



NEOTRACT STANDARD TERMS & CONDITIONS FOR DIRECT SALE TO CUSTOMERS OF ENDOSCOPY EQUIPMENT IN THE UNITED STATES

1. General Principles. These Terms and Conditions (the “Terms”) are applicable to any proposition, offer, order and agreement relating to the sale of UL-SCOPE, UL-SHEATH, UL-VO, UL-SCOPE4, UL-GRASP, UL-WBRIDGE (collectively “Products”) marketed by NeoTract Inc., acting as principal or sales representative (hereinafter “Company”) to the Purchaser (hereinafter “Purchaser”). These Terms do not apply to sales to distributors. On the basis solely of a purchase order or invoice settlement for the products, Purchaser is irrevocably deemed to have acknowledged and agreed to be legally bound to the Terms. Company will not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions of these Terms (whether or not it would materially alter these Terms) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Company specifically agrees to such provision in a written instrument signed by Company. Company’s acceptance of any order by Purchaser is expressly conditioned by Purchaser’s assent to the terms and conditions of these Terms.

2. Order and Delivery.

2.1 Orders. Orders may be placed by contacting:

NEOTRACT CUSTOMER SERVICE
TEL: 925-401-0700
FAX: 925-401-0699
EMAIL: CUSTOMERSERVICE@NEOTRACT.COM

2.2 Purchase and Sale. Company will sell to Purchaser and Purchaser will accept and pay for all Products ordered by Purchaser pursuant to an order which has been accepted by Company. All orders are subject to acceptance by Company, which may be in writing or electronic record delivered to Purchaser or by shipping Products. Company may accept any order in whole or in part and Company’s shipment of less than all Products ordered shall constitute acceptance of the order only as to those Products shipped.

2.3 Shipment. Company will make every reasonable effort to meet the delivery dates quoted or acknowledged, but will not be liable for any failure to meet such dates. Company reserves the right to make partial shipments. Unless specified otherwise in these Terms, Company will deliver the Products FCA shipping point. The Purchaser bears full costs and risks of moving the goods from there to destination. Purchaser hereby acknowledges and accepts responsibility to promptly reimburse Company for all shipping charges, including but not limited to, premiums for freight insurance, inspection fees, assessments, express delivery charges and all other costs incurred in transporting the Products to the shipping destination. Company assumes no liability for products damaged during transit, but will extend assistance to help settle claims.

2.4 Inspection and Acceptance. Purchaser shall inspect all shipments within twenty-four (24) hours after arrival and notify Company in writing immediately of any shortages or other failures to conform to these Terms which are reasonably discoverable upon arrival, including, without limitation, any claim that the Products fail to conform to the specifications described herein. Purchaser shall notify Company within 14 days as from the receipt of any Products of any hidden defect pertaining to said Products. Purchaser shall allow Company a reasonable opportunity to inspect such Products to enable Company to verify the alleged nonconformity. Purchaser’s failure to timely notify Company in writing of any alleged nonconformity of the Products or any co-mingling of the Products shall constitute an immediate and irrevocable acceptance of the Products and an acknowledgment by Purchaser that the Products delivered conform to the specifications herein.

3. Payment.

3.1 Prices. Unless specified otherwise in these Terms the purchase prices for the Products shall be as specified by Company at its then-current standard price list subject to any discounts described in the controlling agreement. Company may change its prices at any time without prior notice to Purchaser. The prices payable under this paragraph 3.1 do not include sales, goods and services, value added or other taxes. Purchaser will pay or reimburse Company for all such taxes, or other amounts payable to governmental authorities on account of the sale of the Products or will provide Company with an exemption certificate satisfactory to Company.

3.2 Payment. Company will issue invoices for all amounts payable under these Terms. Purchaser will pay the amount set forth on Company’s invoice within thirty (30) days from the date of such invoice unless otherwise expressly stated in these Terms. All amounts payable under these Terms are denominated in the currency invoiced unless expressly agreed otherwise.

3.3 Payment of Undisputed Invoices. Unless previously otherwise negotiated, invoices issued by Company for whole or partial shipments of the Products shall be paid by the Purchaser regardless of disputes relating to other invoices, and Purchaser waives the right to

assert offsets or counterclaims with respect to such invoices. Purchaser shall promptly notify Company's customer service personnel of any disputed invoice and confirm such notice in writing delivered to such person. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one half percent (1.5%) per month or the highest rate permissible under applicable law, whichever is lower. Purchaser agrees to pay Company's reasonable attorneys' fees and other costs incurred in collection of any amounts not paid when due, whether or not suit is commenced.

