

(TERMS AND CONDITIONS)
APPLICABLE TO PRODUCTS SOLD BY SPECTRAMED, INC. ("Spectramed")

1. Acceptance of Sales Order
 - a. As used in these terms and conditions the term "Sales Order" includes sales orders, acknowledgements or confirmations of sales orders, invoices, packing slips or any other document evidencing order, sales and/or shipment of products by SPECTRAMED to its Customer.
 - b. This Sales Order constitutes an offer by SPECTRAMED to sell to Customer products detailed on the front upon the terms and conditions specified on the front and back.
 - c. This Sales Order shall not be construed as either an expression of acceptance or confirmation of any previous offer that may have been made by Customer, and with respect to any such previous offer this Sales Order shall operate as a rejection and counter offer.
 - d. This Sales Order may only be accepted upon the exact terms set forth herein. No conditions in any acceptance by Customer and no subsequent Agreements or communications in any way modifying any terms or condition of this Sales Order shall be binding unless made in writing and signed by the authorized representative of SPECTRAMED.
 - e. This Sales Order is intended by the parties as the final expression of their agreement and is the complete and exclusive statement of the terms thereof, and all other agreements entered into prior to or contemporaneous with the execution of this Sales Order are excluded, whether oral or in writing.
 - f. This Sales Order may further not be modified or altered by subsequent course or performance between the parties.
 - g. Following written acceptance by Customer, this Sales Order may not be cancelled or modified without written consent of SPECTRAMED.
 - h. Acceptance of delivery of the products described in this Sales Order shall be deemed to be acceptance of all the terms and conditions of this Sales Order.
2. Delivery
 - a. All shipments of products will be made F.O.B. SPECTRAMED's plant, unless otherwise specified in writing herein. Title passes to Customer and all risk of loss and injury to the products is borne by Customer when the products are delivered by SPECTRAMED at SPECTRAMED's plant to the carrier selected by Customer and SPECTRAMED shall have no further obligations concerning delivery. The Customer shall be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges, and shall, at its own expense, insure the products. All claims for shipping damages must be filed by Customer with the carrier.
 - b. SPECTRAMED's products will be packaged in accordance with the standard commercial practices.
 - c. Delivery dates furnished by SPECTRAMED represent best estimates of the time required to make shipment.
 - d. If the performance of any part of this Sales Order by SPECTRAMED is prevented, hindered, or delayed by reason of any cause or causes beyond the control of SPECTRAMED including, but not limited to, war, riot, strikes, labor disputes, fires, serious accidents, delays in receipt of parts or materials, design or engineering problems relating to Customer's order or natural disasters, and which cannot be overcome by due diligence, SPECTRAMED shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event, and this agreement shall be deemed suspended so long as and to the extent that any such cause prevents or delays its performance.
 - e. Under no circumstances shall SPECTRAMED have any liability whatsoever for loss of profits or for any incidental or consequential damages due to delay in delivery.
3. Prices and Payment
 - a. Unless otherwise specified herein, prices are net and are not subject to trade or other discounts, and do not include costs of special packaging or insurance, or sales, use, excise, or similar taxes, whether Federal, State or Local. In lieu of payment of such taxes, Customer may provide SPECTRAMED with a tax exemption certificate acceptable to the taxing authorities.
 - b. Prices may be changed without notice at an time prior to acceptance by Customer of this Sales Order by written acknowledgement.
 - c. Unless otherwise specified on the front hereof, the purchase price shall be due and payable within thirty (30) days from the date specified on SPECTRAMED's invoice, the date of shipment to Customer. Payments not received within thirty (30) days from the invoice date shall be delinquent and Customer shall pay interest at the rate of two percent (2%) per month on all unpaid and delinquent balances, unless such rate is in violation of the applicable law governing interest rates, then in that case the interest rate shall be the maximum allowed by law.
 - d. In the event SPECTRAMED, in good faith, deems itself insecure with respect to Customer's performance under this Sales Order for absence of established credit or otherwise, or in the event Customer is in default to SPECTRAMED under this or previous Sales Orders, SPECTRAMED may demand advance cash payment or satisfactory security from Customer and may withhold any shipments until it receives payment or security.
4. Warranty and Disclaimer
 - a. Warranty. SPECTRAMED warrants its products only in accordance with the express warranty terms and conditions included or provided with the particular products, which are herein incorporated by reference. Each product warranty limits SPECTRAMED's warranty to repair or replacement of the product, at its option, subject to certain conditions precedent, some of which are set forth as follows. Each warranty requires the return of the defective product, freight and insurance prepaid by Customer, within 30 days of discovery of a defect, to SPECTRAMED, 564 Harcourt Road, Mt. Vernon, Ohio 43050. Repair of any SPECTRAMED product by any other person other than SPECTRAMED authorized employees or agents, or modification of products by unauthorized persons shall invalidate any warranty. No warranty shall apply to a product that has been subjected to misuse, accident, or negligence.
