

Cokiya, Inc Standard Terms and Conditions of Sale

The products and services listed in the quotation are offered by Cokiya, Inc ("Cokiya") to the Buyer ("Buyer") only under the terms and conditions described below (the "Terms and Conditions of Sale" or "Agreement").

1. Order and Acceptance All orders for Cokiya's suite of products ("Products") shall be made by written purchase order sent to Cokiya via postal mail or email. All purchase orders shall reference this Agreement. No purchase order shall be binding upon Cokiya until accepted in writing by Cokiya and Cokiya shall have no liability to Buyer with respect to purchase orders that are not accepted. Buyer shall submit purchase orders to Cokiya in accordance with Cokiya's lead times then in effect.

2. Delivery, Shipment and Acceptance Cokiya shall use reasonable efforts to deliver products at the times specified in Cokiya's acceptance of Buyer's purchase order, provided, however, that all delivery dates are estimates only and deliveries may be made in installments. All products delivered hereunder will be packed according to Cokiya's standard practice, marked for shipment to the address specified in Buyer's purchase order, and shipped F.O.B. Cokiya's manufacturing facility at 12285 World Trade Drive, Suite J, San Diego, California 92128, U.S.A. ("Delivery Point"), at which time risk of loss and title pass to Buyer. All freight, insurance and other shipping expenses from the Delivery Point shall be borne solely by Buyer. Buyer shall accept or reject Products within fifteen (15) days after receipt for failure to substantially conform to Cokiya's published specifications. If Buyer fails to notify Cokiya in writing of its rejection and reasons thereof within such period, Buyer shall be conclusively deemed to have irrevocably accepted the Products. Products rejected by Buyer may be returned only in accordance with the procedures set forth in Section 8.1 (b) (iv) below.

3. Modifications Cokiya may at any time, without incurring any liability to Buyer with respect to any previously placed purchase order, modify the specifications of Products sold by Cokiya and substitute Product units manufactured to such modified specifications, provided such modifications will not materially affect overall product performance.

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5. Payment Standard payment terms are net thirty (30) days from the date of Cokiya's invoice, unless otherwise different payment term is offered specifically in writing by Cokiya. Buyer shall make all payments in United States Dollars by check or wire transfer to a Cokiya designated bank account. Any amounts not paid when due shall be charged the greater of \$25 (USD) or bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law, and are liquidated damages, not a penalty.

6. Taxes Purchase Prices do not include any taxes, and Buyer shall be responsible for, and pay, any and all taxes (including without limitation, withholding, sales, excise, value-added and use taxes), customs or other import duties, and tariffs paid or payable (however designated, levied or based), exclusive of taxes based solely on Cokiya's net income.

7. Security Interest Cokiya hereby reserves a purchase money security interest in all Products sold hereunder and the proceeds thereof, in the amount of the Purchase Price. In the event of default by Buyer in any of its obligations to Cokiya, Cokiya will have the right to repossess the Products sold hereunder without liability to Buyer. These security interests will be satisfied by payment in full. A copy of Cokiya's invoice may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect Cokiya's security interest. On request of Cokiya, Buyer will execute financing statements and other instruments that Cokiya may request to perfect Cokiya's security interest.

8. Product Warranty

8.1 Durable Product Limited Warranty

(a) Subject to the conditions and limitations on liability stated herein, Cokiya warrants that the Durable Products (User Feedback Unit [UFU] inclusive of its operating software) (the "System") as so delivered, shall materially conform to Cokiya's then current specifications for the System, for a period of one (1) year from the date of delivery. BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY IS LIMITED TO SYSTEM REPAIR, REPLACEMENT OR, IF REPLACEMENT IS INADEQUATE AS A REMEDY OR, IN THE OPINION OF COKIYA, IMPRACTICAL, TO REFUND OF THE PRICE PAID FOR THE SYSTEM. COKIYA DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SYSTEM OR WRITTEN MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. Buyer understands that Cokiya is not responsible for and will have no liability for any items or any services provided by any persons other than Cokiya.

(b) The warranty in Section 8.1 does not apply if:

(i) The System is operated in a manner that does not conform with the specifications

prescriptions in the Operator's Manual, and/or supplements.

(ii) The System is not maintained in accordance with procedures in the Operator's Manual, and/or supplements.

(iii) The System is repaired, altered, or modified in any way, except by Cokiya authorized personnel or with Cokiya authorization.

(iv) If Buyer wants to return the System or components of the System under this warranty, contact Cokiya Technical Support for instructions and issuance of a Return Material Authorization (RMA). Cokiya will not accept the System or components for warranty purposes unless Cokiya authorized the return.

