

Product Ordering Terms and Conditions

1. **Acceptance of Orders.** All Customers are required to open up a Customer Account prior to placing an order. All orders are subject to these Terms and Conditions. To place orders, contact Cogentix Medical Customer Care at customercare@cogentixmedical.com or by phone at 866-258-2182. Customer Care hours of operation are 7:00 AM CST to 6:00 PM CST, Monday through Friday. Delivery of product is subject to availability at the time of order.
2. **Shipping Terms.** All deliveries of products shall be Ex Works Manufacturer's Facility. The term "Ex Works" shall be construed in accordance with INCOTERMS 2010 of the International Chamber of Commerce. Cogentix Medical, Inc. ("Cogentix Medical") will pre-pay and add to the invoice all shipping and handling charges, and any duties if applicable. If Customer does not provide a specific shipping service or delivery date, Cogentix Medical will use "Ground Delivery" as its standard delivery service.
3. **Payment Terms.** Unless authorized by separate agreement executed by an officer of Cogentix Medical, or unless Cogentix Medical has approved a credit application by Customer, payment for purchase of product is due upon invoice. If Cogentix Medical has approved a credit application, terms are Net 30 days, date of invoice. Cogentix Medical reserves the right to cancel or reschedule deliveries of products if Customer fails to make any payment when due. Any balance remaining unpaid when due shall bear interest until paid in full at the lesser of 1.5% per month or the maximum rate permitted by applicable law, plus any costs of collection, including reasonable attorney fees.
4. **Warranty Terms and Conditions.** Cogentix Medical warrants that its products shall be free from defects in material and workmanship for a period of one (1) year from the date of original shipment of the product(s) to Customer, or until its stated expiration date, subject to the following terms and conditions: (i) Claims of defects in material or workmanship must be reported to Cogentix Medical and the affected product(s) returned to Cogentix Medical, within the warranty period. (ii) If inspection by Cogentix Medical confirms the affected product(s) to be defective in material or workmanship, at Cogentix Medical's sole discretion, and at no cost to Customer, the product will be either, repaired, replaced, or credited to the Customer's account. (iii) If inspection by Cogentix Medical does not disclose any defect in material or workmanship, Cogentix Medical's regular repair or replacement charges will apply. No repair or replacement will be performed without Customer's prior authorization. (iv) Improper use of or service to, any of Cogentix Medical's products will immediately void this warranty. (v) Spare parts are warranted for 90 days from the date of shipment to Customer. (vi) All non-warranty repairs will be warranted to be free from defects in material and workmanship for a period of 90 days from the date the repaired product(s) were shipped back to Customer (vii) Cogentix Medical is not liable for any damages to PrimeSight™ endoscopes resulting from misuse, negligence or improper cleaning or storage. In no event shall Cogentix Medical be liable for anticipated profits, consequential damages or loss of time incurred by Customer with the purchase or use of Cogentix Medical's products (viii) Upon receipt of an endoscope for repair, Cogentix Medical will evaluate the endoscope and make the final decision as to warranty status. A \$350.00 estimation fee will be charged if the endoscope is returned, by customer request, unrepaired or if the customer fails to respond with an approval within 30 days of estimation. (ix) All obligations of Cogentix Medical apply to the original (buyer) Customer and shall terminate one (1) year after date of original shipment of the product(s) to Customer, or until the product's stated expiration date. Customer's exclusive remedy and Cogentix Medical's sole liability for any breach of the foregoing warranty shall be the repair or replacement of the affected component(s), failing which, at Cogentix Medical's option, Cogentix Medical may refund the portion of fees paid which relate to the specific non-conforming component(s). THE EXPRESS WARRANTIES IN THIS SECTION 4 ARE IN LIEU OF, AND COGENTIX MEDICAL HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES IN RELATION TO THE PRODUCTS AND SERVICES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. Cogentix Medical makes no representation or warranty that the products comply with any local laws or ordinances, and Customer has the responsibility for compliance with local laws and ordinances, including obtaining all permits, licenses, authorizations or certificates required by any regulatory body for installation or use of the products.
5. **Returns.** All sales are final except when it relates to warranty claims. Cogentix Medical will not, for any reason, accept product(s) that have been used within a clinical setting.
6. **Prices Quoted.** Prices exclude any excise, sales, use or like taxes, and therefore such prices are subject to increase in the amount of any such tax (excluding tax on net income) that Cogentix Medical may be required to collect or pay upon the sale or delivery of the products.
7. **Title, Risk of Loss and Acceptance.** Title to products (except for any software contained therein) and risk of loss of the products shall pass to Customer upon delivery by Cogentix Medical to a common carrier. Cogentix Medical shall retain a purchase money security interest in all products shipped until payment in full of the purchase price and related charges to Cogentix Medical. A photocopy or other reproduction of the Agreement or any financing statement covering the products or any part thereof shall be sufficient as a financing statement where permitted by law. Products shall be deemed accepted when delivered by Cogentix Medical to a common carrier.
8. **Limitation of Liability.** COGENTIX MEDICAL SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE PRODUCTS OR SERVICES. IN NO EVENT SHALL COGENTIX MEDICAL BE LIABLE FOR ANY SPECIAL,

CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF REVENUE AND LOST DATA) ARISING OUT OF THIS AGREEMENT (WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE OR OTHER FORM OF ACTION), OR ITS CANCELLATION, IRRESPECTIVE OF WHETHER CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL COGENTIX MEDICAL BE LIABLE FOR ANY DAMAGES UNDER OR AS A RESULT OF THIS AGREEMENT IN EXCESS OF THE AGGREGATE AMOUNTS ACTUALLY PAID BY CUSTOMER TO COGENTIX MEDICAL UNDER THIS AGREEMENT. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITY SET FORTH IN THIS AGREEMENT ARE INDEPENDENT OF ANY EXCLUSIVE OR LIMITED REMEDIES, AND SHALL SURVIVE AND APPLY EVEN IF SUCH REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. No arbitration or other action arising out of the purchase of product unless involving death or personal injury, may be brought by Customer against Cogentix Medical more than one (1) year after the cause of action arises.

9. Compliance with Laws Customer hereby acknowledges that it shall not, in any manner or form, export or re-export any of the products and shall use the products in compliance with all applicable laws, regulations and judicial orders.
10. Products Cogentix Medical may make any changes to the products, or discontinue sale of any of the products at Cogentix Medical's sole discretion.
11. Arbitration. If any dispute arises with regard to Customer's unauthorized use of the products, Cogentix Medical may seek any available remedy at law or in equity from a court of competent jurisdiction. Except as provided in the preceding sentence and without limiting any right to terminate or cancel (a) Cogentix Medical and Customer shall each use its best efforts to resolve any dispute between them promptly and without resort to any legal process within 30 days of receipt of a written notice by one party of the existence of such dispute; and (b) any dispute, claim or controversy arising out of or in connection with the purchase of product which has not been settled through negotiation as set forth in subsection (a) shall be settled by final and binding arbitration under the then-applicable Commercial Arbitration Rules of the American Arbitration Association ("AAA") or, if Customer's principal place of business is outside the United States, the International Arbitration Rules of the AAA, conducted by three arbitrators appointed by mutual agreement of the parties or, failing such agreement, in accordance with said Rules. Arbitration(s) shall be conducted in Minneapolis, Minnesota, U.S.A. in the English language. An arbitral award may be enforced in any court of competent jurisdiction.
12. General The new customer setup form, together with these Terms and Conditions, the Customer's order, and any non-disclosure agreement entered into by the parties, constitute the final, complete, exclusive and entire agreement between the parties and supersede all prior or contemporaneous agreements, including without limitation the terms and conditions of any Customer purchase order, written or oral, regarding the subject matter hereof. Any different or additional terms and conditions in any Customer purchase order, invoice or other document are hereby expressly rejected by Cogentix Medical and shall have no force or effect If performance of any obligation hereunder (except payment of monies due) is prevented, restricted or interfered with by any force majeure, including without limitation act of God; fire or other casualty or accident; strikes or labor disputes; war or other violence; unavailability of or delays in procuring materials, power or supplies; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental or intergovernmental agency or body; or any other act or condition whatsoever beyond the reasonable control of the party affected thereby, the party so affected shall be excused from such performance during the time such prevention, restriction or interference persists. If such a delay occurs, the date for shipment or performance shall be extended correspondingly. The purchase of product and these Terms and Conditions shall be governed by and interpreted under the laws of the State of Minnesota, U.S.A., excluding (i) its choice of law rules; and (ii) with respect to any purchase of product for shipment overseas, by the United Nations Convention on Contracts for the International Sale of Goods. These Terms and Conditions shall be binding on the parties and their respective successors and permitted assigns. If any provision of these Terms and Conditions is found unenforceable, such provision shall be deemed stricken, without invalidating any of the other terms and conditions. No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right. The parties are independent contractors and not agents of each other. These Terms and Conditions shall not be modified except in a writing signed by Cogentix Medical and Customer. Notices shall be deemed given on the fifth day following domestic mailing or the tenth day following international mailing, if mailed registered or certified mail, postage prepaid, return receipt requested, or on receipt if delivered by private courier service, or by facsimile, addressed to the respective addresses of the parties on the Quotation. If there is any conflict between the Quotation, these Terms, or any product sheets, these terms shall control, unless otherwise expressly agreed by the parties on the Quotation.