3.4 Purchaser's Financial Condition; Insecurity. If, in Company's sole judgment, Purchaser's financial condition or any other circumstances causes Company to be insecure with respect to Purchaser's performance of any obligation under these Terms, Company may accelerate and demand immediate payment of any amounts owed Company, suspend performance or cancel these Terms.

3.5 Order Holds. Unless previously otherwise negotiated, if Purchaser requests Company to hold delivery of the Products ordered hereunder, at its option, Company may delay delivery of the Products ordered hereunder invoicing Purchaser on the original date the Products were to be shipped to meet the delivery date originally agreed upon.

3.6 Security for Payment of Purchase Price. Purchaser hereby grants Company a security interest in the Products and proceeds thereof to secure payment of the Purchase Price and all of Purchaser's related and incidental obligations to Company. Purchaser shall execute suitable financing statements for filing upon the request of Company. Company may file these Terms as a financing statement.

4. Product Return and Warranty.

4.1 No Product Return. Purchaser has no right of return.

4.2 Limited Warranty. Company warrants to Purchaser that the Products substantially conform to Company's material published specifications and are free from any defects in material or workmanship for one (1) year from the date of delivery. Purchaser's exclusive remedy for Company's breach of the foregoing warranty shall be, at Company's option, the replacement of a confirmed defective Product or the refund of the purchase price paid by Purchaser. This warranty is contingent upon proper use of Products in the application for which they were intended as indicated in the instructions for use thereof. This warranty shall not apply to Products that were modified or subject to unusual physical or environmental stress.

4.3 Disclaimer and Release. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF COMPANY AND THE REMEDIES OF PURCHASER SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND PURCHASER HEREBY WAIVES, RELEASES, AND DISCLAIMS ALL OTHER TERMS, REPRESENTATIONS, CONDITIONS, WARRANTIES, OBLIGATIONS AND REMEDIES OF PURCHASER AGAINST COMPANY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND ANY OTHER GOODS OR SERVICES DELIVERED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF COMPANY; AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR INFRINGEMENT. COMPANY MAKES NO REPRESENTATION REGARDING COMPLIANCE WITH ANY STATE, PROVINCIAL, OR LOCAL LAW, BUILDING CODE OR ORDINANCE RELATING TO THE INSTALLATION OR OPERATION OF THE PRODUCTS ("LOCAL LAWS"). PURCHASER HEREBY ACKNOWLEDGES THAT PURCHASER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LOCAL LAWS.

4.4 Excused Performance. Company will not be responsible for or be considered to be in breach of or default under these Terms on account of any cause beyond Company's reasonable control or not occasioned by Company's fault or negligence, including, but not limited to, Company's inability, after due and timely diligence, to procure materials, parts, equipment, or services.

4.5 Third Party Beneficiaries. There are no third party beneficiaries of the warranty granted by Company herein.

4.6 Implied Warranties. These Terms will be subject to any applicable laws in the territory where the Products are used imposing implied warranties, conditions or obligations upon Company which cannot be excluded, restricted or modified (or can only be excluded, restricted or modified to a limited extent). To the greatest extent allowed by such laws, the Company will limit its liability to its choice of the following: (1) in the case of goods: (a) the replacement of the goods or the re-supply of equivalent goods; (b) the repair of the goods; (c) payment of the cost of replacing the goods or acquiring equivalent goods; or (d) payment of the cost of repairing the goods; and (2) in the case of services: (a) the supply of the services again; or (b) payment of the cost of having the services supplied again.

5. Repair Program.

5.1 Solely for UL-SCOPE and UL-SCOPE4, Company offers Purchaser an Equipment Exchange Program for two (2) years from the date of delivery, the terms of which are available from NeoTract Customer Service.

