

## **Terms and Conditions of Sale**

### **General Terms.**

Boehringer Laboratories, LLC (“Boehringer”), accepts customer’s order expressly conditioned on customer’s assent to the terms set forth in this document. Customer’s order and acceptance of any portion of the goods and services shall confirm customer’s acceptance of these terms. These Terms and Conditions of Sale supersede any of customer’s terms and conditions of purchase (which are expressly rejected to the extent contradictory of Boehringer’s terms and conditions) regardless of whether or when customer has submitted such terms and conditions. Fulfillment of customer’s order does not constitute acceptance of any of customer’s terms and conditions or serve to modify or amend these terms and conditions. Unless specified otherwise herein, these terms constitute the complete agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. No additions to or modifications of these Terms and Conditions of Sale will be binding on Boehringer unless agreed to in writing and signed by an authorized representative of Boehringer. Boehringer objects to all other terms and conditions proposed by the customer. Acceptance by Boehringer of customer’s purchase order(s) is expressly conditioned on customer’s assent to all of the Terms and Conditions of Sale contained herein. All prices and terms are subject to change.

Defined terms shall have the meaning set forth in the applicable agreement executed by customer and Boehringer unless otherwise defined herein.

### **Pricing Policy.**

Orders will be priced and invoiced at the Boehringer list price, unless agreed otherwise. Price discrepancy claims or deductions for other than Boehringer caused errors or omissions will be denied. Boehringer commits to the accuracy of pricing but reserves the right to correct any errors or omissions at any time. Prices and specifications on products are subject to change. Unless otherwise indicated of Boehringer’s invoice, prices do not include, and customer is responsible to pay, freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Customer shall be responsible for payment of all applicable state/local sales, use and/or gross receipts taxes resulting from transactions with Boehringer regardless of placement of liability for the tax by law. Boehringer reserves the right to impose a market conditions surcharge reflecting increases in costs resulting from inflation or supply constraints not occurring in the ordinary course of business.

### **Shipment Terms.**

Terms are FOB Destination. Boehringer ships product via United Parcel Service (“UPS”) Ground or other common carrier. Boehringer shall endeavor to ship all accepted orders within a commercially reasonable time. Shipping and handling will be absorbed by Boehringer for all standard shipments. Boehringer will ship rush orders via UPS Air. Charges for rush orders will be added at the time of invoicing. Boehringer shall endeavor to ship all rush orders that are received before 2PM EST on the day that they are received. Shipment and delivery dates given by Boehringer are estimates only. Boehringer shall not be liable on account of any delays in shipment or late delivery. Deliveries should not be refused.

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### Payment Terms

Payment is due no later than 30 days from the date of invoice. Boehringer may charge interest at the rate of one and one-half percent (1.5%) per month, or at such lesser rate as may be required by law, on any amount that is unpaid within 30 days from the date of invoice. Boehringer may suspend delivery of any products for which payment has not been made when due. Customer shall not have the right to withhold payment of any amounts due to Boehringer as a set off or on account of any claim or right customer may assert against Boehringer. Customer shall reimburse Boehringer for all costs incurred in collecting any unpaid amounts due Boehringer, including, without limitation, attorneys' fees. Boehringer reserves and does not waive all other rights at law and equity to collect amounts due.

### Inspections and Returns.

Within 30 days from receipt of a shipment, customer shall notify Boehringer in writing of any claim for product damage or nonconformity. Customer waives any right to reject any product or revoke acceptance thereafter. Upon failure to provide such notice, customer will be deemed to have accepted the product. Boehringer, at its sole option and discretion, may replace a product, repair a product to bring it into conformity or credit or refund the purchase price for the product. The payment terms stated in these terms and conditions shall remain in full force and effect notwithstanding such notice and notwithstanding any delays in completing any required replacement, repair or refund.

