

ICU MEDICAL AUSTRALIA PTY LIMITED / ICU MEDICAL (SM) PTY LIMITED - TERMS AND CONDITIONS OF SALE

CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 13.

1. DEFINITIONS

Accessories	accessories purchased for use with Infusion Pumps but excluding batteries for Infusion Pumps.
Contract	any contract between ICU Medical and Customer for the sale and purchase of the Products, incorporating these Terms and Conditions, as well as any purchase order from Customer for the purchase of Products from ICU Medical that is accepted by ICU Medical in accordance with clause 2.4 and also incorporating these Terms and Conditions.
Consumables	non-dedicated disposables which are individual single-sterile and single use, applicable only if purchased under these Terms and Conditions.
Customer	the person, firm or company, authority or government department or agency, which purchases the Products from ICU Medical.
Customer Data Files	Customer-generated data, including drug libraries, users, Infusion Pump logs, event logs, and other data that is created or stored through use of the Software. The term Customer Data Files does not include the Software itself or any ICU Medical intellectual property or proprietary and/or Confidential Information.
Disposables	dedicated disposables which are individual, single-sterile and single-use, applicable only if purchased under these Terms and Conditions.
Equipment	hardware sold by ICU Medical, including applicable pre-installed Firmware, applicable only if purchased under these Terms and Conditions, but does not include Infusion Pumps.
Firmware	device-specific software embedded on Infusion Pumps and Equipment and any updates thereto provided under these Terms. For clarity, Firmware does not include Software.
ICU Medical	ICU Medical Australia Pty Limited (ABN 96 129 888 259) or ICU Medical (SM) Pty Limited (ABN 9708 3515 235), as applicable.
Infusion Pump	an external infusion pump used to deliver fluids and/or medications, including applicable pre-installed Firmware, applicable only if purchased under these Terms and Conditions.
Order Confirmation	the ICU Medical order confirmation issued to Customer for an accepted order.
parties	collectively, Customer and ICU Medical, with a party being one of them.
Products	any products, Accessories, Consumables, Disposables, Equipment, Infusion Pumps, spare parts and materials agreed in the Contract to be supplied to Customer by ICU Medical (including any part or parts of them but does not include software).
Services	the (implementation or) maintenance/repair services provided by ICU Medical relating to the applicable Products and/or Software.
Software	any ICU Medical software or applications (mobile or desktop) and related options as may be separately licensed to Customer subject to the Software Terms of Use.
Software Terms of Use	the ICU Medical Software Terms of Use governing the licensing by ICU Medical to Customer of any Software, and/or the subscription by Customer to any Software.
Terms and Conditions	these terms and conditions of sale.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1. Subject to any variation as provided by clause 2.2, or unless specifically provided otherwise in writing by ICU Medical, all orders, offers, and quotes and their acceptance shall be governed by these Terms and Conditions, which shall supersede and exclude any terms and conditions proposed, stipulated or referred to by Customer.
- 2.2. Any variation to these Terms and Conditions and any representations regarding the Products shall have no effect unless set out in writing and signed by authorised representatives of each party. Subject to the limitations of Applicable Laws (as defined below), ICU Medical may, at any time, amend or remove any of the terms and conditions of, or add new terms or conditions to these Terms and Conditions. If ICU Medical makes such a change, Customer agrees that ICU Medical may provide Customer with notice of the change by any reasonable method. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ICU Medical that is not set out in the Contract. Nothing in this clause shall exclude or limit ICU Medical's liability for fraudulent misrepresentation.
- 2.3. Each purchase order or acceptance of a quotation for Products from Customer for Customer's purchase of Products from ICU Medical shall be deemed to be an offer by Customer to purchase Products and, subject to ICU Medical accepting the purchase order pursuant to clause 2.4, shall create a Contract subject to these Terms and Conditions. These Terms and Conditions shall be included in each purchase order.
- 2.4. No purchase order placed by Customer shall be deemed to be accepted by ICU Medical until a written acknowledgement of order is issued by ICU Medical or (if earlier) ICU Medical ships the Products, commences installation of the Software or provides Services to Customer. Acceptance of purchase orders is at the sole discretion of ICU Medical.
- 2.5. Orders placed by Customer under and subject to these Terms and Conditions with a combined value of less than AU\$250 (excluding freight) will incur a minimum handling charge of AU\$25.
- 2.6. Customer shall ensure that the terms of its purchase order and any applicable specification are complete and accurate.
- 2.7. Any quotation is given on the basis that no Contract shall come into existence until ICU Medical sends an acknowledgement of order to Customer. Quotations are valid for a period of thirty (30) days from date of the issue, unless specifically stated otherwise on such quotation and to the extent not previously withdrawn.