6. Reporting, Recordkeeping, and Recall.

6.1 Company and Purchaser agree to supply to each other upon request any information necessary for the other to comply with any applicable governmental reporting or recordkeeping requirement including, but not limited to, the United States Food and Drug Administration's Medical Device Reporting Regulations, the European Medical Device Vigilance Guidelines, and all similar national laws insofar as they are applicable where the Products are used. When requesting such information, the requesting party shall inform the other what information is required for these purposes, and, promptly after being made aware of any such required information, the recipient of the request shall supply the other with responsive information necessary to enable the requesting party to comply with such governmental

reporting or recordkeeping requirements. Without limiting the generality of the foregoing, Purchaser agrees to provide, upon request, information to Company that responds to whether the device(s) may have caused or contributed to the death or serious injury of an individual or has malfunctioned, and whether the device(s) would be likely to cause or contribute to death or serious injury of another if the malfunction were to recur, in order for Company to comply with the aforesaid governmental reporting or recordkeeping requirements.

6.2 In the event of a recall, Purchaser shall cooperate fully in conducting such recall. If the recall is caused (in whole or in part) by any action or omission of a party in breach of these Terms, such party shall pay the costs of such recall, excluding attorneys' fees, transportation, and related costs, but including any costs of destruction, related or attributable to such breach. If the recall is caused by reasons other than breach of these Terms by one or both of the parties, the parties agree to equally share the costs for said recall, excluding attorneys' fees, transportation, and related costs, but including any related costs of destruction.

7. Indemnity. Purchaser agrees to indemnify, defend and hold harmless Company, its affiliates and their respective officers, directors, employees, agents and representatives from and against any and all losses of any kind or nature whatsoever arising out of any third party claims or suits resulting from (i) Purchaser's negligent act or omission in connection with the purchase, storage, use, sale, lease, shipment, promotion, endorsement, or distribution of the Products, (ii) Purchaser's breach of any representation, warranty or covenant contained herein, or (iii) Purchaser's failure to comply with any or all domestic or foreign laws or other regulatory requirements

8. Miscellaneous.

8.1 Limitation of Remedy. EXCEPT TO THE EXTENT PROHIBITED BY THE LAW OF THE TERRITORY WHERE THE PRODUCTS ARE USED: (A) COMPANY'S LIABILITY (WHETHER IN TORT, CONTRACT, OR OTHERWISE), AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), STRICT LIABILITY, OR PRODUCT LIABILITY OF COMPANY WITH REGARD TO ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO COMPANY UNDER PARAGRAPH 3.1; AND (B) COMPANY SHALL HAVE NO OBLIGATION OR LIABILITY WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT WHETHER OR NOT COMPANY WAS AWARE OF THE POSSIBILITY OF THE SAME.

8.2 Force Majeure. Company will not be responsible for or be considered to be in breach of or default under these Terms on account of any cause beyond Company's reasonable control or not occasioned by Company's fault or negligence, including, but not limited to, Company's inability, after due and timely diligence, to procure materials, parts, equipment or services.

8.3 Assignment. PURCHASER MAY NOT ASSIGN ITS RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT TO ANY THIRD PARTY BY OPERATION OF LAW OR OTHERWISE, WITHOUT COMPANY'S PRIOR WRITTEN CONSENT.

8.4 Export Laws. Purchaser acknowledges that any Products supplied to Purchaser are subject to export control laws and regulations of the United States. Purchaser agrees to comply with all export laws, trade sanctions, regulations and restrictions of the United States, including but not limited to the shipment or any other transfer of the Products to a location or to any end user or for any end use that would violate any applicable export controls and trade sanctions. Purchaser further agrees to ensure that the Products will not be exported, sold or otherwise transferred to countries or persons in violation of the export laws and regulations of the United States.

8.5 Governing Law and Forum. The validity, performance and construction of these Terms shall be governed by the laws of the State of California (excluding principles of conflict of laws). Each party agrees that valid service of process may be effected by certified mail at the last known address of its principal office, or by other means authorized under the laws of the state of California.

8.6 Entire Agreement. These Terms constitute the entire agreement, and supersede any and all prior agreements, between Company and Purchaser with regard to the Products, unless an agreement is entered into between the Company and Purchaser for special purchase terms supplemental to these Terms. Purchaser agrees that Company's failure at any time to require compliance by Purchaser of any of the provisions of the present Terms shall not operate as a waiver of the right of Company to request strict performance of the same or like provisions at a later time. No amendment, modification, or waiver of these Terms will be valid unless set forth in a written instrument signed by the parties to be bound