending or settling any demand, investigation, suit, action, claim, inquiry or proceeding, whether or not a formal inquiry, proceeding or investigation had been commenced; and (ii) reasonable accountants', legal and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. Buyer shall give Sunrise immediate written notice of any demand, investigation, inquiry, action, suit, proceeding or claim. Sunrise at its sole option shall have the right to defend at Buyer's expense any such liability or claims in which either Sunrise or Buyer or both are named as defendants, or reasonably are expected to be named, and Sunrise shall not be obligated to mitigate losses. Sunrise's conduct of the defence shall not diminish Buyer's obligation to indemnify Sunrise hereunder. This indemnity shall continue in full force and effect subsequent to and notwithstanding any termination of these Terms.
Delays	Sunrise shall not be liable for any damage as a result of any delay in performance or nonperformance due to any cause beyond Sunrise's reasonable control, including, without limitation, an act of God, act of the Buyer, delays caused by Sunrise's suppliers or subcontractors, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to readily obtain necessary labour, materials or manufacturing facilities.
Intellectual Property	" <u>Intellectual Property</u> " means any and all patents, copyrights, trademarks, trade names, trade secrets, and other propriety rights of Sunrise or its affiliates, and all applications and registrations therefor. Buyer acknowledges that Sunrise is the exclusive owner or licensee of all rights, title and interest in and to the Intellectual Property embodied in, related to, or associated with Sunrise Products. Buyer will immediately notify Sunrise of any and all suspected infringements of any Intellectual Property which may come to the attention of Buyer. Sunrise will be responsible for taking any action to prevent infringement of the Intellectual Property.
Confidential Information	Buyer may become familiar with trade secrets and confidential information of Sunrise which derive independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from their disclosure or use (" <u>Confidential Information</u> "). Buyer agrees not to disclose or utilize any Confidential Information, including without limitation, Product specifications, prices, discounts, manufacturing costs, ideas, technical data, customer lists and sales reports to which Buyer has been privy.
Credit	Sunrise may terminate any credit availability within its sole discretion. Buyer understands that Sunrise is relying on the truth and accuracy of the information provided to Sunrise in any application for credit, as well as any other information provided to Sunrise such as financial statements. Buyer authorizes Sunrise to conduct any credit investigation of Buyer deemed necessary, including, but not limited to personal credit information about guarantors, general partners, proprietors and individual applicants. Buyer hereby explicitly authorizes trade and bank references to release credit information to Sunrise.
Miscellaneous	These Terms, any Modified Terms and any other agreement between Buyer and Sunrise shall be construed in accordance with the laws of the Province of Ontario without regard to conflicts of laws. At the election of Sunrise, any legal action or proceeding with respect to the enforcement of these Terms, the Modified Terms or any agreement between Buyer and Sunrise may be brought in the provincial or federal courts in Toronto, Ontario or wherever Sunrise chooses to bring such action. Buyer and any surety or guarantor of Buyer's obligations to Sunrise submits to the exclusive jurisdiction of the provincial and federal courts in the aforesaid courts, and further waives diligence, demand, presentment for payment, notice of nonpayment and protest, and expressly waives all right to the benefit of any statute of limitations, reinstatement, marshaling, forbearance, extension, redemption, offset, setoff and appraisalment, as well as any right to trial before a jury with respect to any action or proceeding brought by Sunrise to the fullest extent permitted by law. Buyer shall be further responsible for Sunrise's attorneys' fees and expenses incurred in enforcing these Terms, the Modified Terms or any agreement between Buyer and Sunrise, and all such terms shall be binding upon the parties and their respective heirs, executors, administrators, successors and assigns. These Terms, the Modified Terms and any other written agreement between Buyer and Sunrise contain the entire agreement between the parties related to the transactions contemplated hereby. Failure of Sunrise to object to provisions contained in any Purchase Order or other communication from Buyer shall not be construed as a waiver of these Terms or the Modified Terms, or an acceptance of any other terms. Any term or condition, which by its nature survive the termination or expiration of these Terms, including but not limited the provisions on warranty, limitation of liability, indemnity, intellectual property and confidential information, shall survive the termination or expiration of these Terms.