3. DELIVERY

- 3.1. Customer is responsible for providing complete and accurate delivery address information to ICU Medical and for checking such information is correctly set out in the Order Confirmation.
- 3.2. ICU Medical shall deliver the Products to the location set out in the Order Confirmation or to such other location as the parties may agree. Products shall be delivered CPT Customer's delivery location, as defined in Incoterms 2020 (as amended), the terms of which are incorporated herein. ICU Medical is under no obligation to give notice to Customer if shipment is by a route involving sea transit (including under circumstances in which it is usual to insure).
- 3.3. Any dates specified by ICU Medical for delivery of the Products are estimates only and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time.
- 3.4. Customer may submit a request for next day delivery and such request may be accepted at the discretion of ICU Medical. Any expedited freight costs associated with such request shall be the sole responsibility of Customer.
- 3.5. ICU Medical shall not be liable for any delay in the delivery of the Products (even if caused by ICU Medical's negligence), nor shall any delay entitle Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.6. If for any reason Customer fails to accept delivery of any of the Products when they are ready for delivery, or ICU Medical is unable to deliver the Products on time because Customer has not provided appropriate instructions, documents, licences or authorisations:
 - 3.6.1 risk in the Products shall pass to Customer (including for loss or damage caused by ICU Medical's negligence);
 - 3.6.2 the Products shall be deemed to have been delivered; and
 - 3.6.3 ICU Medical may store the Products until delivery, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.7. If ICU Medical delivers to Customer a quantity of Products of up to two percent (2%) more or less than the quantity noted in Customer's purchase order or in ICU Medical's Order Confirmation, Customer shall not be entitled to object to or reject the Products or any of them by reason of the shortfall or surplus and shall pay for such Products at the pro rata Contract rate.

