

## **Evergreen Medical LLC Standard Terms and Conditions of Sale**

**PURCHASE PRICE; PAYMENT.** The Purchase Price shall be paid in United States Dollars (USD). The Purchase Price stated in the INVOICE does not include any regulatory, permit, duties, tariffs, customs entry service fees, terminal service charges or other fees that become owing to carry out or as the result of this INVOICE. Any such amounts not expressly Seller's responsibility under the INVOICE shall be the sole responsibility of Buyer. Unless otherwise agreed, no Equipment will be released until deposit as spelled out in the TERMS of the INVOICE is actually received at Seller's bank account, and accessible to Seller without conditions. Delinquent payments will be assessed a late fee of 1.5% per calendar month, straight interest (or the maximum rate permitted by applicable law, if less), from the due date thereof and continuing until such delinquent payments are paid in full. Notwithstanding, if Buyer fails to make a required payment when the same is due, such failure shall be a default in the performance of Buyer's obligations under this INVOICE and Seller may, in its discretion and without limiting its remedies, terminate the INVOICE and retain all deposits or other payments theretofore made by Buyer. The due dates of payments required to be made by Buyer may not be excused or delayed, except in writing signed by Seller's authorized representative. Payments may be made by wire transfer, with ALL BANK FEES TO BE PAID BY SENDER. Wire transfer instructions shall be provided by Seller.

**DELIVERY & REFUNDS.** Delivery dates represented by Evergreen Medical LLC are approximate and dependent on numerous factors, some of which are outside of Seller's control. Seller will use its commercially reasonable efforts to meet Invoiced delivery dates but will not be responsible for any delays, damages, or losses due to (but not limited to): fires, floods, earthquakes or other acts of God, accidents, riots, wars, acts of terrorism, operation of law, government regulations or requirements, strikes, labor difficulties, shortages of fuel, power, materials or supplies, unavailability of transportation, or other acts or circumstances that are not within reasonable control of Seller. If such delay occurs, Buyer agrees that Seller may extend the delivery date for a reasonable period of time. Unless Seller has agreed otherwise in writing, Seller shall have no responsibility whatsoever for the performance of, or the cost of, the installation of the Equipment. All sales are final. It is presumed that Buyer has exercised due diligence when placing order with Seller, therefore, no refunds are due to Buyer once item(s) are accepted upon delivery. Damaged or non-working items will be repaired or replaced by Seller.

**DEFAULT.** In the event Buyer defaults in the performance of its obligations under this INVOICE, in addition to all other remedies available to Seller under the INVOICE and under applicable law, Buyer shall pay Seller, within ten (10) business days upon receipt of Seller's invoice: (1) all costs, including overhead cost and normal markup of purchased materials and services, of all partially completed items; (2) all costs, including normal markup, incurred by Seller to outside suppliers and contractors in respect of the INVOICE; and, (3) all other costs incurred by Seller as a result of default.

**PASSAGE OF TITLE.** Title to the Equipment listed in the INVOICE will pass to Buyer upon the later to occur of (1) Seller acquiring adequate title to the Equipment so as to be able to transfer title to Buyer and, (2) Seller receiving payment in full from the Buyer of the Purchase Price.

**DISCLAIMER OF WARRANTIES.** Unless otherwise stated in this INVOICE, the Equipment is sold "AS IS," with no warranties and with all faults, obvious and latent, that may be discovered before or after Buyer's purchase. Seller did not inspect, recondition, alter, modify, or manufacture the Equipment unless otherwise stated in this INVOICE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY REGARDING THE ACCURACY OF EQUIPMENT SPECIFICATIONS OR OPERABILITY, NOR ARE THERE ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**WARRANTY STATEMENT.** Evergreen Medical LLC agrees to warranty products from manufacturer workmanship for a term stated in the INVOICE. Warranty includes necessary parts and labor to repair manufacturer workmanship of this product. Unauthorized, improper or incorrectly performed maintenance, service or repair of this product, fluid invasion of endoscopes, dropping of hand controls voids the warranty. Warranty does not cover repairs arising from negligence, unauthorized modifications or use of aftermarket parts, misuse or use of the product for other than its intended purpose, abusive treatment, and normal wear and tear. This warranty is not transferrable. Evergreen's liability under this warranty shall not extend to any special, incidental, punitive, indirect or consequential damages, including but not limited to loss of business or profits.