 - b. Recharger, Rechargeable Batteries, Electrodes, Cables, Electrode Cream, Tape Adhesive Patches, and Accessories. Accessories such as cables, electrodes, electrode cream, rechargeable batteries, chargers, and tape adhesive patches are excluded from all warranties, since they are designed to be used up over a short period of time, or their structure is such that they might be easily damaged before or during use.
 - c. Disclaimer. Except as provided in the express written warranty terms and conditions included or provided with the particular product. Each product, is being sold on an as is basis, and the entire risk as to quality or performance of the products is with the Customer. SPECTRAMED disclaims all warranties, express or implied including warranties or merchantability and fitness for a particular purpose, except that in the case of a Customer deemed to be Consumer, the implied warranties shall be limited in duration to the term of the express warranty applicable to the product. The sole and exclusive remedy available to any party against SPECTRAMED shall be for repair or replacement as provided in the express warranty for the particular products. SPECTRAMED shall not be liable for any direct, special, incidental, or consequential damages, lost profits or medical expenses caused by any defect, failure, malfunction or otherwise of any SPECTRAMED product whether claims are based upon tort, warranty, contract, or otherwise. No waiver, alteration, or modification of any SPECTRAMED warranty or this section 4 shall be valid unless made in writing and signed by an officer of SPECTRAMED. Some States do not allow limitations on how long an implied warranty lasts, or the exclusion or limitation of incidental or consequential damages; so the above limitations may not apply to Customer. The warranty gives Customer specific legal rights, and Customer may also have other rights which vary from State to State.
5. Patents and indemnity
 - a. Except in the case where SPECTRAMED manufactures in conformity with specifications forwarded by Customer, SPECTRAMED shall defend any action brought against Customer so far as the action is based on a claim that the products, or any part of the products furnished under this Sales Order, constitute an infringement of any patent of the United States or a trademark. SPECTRAMED shall be notified promptly in writing of the action and be given authority, information and assistance, at the expense of SPECTRAMED, for the defense of the action. SPECTRAMED shall pay all damages and costs awarded in the action in case the products or a part thereof are held to constitute infringement and the use of the products or a part thereof is enjoined. SPECTRAMED shall at the expense of SPECTRAMED, either procure for Customer the rights to continue using the products, replace the products, or a part thereof with non-infringing products, modify the products so the products become non-infringing, or retake the products and refund the purchase price and the transportation and installation costs of the products.
 - b. Customer shall indemnify SPECTRAMED against any damages for patent or trademark infringement for which SPECTRAMED becomes liable as a consequence of manufacturing the products covered by this agreement in conformity with specifications furnished by Customer.
 - c. The sale of products by SPECTRAMED does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of said products with other devices or elements.
6. Inspection
 - a. Customer shall inspect the products upon delivery and notify SPECTRAMED within ten (10) days after receipt of products of any defects or omissions. Failure to give such notice shall constitute acceptance of the products, and such acceptance shall be final, absolute and irrevocable.
7. Returned Goods
 - a. Written approval of an authorized employee of SPECTRAMED must be obtained prior to return of any products to SPECTRAMED for credit.
 - b. All products must be returned with a SPECTRAMED external label.
 - c. All products returned for credit, excluding wrong orders and damaged goods, must be shipped freight and insurance prepaid.
 - d. All products returned for credit must be unused in original condition, including packaging, with all accompanying kit components and accessories intact, and not beyond applicable expiration dates.
 - e. Products returned less than 30 days after shipment by SPECTRAMED may be subject to a 5% restocking charge which will adjust the credit accordingly.
 - f. Items received after 30 days and before 60 days after shipment by SPECTRAMED may be subject to a 20% restocking charge which will adjust the credit accordingly.
 - g. Products will be considered by SPECTRAMED for return for credit no later than 60 days after shipment by SPECTRAMED.
 - h. Accessories, including but not limited to, cables, electrodes, electrode cream, rechargeable batteries, chargers and tape adhesive patches, may not be returned for credit at any time.
8. Miscellaneous
 - a. SPECTRAMED shall be entitled to all consequential and incidental damages including, but not limited to, lost profits, all commercially reasonable charges, expenses, or commissions incurred in stopping delivery under the Uniform Commercial Code, in the transportation, care, and custody of products after a breach by Customer and in connection with the return or resale of products, or any other damages resulting from a breach by Customer.
 - b. SPECTRAMED shall have without limitation, all of the remedies for any breach of this Sales Order which are conferred upon it by the Uniform Commercial Code.
 - c. The Sales Order may not be assigned, in whole or in part, by the Customer without prior written consent of SPECTRAMED.
 - d. This Sales Order shall in all respects be governed by and interpreted in accordance with the laws of the State of Ohio. The U. N. Convention on Contracts for the International Sale of Goods shall not apply.
 - e. Terms, product availability and product specifications may be changed without notice at any time by SPECTRAMED.