Within 30 days from the date of invoice customer shall notify Boehringer in writing of any claim pertaining to such discrepancies as erroneous billing charges, shortages, overages, wrong product, missing documents, etc.). Upon failure to provide such notice, Boehringer shall have the right in its sole discretion to deny such claims.

Customer agrees that such period constitutes a reasonable inspection and notice period. The payment terms stated in these terms and conditions shall remain in full force and effect notwithstanding such notice and notwithstanding any delays in completing any required replacement, repair or refund or otherwise addressing or resolving any other claim.

All notices shall be sent via email to [orders@boehringerlabs.com](mailto:orders@boehringerlabs.com). In order for a claim to be processed by Boehringer, the notice referenced in this section must include the following information (in addition to all other information pertinent to the claim):

- Purchase order number
- Customer name and address
- Type of discrepancy or issue and requested resolution
- Boehringer item number, lot or serial number
- Quantity per the packing list unit of measure terms
- Contact name, email and telephone number
- Copy of the carrier bill of lading or delivery receipt signed by customer which includes number of pallets received and any visible damage noted
- If the above information is not provided in total, Boehringer reserves the right to deny the claim.

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To facilitate the claim investigation, customer shall provide digital photos to Boehringer for any damaged, incorrect or otherwise nonconforming products. Requests for tracking numbers or proof of delivery must be made within 15 days of invoice date. Proof of delivery requests are subject to a service fee.

Product returns will be accepted only to the extent that such products were purchased directly from Boehringer and are subject to the following requirements:

Returns will not be accepted for full credit without a return material authorization (“RMA”) issued by Boehringer, including returns which are the result of a Boehringer error. Product must be returned to Boehringer within 60 days of its original shipment to the customer. In order for an RMA to be issued, the request must include the following information:

- Purchase order number
- Customer name and address
- Reason for return
- Boehringer item number, lot/batch number, expiry date or serial number (if applicable)
- Quantity per the packing list unit of measure terms
- Contact name, email, telephone number
- Such other information and documents as Boehringer may request
- For single-use products, the product must be returned in its original, unopened packaging

All product returns must have a copy of the RMA attached with return documentation.

Neither an RMA, a credit or other remedy will be provided in (without limitation) the following circumstances:

- Product returned without authorization
- Product not purchased directly from Boehringer
- Products returned with conditions that prevent resale. Examples include, but are not limited to:
  - Obsolete or discontinued products
  - Opened or resealed products
  - Expired product or product outside minimum dating requirements
  - Units of measure less than original unit of issue, for example partial cases

If such non-resale product is returned a credit will not be issued and the product will be destroyed.

An RMA will only be issued to the original customer ship to location, or in the case of a drop ship order the customer sold to location that originally purchased the product.

Returned product must be received in its original, unopened packaging and in saleable condition within 15 days of the RMA to be eligible for a full credit, minus any restocking fee. If returned product is returned after the 15 day expiration of the RMA, Boehringer reserves the right to refuse to accept the return or charge additional restocking fees, even if the product is in saleable condition.

Customer shall pay the freight charges for all returns except as noted below. Product shipped in error by Boehringer will be accepted for return, freight collect using a Boehringer designated carrier. Boehringer reserves the right to issue a certification of destruction in place of returning said product and applicable credit, if any, will be issued. A restocking fee will not apply.

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### Customer Complaints.

Boehringer will endeavor to address customer complaints relating to products whether the complaint is received from the customer, a patient, or otherwise. Customer shall transfer to Boehringer any customer complaints that it receives concerning any product to [orders@boehringerlabs.com](mailto:orders@boehringerlabs.com).

In the event customer receives or becomes aware of a customer complaint about any product, customer shall be responsible for promptly (i) collecting, documenting and recording all relevant information regarding such customer complaint (e.g. customer name, address, telephone number, date of incident, product, reorder number, manufacturing code, lot control number) and a customer report of the incident, and such other information as may be reasonably warranted under the circumstances, and (ii) notifying Boehringer of such customer complaint and promptly forwarding such collected information to Boehringer. Boehringer shall be responsible for communicating with customers regarding any customer complaint about any product, unless otherwise agreed upon by the parties during specific complaint investigation. Each party shall provide the other party with the telephone numbers and names of contacts for this purpose. Boehringer shall be responsible for investigating any customer complaint about the products, implementing corrective action where necessary, and responding directly to the customer about its complaint.