- 3.8. ICU Medical may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.9. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle Customer to repudiate or cancel any other Contract or instalment.
- 3.10. ICU Medical reserves the right to delay shipping or allocate the supply of a Product or Software, as the case may be, in the event of shortage, force majeure event, or any other event which disrupts or is reasonably expected to disrupt the ongoing supply of Products or Software, as the case may be, to Customer.
- 4. PLACE OF DELIVERY**
- 4.1. Unless otherwise expressly agreed in writing by ICU Medical, ICU Medical shall deliver the Products to Customer and delivery shall take place at Customer's premises ("Delivery Point").
- 4.2. Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for taking delivery of the Products.
- 5. LOSS, SHORTAGE OR DAMAGE IN TRANSIT**
- 5.1. Customer or its carrier shall make reasonable efforts to inspect the Products immediately upon delivery and shall note (i) any discrepancy between the corresponding Order and the delivered Products (quantities, specifications, etc.) and (ii) any visible damage to Products or packaging (together the "Contested Products"), on the bill of lading, and shall take sufficient photographs to identify any visual damage. Customer shall advise ICU Medical in writing within three (3) days of delivery of any Contested Products.
- 5.2. Except for any Contested Products identified by Customer on the bill of lading or in writing within three (3) days of delivery, Customer's receipt of the Products shall constitute an unqualified acceptance of the delivery of such Products and a waiver by Customer of all claims with respect to such delivery. Customer's acceptance of delivery shall in no way affect or diminish ICU Medical's warranties for the Products as set out herein.
- 6. CHANGES AND RETURNS**
- 6.1. If after the receipt of any purchase order for Products before delivery, improvements are made to their design, on giving notice to Customer, ICU Medical may make reasonable alterations to such design provided that:
- 6.1.1 the performance and quality of the altered goods are at least as high as those of the Products ordered and/or according to ICU Medical's assessment, such alterations are required for such Products to conform to existing or future legal, regulatory, or technological requirements; and
- 6.1.2 no price variation is made except with Customer's consent; and
- 6.1.3 delivery is not unreasonably delayed because of such alterations.
- 6.2. Further, Customer accepts and agrees that any Consumables or Disposables may be subject to minor evolutions and modifications from time to time, at ICU Medical's discretion, and ICU Medical shall inform Customer as and when these occur.
- 6.3. If in respect of any order for Products that are manufactured to Customer's specification, Customer requests any amendment to such order, ICU Medical shall, at its discretion, charge Customer in respect of any such amendments at the rate of twenty-five percent (25%) of the invoice value of such Products.
- 6.4. Except for Products that do not conform to the warranty in clause 9 or any erroneous delivery of Products due to ICU Medical's mistake (subject to clause 3.7), if Customer wishes to return Products to ICU Medical and ICU Medical, in its discretion, is prepared to accept the return of such Products, ICU Medical reserves the right to charge Customer a restocking fee at a rate of twenty-five percent (25%). Any such returns shall be at Customer's expense and the Products must be unused and in good and saleable condition and no returns will be accepted more than 30 days after receipt by Customer.
- 6.5. As related to Contested Products, ICU Medical will access the notes and photographs sent by Customer (in accordance with clause 5) to verify the alleged damage. If the Products are found to be non-conforming, ICU Medical shall promptly, at ICU Medical's election, repair or replace such Contested Good (subject to clause 9.4). Any such returns shall be at ICU Medical's expense and Customer must comply with clause 5 of these Terms and Conditions.
- 6.6. Customer undertakes to ensure there is no Personal Data (as defined in the applicable privacy and data protection legislation and regulations) on any Products returned to ICU Medical for any reason, including without limitation Products sent to ICU Medical for repair, replacement or returned pursuant to clause 6.4 and 6.5.
- 6.7. ICU Medical shall, upon the reasonable request of Customer, package or bundle certain Products together to form a kit (a "Custom Kit"). Customer agrees that in the event that it wishes to change the content of the Custom Kit and / or no longer wishes to purchase the Custom Kit, Customer shall notify ICU Medical in writing and shall purchase all Custom Kits which ICU Medical holds in stock.
- 7. RISK AND TITLE; INTELLECTUAL PROPERTY; CUSTOMER DATA**
- 7.1. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2020 (as amended) shall have the same meaning in these Terms and Conditions but if there is any conflict between the provisions of Incoterms and these terms, the latter shall apply.
- 7.2. The Products are at the risk of Customer from the time of placement of the Products with the first carrier (the provisions of clause 3.6(a) continue to apply in that case)
- 7.3. Ownership of and title to the Products shall not pass to Customer until ICU Medical has received in full (in cash or cleared funds) all sums due to it in respect of the Products; and all other sums which are or which become due to ICU Medical from Customer on any account at the date the Products are delivered to Customer.
- 7.4. Until ownership of the Products has passed to Customer, Customer shall:
- 7.4.1 hold the Products on a fiduciary basis as ICU Medical's bailee;
- 7.4.2 store the Products (at no cost to ICU Medical) separately from all other goods of Customer or any third party in such a way that they remain readily identifiable as ICU Medical's property;
- 7.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 7.4.4 maintain the Products in satisfactory condition and keep them insured on ICU Medical's behalf for their full price against all risks to the reasonable satisfaction of ICU Medical. On request Customer shall produce the policy of insurance to ICU Medical.
- 7.5. Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.
- 7.6. Customer may resell the Products before ownership has passed to it, subject to clause 10 and solely on the following conditions:
- 7.7.1 any sale shall be effected in the ordinary course of Customer's business (but not otherwise) at full market value; and
- 7.7.2 any such sale shall be a sale of ICU Medical's property on Customer's own behalf and Customer shall deal as principal when making such a sale.
- 7.7. All rights, title, and interest in and to the Products and any associated documentation and all derivative works thereof prepared by or for ICU Medical and its affiliates and all related know-how and all rights therein (including, without limitation, all intellectual property rights), are and shall remain the exclusive property of ICU Medical and its affiliates. All suggestions for corrections, changes, additions or modifications to the Products provided by Customer and any other feedback provided by Customer are the exclusive property of ICU Medical, and Customer hereby assigns all rights in and to any such feedback to ICU Medical, without any right to compensation or attribution.
- 7.8. In connection with the purchase of external infusion pumps used to deliver fluids ("Infusion Pumps" as defined), ICU Medical grants Customer a license to use the device-specific software as embedded on the Infusion Pumps and Equipment and any updates thereto ("Firmware" as defined, not including other software), in object code form only, solely on the particular Infusion Pump unit onto which it is embedded solely for internal purposes at Customer sites and in accordance with: the product instructions for use, package inserts, product labelling, product packaging, manuals, specifications and training materials, which may include eLearning (including pre-recorded videos) if available, for any of the Products ("Product Documentation").
- 7.9. To the extent Software is licensed to Customer, this licence will be a limited, non-exclusive, and non-transferable license to use such Software (i) only at Customer site(s) as specifically identified (ii) in accordance with these Terms and Conditions and the specific, separate, Software Terms of Use, and (iii) solely during such (annual) use period for which Customer has paid ICU Medical the corresponding, nonrefundable (annual) user fee. A separate implementation and/or maintenance/service fee may also be payable for Software. In the event of a conflict between the provisions of these Terms and Conditions and the Software Terms of Use, the Software Terms of Use shall prevail.
- 7.10. To the extent that Customer data is created under these Terms and Conditions or a Contract, Customer retains all rights, title, and interest thereto. Customer however hereby grants the following rights to ICU Medical in relation to Customer-generated data created or stored through the use of the Products (e.g. an Infusion Pump or Equipment), to access, use, process, and disclose such Customer-generated data as may be required for ICU Medical to comply with all applicable international and local laws, rules and regulations ("Applicable Laws") to manufacturers of devices such as the Products, for complaint investigation, handling and reporting, and for maintaining,

