

# **BRAEBON MEDICAL CORPORATION TERMS AND CONDITIONS OF SALE**

## **1. Scope**

1.1 For the purposes of these Terms and Conditions, “Customer” means the customer to which this form has been provided, and “Products” means those products, including any software therein, to be delivered by BRAEBON Medical Corporation (“BRAEBON”) to Customer.

1.2 These Terms and Conditions apply to all quotations and any sales of Products by BRAEBON to Customer. Acceptance of Customer’s order by BRAEBON is made upon the express understanding that it will be governed by the Terms and Condition set out herein and any licence agreement, and that any additional or conflicting terms and conditions that may accompany Customer’s order shall, absent express agreement to the contrary as hereinafter provided, be void and of no force or effect.

## **2. Quotation**

2.1 Quoted prices will remain open for acceptance by the Customer for a period of **30** days from the date of quotation. Unless otherwise stated, prices for the Products may be subject to adjustment for foreign exchange, purchase or sales tax, customs tariff or other direct taxes, between the date of quotation and the date of shipment.

## **3. Orders**

3.1 Customer’s orders are subject to final acceptance by BRAEBON and BRAEBON reserves the right to accept or to reject any order from the Customer, in whole or in part. BRAEBON may, without prejudice to any other remedy which it may have at law or in equity, cancel or suspend delivery of any uncompleted order in the event of non-payment or other breach of the Terms and Conditions by Customer. BRAEBON shall have no liability to Customer for any costs, losses, or damages of any kind whatsoever arising as a result of any such suspension or cancellation.

## **4. Title and Delivery**

4.1 The Products shall be delivered EX WORKS (INCOTERMS: 2000) BRAEBON’s plant or designated warehouse. Title and all liability for loss or damage shall pass to Customer upon BRAEBON’s delivery of the Products to a common carrier for shipment to Customer.

4.2 Customer hereby grants to BRAEBON a purchase money security interest in all Products sold to Customer hereunder until full payment for such Products has been received by BRAEBON. Customer agrees to execute any and all documents and instruments necessary to perfect such security interest including all financing statements.

4.3 Absent express instructions from Customer, BRAEBON shall, in its sole discretion, determine the routing and carrier to be utilized to ship Products. BRAEBON will use reasonable commercial efforts to ship orders within the time quoted for shipment. Times quoted for shipment are estimates only and will date from acceptance by BRAEBON of the Customer’s

order, and will be subject to the issuance of any necessary import permits and licenses. In no event will BRAEBON be liable for any costs, losses or damages including, without limitation, procurement costs arising out of or caused by delay in the delivery or non-delivery of the Products.

## **5. Taxes**

5.1 All taxes, levies or duties of any nature applicable to the Products shall be paid by the Customer, or in lieu thereof, the Customer shall provide BRAEBON with a tax exemption certificate acceptable to the taxing authorities.

## **6. Payments**

6.1 With the exception of orders made via PayPal, all orders may be subject to credit approval prior to acceptance. Invoices are due and payable thirty (30) days from the date of invoice. Notwithstanding the foregoing, any orders made online by webstore must be paid using PayPal at the time of order. If, in BRAEBON's opinion, the Customer's financial condition does not at any time justify the terms of payment specified, BRAEBON may cancel any unfilled orders upon written notice unless the Customer immediately pays any outstanding amounts and/or agrees to pay in advance for all Products ordered but not delivered, at BRAEBON's option. Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. In the event of any default by the Customer, BRAEBON may, without prejudice to any other rights that it may have in law or in equity, decline to make further shipments. If, despite any default by the Customer, BRAEBON elects to continue to make shipments, its action shall not constitute a waiver of any default by the Customer or in any way preclude BRAEBON's right to exercise any other remedies available to it in law or in equity.

6.2 Interest shall accrue against any amount which remains unpaid by the Customer under this Agreement for more than thirty days from the date of invoice. Interest shall be payable to BRAEBON at the rate of 1.5% per month compounded (19.6% per annum, actual rate), or the maximum allowed by law, whichever is less, and shall be payable monthly in arrears.

## **7. Warranty**

7.1 BRAEBON warrants that the Products will be free from defects in materials and workmanship for the period stated in the user guide accompanying the Products.

7.1.1 BRAEBON shall incur no liability under the foregoing warranty unless:

(a) Customer first contacts BRAEBON for troubleshooting purposes within the warranty period with respect to the allegedly defective Product(s) at [support@BRAEBON.com](mailto:support@BRAEBON.com) or 1-888-462-4841 x214, whereupon, if necessary, BRAEBON will issue customer a return materials authorization ("RMA") number;

(b) Following receipt of such RMA number, Customer returns the allegedly defective Product(s) to BRAEBON at the applicable address indicated in Section 10 hereof, quoting the RMA number provided to Customer, within the warranty period. Customer shall prepay all shipping costs in connection with any return at their sole expense; and

(c) BRAEBON's tests disclose that the alleged defect is due solely to defects in materials or workmanship.