Customer is responsible for the safe return of products to Boehringer, or safe destruction of such products at the direction of Boehringer. As manufacturer, per FDA requirements, Boehringer is responsible for addressing and reporting adverse events and other safety related information concerning the products whether received from customer, a patient, healthcare provider or otherwise. Adverse events are defined as any untoward medical occurrence in a patient to whom the products are administered.

In the event customer receives or becomes aware of any adverse events or other safety information regarding the products, customer shall comply with this section and immediately forward such information to Boehringer ([orders@boehringerlabs.com](mailto:orders@boehringerlabs.com)) within one (1) business day, but no later than within five (5) calendar days, from customer's initial receipt of the information. Customer shall cooperate with Boehringer reasonable requests to obtain additional information related to reports of adverse events or other safety information.

### Limited Warranty and Limited Remedy.

Boehringer warrants to the customer that, provided customer uses, stores and maintains the products in accordance with the documentation (defined as the user guide, user manual, labeling, release notes, technical specifications, and other similar information applicable to a product, that Boehringer makes generally available to end user purchasers of the products) all products will meet the specifications stated in the documentation in all respects, and that products shall be free from defects in material and workmanship for either the warranty period or expiration date stated in the documentation for such products, or for products without a stated warranty period or expiration date, 6 months. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE (I) REPAIR OR REPLACEMENT OF THE NON-CONFORMING PRODUCTS, OR (II) A REFUND OF THE AMOUNT PAID TO BOEHRINGER FOR NON-CONFORMING PRODUCTS, WITH SUCH REMEDY TO BE AT BOEHRINGER'S OPTION. Customer must provide written notice of any such non-

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conformance to Boehringer within the warranty period. Any alteration, abuse, misuse, further manufacture, packaging, processing, adjustment or repair by any person or entity other than Boehringer or a person or entity authorized by Boehringer shall void the warranty above. For information on Boehringer's warranty on suction regulators, consult our 3800 Series Suction Regulator Warranty.

**Disclaimers.** THE LIMITED WARRANTY AND LIMITED REMEDY PROVIDED UNDER THIS SECTION IS THE SOLE AND EXCLUSIVE WARRANTY AND REMEDY PROVIDED BY BOEHRINGER AND IS IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, INOPERABILITY, QUALITY OR CONDITION, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECT, WHETHER LATENT OR PATENT.

MEDICAL PROVIDERS ARE RESPONSIBLE FOR THE PERFORMANCE OF THEIR RESEARCH AND THE CARE OF THEIR PATIENTS AND DETERMINING THE APPROPRIATENESS OF THE PRODUCTS FOR THEIR USE; CUSTOMER ACKNOWLEDGES THAT BOEHRINGER IS NOT RESPONSIBLE FOR THE DELIVERY OF MEDICAL CARE OR MEDICAL SERVICES TO CUSTOMER'S, PATIENTS OR ANY OTHER PERSON. THE PRODUCTS ARE TOOLS TO BE USED BY CUSTOMERS BUT DO NOT REPLACE PROFESSIONAL SKILL OR JUDGMENT. BY PROVIDING PRODUCTS TO CUSTOMERS, NETHER BOEHRINGER NOR ANY EMPLOYEE, AGENT OR AFFILIATED PERSON OR ENTITY OF BOEHRINGER IS ENGAGED IN THE PRACTICE OF MEDICINE. THE MEDICAL PROVIDER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL PATIENT, LEGAL OR OTHER INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS. MEDICAL PROVIDER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION. BOEHRINGER IS NOT RESPONSIBLE FOR THE PERFORMANCE, SUPPORT, OR ANY OTHER ASPECT OF MEDICAL PROVIDER'S TECHNOLOGY ENVIRONMENT.

