

TERMS AND CONDITIONS OF SALE

- 1. Warranties and Remedies.** Buyer shall have the benefit of the warranties implied by the laws of the State of New Jersey governing the sale of goods. In case of breach of this Agreement, the non-breaching entity shall have the benefit of the remedies provided by the laws of the State of New Jersey governing the sale of goods, except that no such entity shall have the right to punitive, exemplary, multiplied or consequential damages, all of which are hereby irrevocably waived by all of the parties. Seller warrants that in furnishing the Products, Seller, its affiliates and the products will comply with all applicable Federal, State and local laws and regulations relating thereto, including (without limitation) the Federal Food, Drug and Cosmetic Act.
- 2. Dispute Resolution.** ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS INVOICE, OR THE BREACH THEREOF, OR ANY OTHER ASPECT OF THE RELATIONSHIP BETWEEN BUYER AND SELLER AND THEIR RESPECTIVE AFFILIATES, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGEMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE ARBITRATION SHALL BE HELD IN NEW JERSEY AND THE ARBITRATOR SHALL APPLY THE SUBSTANTIVE LAW OF NEW JERSEY, EXCEPT THAT THE INTERPRETATION AND ENFORCEMENT OF THIS ARBITRATION PROVISION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT. THE ARBITRATOR SHALL NOT AWARD PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES, AND EACH ENTITY BOUND HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SEEK SUCH DAMAGES IN ARBITRATION OR IN JUDICIAL PROCEEDINGS.
- 3. Returns.** No merchandise can be accepted for credit unless the return has been previously authorized by Seller or one of its affiliates.
- 4. Adjustments.** Any discrepancy on this invoice must be reported to Seller's Customer Service within 30 days to qualify for an adjustment. Claims for loss or damages as a result of shipment must include a copy of the delivery receipt.
- 5. Security Interests.** Buyer hereby grants to Seller a security interest in all products covered hereby as security for payment of all amounts due hereunder. Buyer agrees to assist Seller in perfecting such security interest by execution upon request of Seller of appropriate documents, including without limitation form UCC-1 financing statements and cooperation with Seller (at Seller's expense) as to all further acts or instruments reasonably necessary to perfect, preserve, and protect the security interest created hereby. The Seller shall have all of the remedies of a secured creditor under the Uniform Commercial Code.
- 6. Option to Accelerate.** Seller shall have the right on written notice to Buyer to demand immediate payment of amounts due hereunder when Seller believes in good faith that the prospect or payment or performance by Buyer hereunder is impaired. The acceptance of Products by Buyer shall constitute an express representation that Buyer is not then insolvent within the meaning or Title 11, United States Code or similar federal or state law.
- 7. Additional or Different Terms.** This instrument is subject to any related agreement signed by the parties. In the absence of such agreement, this instrument constitutes an offer to sell the Products listed on the reverse hereof pursuant to the terms and conditions and at the prices herein. THIS OFFER IS EXPRESSLY CONDITIONED ON ACCEPTANCE WITHOUT ADDITION OR ALTERATION. SELLER HEREBY PROVIDES NOTICE THAT IT OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED IN ANY INSTRUMENT REQUESTING OR CONFIRMING THIS OFFER OF SALE BY OR ON BEHALF OF BUYER.

In addition to the foregoing, acceptance of the Products by Buyer shall constitute an express waiver by Buyer of any such additional or different term it may have proposed.
- 8. Taxes.** Any tax, duty, custom or other fee of any nature imposed upon this transaction by any Federal, State or local governmental authority shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, Buyer will reimburse Seller.
- 9. Cost Reporting.**
 - a.** THE PRICING FOR PRODUCTS PROVIDED HEREUNDER MAY REFLECT OR BE SUBJECT TO DISCOUNTS, REBATES, OR OTHER PRICE REDUCTION PROGRAMS.
 - b.** Buyer is hereby advised that it is obligated to:
 - i.** fully and accurately disclose the amount of any such discounts, rebates, or other price reductions in cost reports or claims for reimbursement by Buyer to Medicare, Medicaid, or health care programs requiring such disclosure, and
 - ii.** provide such documentation to representatives of the Secretary of the Department of Health and Human Services and state agencies upon request.
 - c.** Unless noted otherwise, the value of any Product listed as \$0.00 on the reverse side may constitute a discount which should also be evaluated by Buyer when filing such reports.
 - d.** The value of any item which is designated as or known to Buyer to constitute a sample should not be included as a discount for cost-reporting purposes and no reimbursement for such items should be sought from third party payers.
 - e.** Buyer is strongly urged to retain this invoice and any later documentation provided by Seller regarding the existence and amounts of such discounts, rebates, or other price reductions.
 - f.** Buyer may request additional information from Seller in order to meet Buyer's reporting or disclosure obligations, by writing to the address on the reverse side.
- 10. No Resale.** The products sold hereby are intended for Buyer's "own use" in the United States and are not for resale unless the Buyer is Seller's authorized distributor.
- 11. Product Shortages.** Seller will make reasonable efforts to fulfill orders; however, Seller will not be held liable for delays in delivery due to product shortages, acts of nature, war, terrorism, regulatory or carrier issues.
- 12. Distributor Rebates (applicable to distributors only).** Johnson & Johnson (J&J) companies will pay rebates to distributors only for products sold to end users located in the U.S. who are entitled by contract with a J&J company to a price below distributor list price. J&J companies will pay rebates only for such products that are purchased directly from a J&J company located in the U.S. Your acceptance of a rebate from a J&J company constitutes a representation by you that such rebate relates solely to product that meets the requirements of this paragraph. By your acceptance of a rebate, you further agree that a J&J company that does pay a rebate shall have the right, on reasonable notice and during normal business hours, to audit your books and records for purposes of confirming the validity of a rebate.
- 13. Shipping Terms.** FOB origin (freight and insurance prepaid to final ship point).

NAMES OF JOHNSON & JOHNSON HEALTH CARE SYSTEMS INC. AFFILIATE COMPANIES

(AS) Advanced Sterilization Products, Div. of Ethicon, Inc.

(CC) Cordis Corporation

(CO) Codman & Shurtleff, Inc.

(ES) Ethicon Endo-Surgery, Inc.

(ET) Ethicon, Inc.

(HC) Johnson & Johnson Health Care Systems Inc.

(OR) DePuy Orthopaedics, Inc.

(TH) Therakos, Inc.

Products bearing the Red Cross have no connection whatever with the American National Red Cross.

Revised 06/25/2003