(v) System parts or components repaired or replaced under warranty bear the same warranty expiration date as the original equipment, or ninety (90) days, whichever is longer. Consumable parts (including cables and power supplies) are warranted only against defects in materials and workmanship. System parts purchased outside the original warranty period are warranted for a period of ninety (90) days, subject to all of the restrictions contained in this Limited Warranty. Use of unauthorized replacement parts may void the warranty. In all cases, Cokiya will be the sole judge as to what constitutes warrantable damage.

8.2 Disposables

(a) Disposables (TruNode probe) indicated as intended for single patient use are warranted for single patient use prior to the expiration date specified on the package labeling. The foregoing warranties apply only in favor of the Buyer specifically identified in the applicable purchase documents. If any Disposable is found upon examination by Cokiya to be defective during the warranty period, Cokiya will either, at Cokiya's option and as Buyer's SOLE REMEDY, repair or replace the defective Disposable.

(b) The limited warranties set forth or referenced herein do not apply or extend to, and shall be void with respect to, any Disposable:

(i) used in breach of these Terms and Conditions;

(ii) not used in compliance with the Intended Uses or IFUs or in conformance with the specifications accompanying the Disposable;

(iii) used with equipment, hardware, software or accessory not supplied or expressly authorized by Cokiya; or

(iv) that has been subjected to (1) physical abuse, misuse, abnormal use, tampering, unusual physical stress, or improper shipping, storage, or handling, (2) use by unauthorized, inadequately trained, or untrained operators, (3) use after defect or malfunction has been detected, (4) modification, disassembly, reassembly, processing, reprocessing, repackaging, or sterilization by anyone other than Cokiya or a third party designated by Cokiya, unless pre-approved in writing by Cokiya, or (5) negligence, accidents, or acts of nature. In addition, Cokiya makes no warranty with respect to, and shall have no liability for, Buyer's performance of any test, process or procedure using any Disposable. In the event of a conflict between the provisions of these Terms and Conditions and the provisions of a Limited Warranty, the provisions of these Terms and Conditions shall govern.

(c) Limited Use. Buyer acknowledges and agrees that:

(i) Notwithstanding the use of the terms "Buyer," "purchaser," "seller," "buy," "purchase," "sell" or other similar terms in the Agreement or any other document provided by either party to the other party, or any other provision of the Agreement or any such document to the contrary, all Disposables supplied by Cokiya to Buyer are licensed, not sold. Subject to the terms and conditions of this Section d, Cokiya grants to Buyer a non-exclusive, non-sublicensable, non-transferable, limited license under Cokiya's patents, trade secrets, and proprietary technology/information (the "Cokiya Intellectual Property") solely to use Disposables for the intended uses expressly set forth in the respective IFUs and approved or cleared labeling for such Disposables (collectively, the "Intended Uses").

(ii) Unless expressly provided otherwise in the Intended Uses, the Disposables are designated for single patient use only and are licensed to Buyer under the Cokiya Intellectual Property to be used on a single patient only.

(iii) There is no license, implied or otherwise, that would allow use of the Disposables, by Buyer or any third party (1) beyond their intended single use or (2) after their expiration date.

(iv) Except with Cokiya's prior written consent, Buyer shall not: (1) use any Disposable for any use or purpose other than its Intended Uses; (2) process, reprocess, use or reuse,

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repackage or sterilize any Disposable that has already been used with a patient, any reusable Disposable that has already been used the number of times indicated in the Intended Uses, or any Disposable that has reached or passed its expiration date (or have, encourage, solicit, or permit any third party to do any of the foregoing on behalf of the Buyer, such third party, or any other third party); or (3) purchase or otherwise acquire reprocessed, reused, repackaged, or sterilized Disposables from any party other than Cokiya (or Cokiya's authorized representatives).

(v) After a single use of a single-use Disposable, or expiration of a Disposable, Buyer shall send such Disposable to a hazardous waste disposal center for destruction or disposal in accordance with applicable laws, rules and regulations.

(vi) Use of any Disposable in violation of the provisions of this limited license shall constitute a material breach of the Agreement and render null and void all Cokiya representations and warranties regarding such Disposable.

(vii) Buyer shall not permit the Disposables to be used by anyone other than Buyer's qualified and trained personnel. Buyer shall not modify, or cause or permit any third party to modify, Disposables without Cokiya's prior written authorization, which authorization may be withheld at Cokiya's sole discretion. Disposables may not be used for any tests, processes, procedures, or any other use for which such Disposables are not intended or cleared by the Food and Drug Administration, or in any manner inconsistent with the IFUs or labeling.