**Exclusions.** The foregoing warranties will not apply (and no other warranties will apply) to failure of products caused by (i) customer's abuse, neglect or misuse of the product or failure to maintain the product in accordance with its documentation or resulting from any failure to comply with the customer responsibilities as may be set forth in this or customer agreement with Boehringer; (ii) implementation, repair, modification, alteration, adjustment, or relocation of the product other than as expressly authorized by Boehringer; (iii) failure to maintain the physical environment for the product (including air quality, temperature and humidity) specified in the documentation.

### **Indemnification.**

Subject to the limitations of Boehringer's liabilities and damages as set forth in these Terms and Conditions, Boehringer shall defend and indemnify customer against any third-party claim alleging loss, damages, or liabilities directly caused by Boehringer's negligence or willful misconduct, and customer shall defend and indemnify Boehringer against any third-party claim alleging loss, damages, or liabilities directly caused by customer's negligence or willful misconduct. The indemnified party shall give prompt notice of the claim to the indemnifying party; however, and delay in giving notice will not excuse the indemnifying party's obligations under this section, except to the extent the indemnifying party has been prejudiced by the delay. The indemnified party shall cooperate with the indemnifying party in the defense of the claim and in any settlement of the claim;

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however, the indemnified party may employ separate counsel, at its expense, to provide or participate in the defense, and the indemnifying party may not settle a claim unless the settlement completely and forever releases the indemnified party from all liability with respect to the claim.

**Infringement indemnification.** Subject to the limitations of Boehringer's liabilities and damages as set forth in these Terms and Conditions, Boehringer shall defend customer against any third-party claim that Boehringer's manufacture or sale of a product infringes any patent or copyright of such third party enforceable in the U.S. or misappropriates any trade secret of such person. On the occurrence of any infringement claim, or in the event Boehringer believes an infringement claim is likely, Boehringer may, at its option (i) modify the product to make it non-infringing; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the product in question.

**Exceptions.** Boehringer will have no obligation or liability to the extent of infringement claim arises, from: (i) the combination or use of the product with products, services or other materials not furnished or approved by Boehringer; (ii) modification of the product, except as expressly authorized by Boehringer in writing; or (iii) use of the product other than in accordance with the documentation in violation of these Terms and Conditions of Sale, the customer agreement executed with Boehringer, or any applicable law or regulation, or after notice from Boehringer that the customer should cease using the product.

**Sole remedy.** The obligations set forth in this section will constitute Boehringer's entire liability and customer's sole remedy for any actual or alleged infringement claim.

### **Limitation of Liability.**

WITHOUT LIMITING THE FOREGOING PROVISIONS PERTAINING TO THE LIMITATION OF DAMAGES AND REMEDIES, BOEHRINGER'S LIABILITY TO CUSTOMER ON ACCOUNT OF ANY CUSTOMER CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT PAID AND PAYABLE BY CUSTOMER UNDER THE PURCHASE ORDER(S) REFERENCING THE PRODUCT(S) ON WHICH CUSTOMER'S CLAIM IS BASED DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.

NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) PROCUREMENT COSTS, LOSS OF PROFITS, INCOME, REVENUE, BUSINESS USE, DATA OR GOODWILL.

### **Publicity and Retention of Rights.**

**Publicity.** A party shall obtain the other party's prior written consent, before (i) issuing any press release or other public disclosure regarding the Terms and Conditions of Sale or customer agreement or (ii) using the other party's name, trademark, service mark, logos, trade dress (collectively, "marks"). Each party must comply with the other party's requirements for use of either party's marks in any press release or other promotional material.