**LIMITATIONS OF LIABILITY.** In no event, shall Seller be liable for loss of use of the products, or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time cost, or claims of Buyer or Buyer's customer for such damages. In no event shall Seller's liability to Buyer for any loss of damage arising out of, or resulting from this INVOICE, or from its performance of breach, or from the Equipment or services furnished hereunder, exceed the Purchase Price of the specific Equipment which give rise to the claim. If Seller furnished Buyer with advice or other assistance which concerns any Equipment supplied hereunder or any system or equipment in which any such Equipment may be installed and which is not required pursuant to this INVOICE, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence and strict liability) or otherwise. The parties agree that any claim, lawsuit, or arbitral proceeding relating to the INVOICE must be commenced no more than six (6) months after the earlier to occur of: (1) delivery of the Equipment to Buyer substantially conforming to the INVOICE; or (2) the accrual of the cause of action that is the subject of the proceeding. Each of the parties waives any statute of limitations to the contrary. Buyer will indemnify and hold Seller harmless from and against any and all liabilities, judgments, settlements, losses, damages, penalties, obligations, and expenses, including attorneys' fees, incurred by Seller, arising out of any loss, damage or injury that occurs from the subsequent use and operation of the Equipment.

**NON-CIRCUMVENTION.** Some or all of the Equipment described in the INVOICE may be previously used equipment that Seller has arranged to acquire from a third party (herein the "Source"). Buyer agrees that the identity of Seller's Source is confidential information of Seller which shall not be disclosed to Buyer, except as Seller deems necessary in its sole and absolute discretion to carry out this INVOICE. Buyer, intending to be legally bound, with full individual and corporate responsibility, hereby and irrevocably agrees not to circumvent, avoid, or bypass Seller, either directly or indirectly, nor to avoid Buyer's obligations under this INVOICE. Buyer agrees not to

circumvent Seller, either directly or indirectly, nor to avoid Buyer's obligations under this INVOICE. Therefore, during the two (2) year period after the date of this INVOICE, if Buyer purchases all or part of the Equipment described in the INVOICE from the Source, directly or indirectly, Buyer will pay Seller a finder's fee of 25% of the Purchase Price listed in this INVOICE for the Equipment.

**ASSIGNMENT.** This INVOICE shall not be assigned by either party without the other party's prior written consent, which consent will not be unreasonably delayed or withheld.

**GOVERNING LAW; DISPUTE RESOLUTION; JURISDICTION.** The INVOICE shall be construed and governed according to the laws of the State of Missouri and the United States of America. In the event of any dispute arising from or relating to the INVOICE, the parties hereto shall initially use their best efforts to amicably settle the dispute. To this effect, they shall consult and negotiate with each other in good faith and attempt to reach a mutually satisfactory solution. If they do not reach such a solution within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences regarding the INVOICE, or any other matter between the parties, will be finally resolved by binding arbitration, conducted using a single arbitrator. Unless otherwise agreed by Seller: if the arbitration involves only United States parties, it will be conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) in force as of the date of the request for arbitration, which rules are deemed to be incorporated by reference into this clause. The arbitration shall be heard in a location agreed by the parties but, if the parties cannot agree on a location within thirty (30) days of the request for arbitration, the arbitration will be conducted at the AAA office having suitable facilities nearest Seller's main offices in Lee's Summit, Missouri. The arbitrator will be selected from a list using the recommended selection method under the rules applicable to the arbitration proceeding. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party, but in no event will any party be awarded penal, punitive or exemplary damages. The award of the arbitrator will be enforceable in any court of competent jurisdiction.

**ENTIRE INVOICE.** This INVOICE constitutes the entire INVOICE between the parties pertaining to the subject matter hereof, and supersedes any and all statements, descriptions of Equipment, course of dealing, or usage of trade previously existing between the parties with respect to such subject matter. After the contract is formed, it may only be modified in writing, in a form prescribed by Seller, which shall be signed and dated by Seller's and Buyer's authorized representatives. Neither Seller or Buyer hereto has entered into this INVOICE in reliance upon any representation, warranty, condition, or undertaking of any other party which is not set out in this INVOICE.

**SEVERABILITY.** If any provision of this INVOICE is determined to be invalid, in whole or part, it shall not affect the enforceability of any other provisions of the INVOICE, which shall remain in effect, and unaffected by such invalidity.