8.3 EXCEPT FOR THE FOREGOING, THE SYSTEM AND THE DISPOSABLES ARE EACH WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

9. License Grant

9.1 Cokiya grants to Buyer a nonexclusive and non-transferable right and license to use the computer software in the product sold ("Licensed Software") in accordance with the terms of the quotation and these Terms and Conditions of Sale. The License shall continue for as long as Buyer continues to own the product, except that Cokiya may terminate the License if Buyer is in breach or default of these Terms and Conditions of Sale and/or the quotation. Buyer shall return the Licensed Software and any authorized copies thereof to Cokiya immediately upon expiration or termination of this License.

9.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Buyer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.

9.3 The License shall not affect the exclusive ownership by Cokiya of the Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Cokiya (or any of Cokiya's suppliers) relating to the Licensed Software.

9.4 The Licensed Software shall be used only on the product(s) referenced in the quotation.

10. Cancellation Except as specifically set forth in this Section 10, Buyer may not cancel, reduce or reschedule any purchase order, and Buyer is liable for the entire Purchase Price of any and all purchase orders. Buyer may cancel, or reschedule the delivery date in, a purchase order only upon obtaining the prior written approval of a duly authorized representative of Cokiya. Any cancellation of purchase orders for Products is subject to a charge of fifteen percent (15%) of the total Purchase Price for such Products. In the event of any cancellation, Buyer shall have no rights in partially completed products. The provisions of Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 shall survive any cancellation of this Agreement.

11. Intellectual Property Cokiya retains all right, title and interest in and to the Products, including related designs, specifications and information, and any and all Intellectual Property Rights related to or derived from the Products or the manufacture, support, installation or use thereof. Nothing in this Agreement shall be construed to convey any rights in or to the Products, or any part thereof, to Buyer and Buyer hereby assigns, and shall assign, to Cokiya any and all Intellectual Property Rights, Buyer may have in or to the Products or the manufacture, support, installation or use thereof. "Intellectual Property Rights" shall mean all worldwide intellectual property rights, including without limitation all rights relating to patents, copyrights, mask work rights, trade secrets, confidential information, trademarks, service marks, trade dress, trade names and design patents.

12. Indemnity Buyer shall defend, indemnify and hold harmless, at its sole expense, Cokiya from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and expenses of litigation) arising out of or relating to any acts or omissions of Buyer or the use, distribution or sale of any Product,

including without limitation, any representation, warranty, covenant or guarantee made by Buyer or its employees, agents, or representatives regarding the Products that are more protective of third parties than those provided to Buyer herein.

13. Limitation of Liability In no event shall Cokiya be liable for any special, indirect, incidental, consequential or punitive damages (including without limitation the cost of procurement of substitute goods, damages for loss of business, use, or profits), whether based in contract, statute, tort (including negligence) or other legal theory, arising in connection with this agreement or the use or performance of the products even if Cokiya has been advised of the possibility of such damages. Cokiya's total liability to Buyer or any third party for any claim or damages arising out of or relating to this agreement shall in no event exceed the purchase price paid by Buyer for the products giving rise to such liability.

14. Governing Law and Jurisdiction This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, IT'S SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

15. Export Control Buyer warrants that it shall, at its sole expense, comply with any and all laws, regulations, orders, permits, prohibitions or other restrictions on the export and/or delivery of the Products, or information about the Products, which may be imposed at any time or from time to time by the United States Government, including without limitation, the Export Administration Act of 1979 (as amended), any successor legislation, and the Export Administration Regulations of the Bureau of Export Administration, Department of Commerce of the United States Government.

16. Government Contract If any Product sold to Buyer under this Agreement is purchased for a United States Government contract or subcontract, then the Buyer shall include such provisions in such contract or subcontract and attach such notices to the Products and other materials provided to the United States Government as will protect Cokiya's intellectual property rights and other proprietary rights to the maximum extent possible under applicable law.

17. Bankruptcy If Buyer (i) becomes bankrupt or insolvent, (ii) makes an assignment for the benefit of its creditors, (iii) commences to be wound up, or (iv) suffers a receiver to be appointed, Cokiya will be at liberty by notice in writing to cancel this Agreement without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Cokiya.

18. Assignment Neither party may assign or delegate this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other party, provided that either party may assign this Agreement in connection with a transfer of all or substantially all of its business or assets to which this Agreement relates, whether by corporate reorganization, acquisition, sale of assets, merger or operation of law. Any attempted assignment of any rights, duties or obligations hereunder in violation of the foregoing shall be null and void.

19. Severability If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect and those provisions so held to be invalid will be interpreted to reflect the original intent of the parties.

20. Waiver No waiver of any rights shall be effective unless consented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

21. Entire Agreement These Terms and Conditions of Sale, the terms and conditions set forth in the quotation constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Buyer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Buyer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

22. Headings The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.

23. Notice All notices under this Agreement shall be in writing and shall be deemed given when: (i) delivered personally; (ii) sent by email; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested; or (iv) one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective addresses set forth in the quotation.