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Retention of rights. Boehringer owns or has rights to all intellectual property embodied or embedded in, or practiced by, the products, documentation, or Boehringer data, and all right therein. If customer gives to Boehringer any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements (“feedback”), customer gives to Boehringer, without royalties or other obligation to customer, the right to make, have made, create derivative works, use, share and commercialize such customer idea, proposal, suggestion or feedback in any way and for any purpose. Customer will not provide any idea, proposal, suggestion or feedback that is the property of any third party and may not be freely utilized by Boehringer.

### **Compliance with Applicable Law.**

Customer and Boehringer hereby represents that it: (i) is a business entity duly organized and validly existing and in good standing under the laws of its jurisdiction of organization; (ii) is qualified or licensed to do business and in good standing in every jurisdiction where such qualification or licensing is required; and (iii) has the corporate power and authority to negotiate, execute, deliver and perform obligation under these Terms and Conditions of Sale and/or a customer agreement and (iv) is not excluded from participation from any federally funded health care program (including, without limitation, Medicare and Medicaid) (each, a “program”). If either party becomes excluded from any program, then such party will promptly notify the other party. Each party hereby represents that it shall comply with all applicable laws, including legal notification requirements. Both customer and Boehringer hereby represents that it shall comply with, and give all noticed required by, all applicable laws, ordinances, rules, regulations and lawful orders of any public authority or agency (including child labor laws) bearing on the performance of the Terms and Conditions of Sale and/or customer agreement.

### **Governing Law and Jurisdiction.**

This agreement and all disputes arising hereunder and/or related to the Boehringer products purchased by customer will be governed by and interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania (without giving effect to any conflict of laws provisions thereof). The parties shall submit all such disputes to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania or the federal courts situated in Pennsylvania.

### **Debarment.**

Boehringer may immediately stop shipping products to customer, if the customer’s key personnel is convicted of an offense related to health care or listed by a federal agency as being debarred, excluded, or otherwise ineligible for federal healthcare program participation. In the event that an entity is no longer a customer, Boehringer may hereby terminate immediately such entity’s access to any Boehringer product hereunder.

### **Force Majeure.**

Except for the customer’s obligation to pay sums owing to Boehringer when due, the performance by any party of any obligations herein is excused when a party’s performance is hindered or delayed by any act or cause beyond its reasonable control including acts of nature, pandemic, the public enemy,

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terrorism, insurrections, riots, labor disputes (including lockouts or boycotts), fire, explosion, flood, acts of government, power outage, failure of the internet, acts of third parties, inability to obtain supplies and raw materials at reasonable prices, or natural disaster (each a “force majeure event”) for as long as such force majeure event continues. The party so affected by the force majeure event must give prompt written notice to the other party and, to the extent practicable, describe in detail the nature of the force majeure event.

### **Defense Production Act.**

Notwithstanding anything to the contrary herein, it is understood that Boehringer may not be able to fulfill quantities ordered or committed as a result of obligations Boehringer may have under the Defense Production Act, including any obligation to prioritize government orders over commercial orders. As such, Boehringer will not be penalized or in breach of this agreement in the event orders are diverted pursuant to the Defense Production Act, nor will any failure to supply provision hereunder be triggered.

### **Entire Agreement.**

These Terms and Conditions of Sale together with the current applicable customer agreement between customer any Boehringer entity constitutes the entire agreement between the parties governing the subject matter herein and supersedes any other oral or written communication, advertisements or understanding with respect to the subject matter hereunder including, but not limited to purchase orders (other than the quantity, type of product and U.S. delivery location), proposals, quotations and other similar documents. These Terms and Conditions of Sale may not be modified or supplemented except by way of a writing executed by the Boehringer and customer.

### **Headings.**

The section headings contained in these Terms and Conditions of Sale are for reference purposes only.

### **Severability.**

If any term or provision of these Terms and Conditions of Sale is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

### **Assignment.**

Customer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Customer without the prior written consent of Boehringer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

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### **Waiver.**

No waiver by Boehringer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Boehringer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Boehringer operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Boehringer precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Boehringer.