7.1.2 The liability of BRAEBON under this warranty shall in any event be limited, at BRAEBON's option and expense, to either the repair or replacement of the defective Product, or the reimbursement of the purchase price paid by Customer to BRAEBON for the defective Product(s).

7.1.3 In no event will BRAEBON be liable for damage to the Products resulting from improper handling during or after shipment, misuse, neglect, accident, or for any other cause not attributable to defects in materials or workmanship.

7.2 IN NO EVENT SHALL BRAEBON'S LIABILITY TO CUSTOMER OR TO ANY OTHER PARTY FOR BREACH OF THE FOREGOING WARRANTY EXCEED THE PURCHASE PRICE PAID BY CUSTOMER TO BRAEBON FOR THE DEFECTIVE PRODUCT.

7.3 THE EXPRESS WARRANTY SET OUT IN THIS SECTION 7 IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM STATUTE OR USAGE OF TRADE. CUSTOMER SHALL NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE PRODUCTS WHICH EXCEED THOSE MADE BY BRAEBON IN THIS SECTION 7.

## **8. Intellectual Property Rights**

8.1 Customer recognizes and acknowledges the great value of the goodwill associated with the name and trade-marks of BRAEBON, and the identification of the Products therewith. Customer shall not obscure, affect or permit the removal or alteration of any trademarks, patent numbers, labels, serial numbers or the like affixed to any Product, related materials or packaging.

8.2 All rights, title, and interest in and to the patents, copyrights, trade secrets, trade-marks and other intellectual and industrial property in the Products, documentation and related materials shall remain vested in BRAEBON and its third party suppliers and licensors. The sale of Products by BRAEBON does not convey any license by implication, estoppel, or otherwise, under any patent, copyright, trade secret, trade-mark or other intellectual or industrial property right.

8.3 Customer shall not copy, make extracts from, translate or otherwise modify any of the Products, documentation or related materials provided by BRAEBON.

8.4 Customer shall not reverse-engineer or conduct any analysis on any Product.

## **9. Indemnity**

9.1 Customer shall defend, indemnify and hold BRAEBON, its employees, contractors, agents and directors harmless from all losses, damages, costs, expenses, claims, penalties and liabilities, including without limitation reasonable legal fees and expenses arising or resulting from any breach by the Customer of its obligations hereunder, the negligence, tortious acts, fault or otherwise of the Customer.

## **10. Returns**

10.1 Product(s) may only be returned to BRAEBON within thirty (30) days after BRAEBON's shipment of the Product(s); provided, however, that such Product(s) have not been removed from their original BRAEBON packaging.

10.2 Upon any such return, Customer shall be entitled to a credit for the purchase price of the Product(s), subject to the deduction of a restocking fee equal to 15% of the original purchase price of such Product(s).

For product returns in the USA, ship to:

BRAEBON Medical Corporation  
Attn. Returns Department  
RMA # \_\_\_\_\_  
2981 Ford Street Ext.  
Ogdensburg, NY 13669-3474

For product returns in Canada, ship to:

BRAEBON Medical Corporation  
Attn. Returns Department  
RMA # \_\_\_\_\_  
Suite 1, 100 Schneider Rd.  
Kanata, ON K2K 1Y2

## **11. Limitation of Liability**

11.1 IN NO EVENT SHALL BRAEBON (INCLUDING ITS CONTRACTORS, DIRECTORS, EMPLOYEES AND AGENTS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM LOST BUSINESS, LOST SAVINGS, LOST DATA, AND LOST PROFITS, REGARDLESS OF THE CAUSE AND WHETHER ARISING IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF BRAEBON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 IN NO EVENT SHALL BRAEBON'S (INCLUDING ITS CONTRACTORS, DIRECTORS, EMPLOYEES AND AGENTS) AGGREGATE LIABILITY TO CUSTOMER FOR ANY CLAIM OR OTHER AMOUNT EXCEED THE AMOUNT PAID FOR THE SPECIFIC PRODUCT THAT IS THE SUBJECT MATTER OF SUCH CLAIM OR THAT IS RELATED TO THE CLAIM, WHETHER ARISING IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF BRAEBON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. General**

This Agreement is governed by the laws in force in the Province of Ontario and constitutes the entire agreement between the parties with respect to the subject matter herein and cancels and supersedes any prior understandings and agreements between the parties with respect to the

subject matter herein. All additions or modifications to this Agreement must be made in writing and agreed to by both parties. If any part of this Agreement is held to be invalid or otherwise unenforceable, the provision shall no longer form part of this Agreement. No failure or delay by BRAEBON in exercising any right, power or privilege hereunder shall operate as a waiver of such right, power or privilege. The parties do not intend that any agency or partnership relationship be created between them by this Agreement. Each party shall execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to carry out the full intent and meaning of this Agreement. This Agreement may not be assigned by either party without the prior written consent of the other and shall enure to the benefit of and be binding on the parties, their respective successors and permitted assigns. The following sections survive termination of this Agreement and continue in effect: 4, 5, 6, 7.2, 7.3, 8, 9, 11 and 12.