developing and improving ICU Medical's products.

8. PRICES AND PAYMENT

- 8.1. ICU Medical shall invoice Customer for Products upon shipment. Unless otherwise agreed by ICU Medical in writing, the price for the Products shall be the price set out in ICU Medical's price list published on the date of delivery. The price for the Products shall be exclusive of GST (if any) and all costs or charges in relation to transit and packing materials, installation, carriage, insurance and additional labour.
- 8.2. Payment terms are net thirty (30) days from the end of the month in which the invoice was issued ("**Due Date**"). Time for payment shall be of the essence and payment must be made in the currency stated on the invoice. In the event of late payment, interest will become due at a rate of two percent (2%) per month (or the maximum interest rate permitted by Applicable Law) from the Invoice Due Date up to and including the date full payment is received by ICU Medical. In addition, non-payment of an invoice when due may, at the sole option of ICU Medical, result in (i) the acceleration of all outstanding invoices and (ii) the suspension or cancellation of outstanding Orders.
- 8.3. To the maximum extent permitted by Applicable Laws, Customer will be responsible for any and all applicable taxes, fees, and assessments due in relation to its receipt of Products. Customer will pay or promptly reimburse ICU Medical for, any and all taxes, other governmental fees, assessments, duties and charges that are payable as a result of this transaction.
- 8.4. Customer also agrees to pay all collection costs, expenses and reasonable legal fees for collection of any amount due and unpaid. ICU Medical also reserves the right to require from Customer, at any time, satisfactory assurance of performance of Customer's payment obligations to ICU Medical, and refusal or failure to promptly furnish such assurance will entitle ICU Medical to suspend or cancel further deliveries to Customer.
- 8.5. Customer shall not be entitled to retain or defer payment of any sums due to ICU Medical hereunder on account of any right to counterclaim or set-off which it may allege against ICU Medical.
- 8.6. ICU Medical reserves the right to change the terms of payment offered to Customer following a suspension or cancellation of performance under the provision of clause 8.2 and 8.4 above.

9. WARRANTY

- 9.1. ICU Medical warrants that the Products:
 - 9.1.1 meet ICU Medical's specifications and will be manufactured in accordance with all current GMP and other Applicable Laws in effect at the time of manufacture;
 - 9.1.2 are free of defects in workmanship and material, and
 - 9.1.3 comply with Applicable Laws and meet stated standards and regulations.
- 9.2. ICU Medical warrants that the Services provided to Customer shall be performed in a workmanlike manner in accordance with generally accepted industry standards.
- 9.3. Warranty Periods. For repair Services, a period of ninety (90) days from performance or completion of the corresponding repair Service applies. For Products, the ICU Medical warranties shall apply as follows:
 - 9.3.1 For Infusion Pumps and Equipment (which does not include batteries), for a period of twelve (12) months from the date of shipment to Customer, except for the CADD™-Solis Ambulatory Infusion Pump, which shall have a warranty of twenty-four (24) months from the date of shipment to Customer.
 - 9.3.2 For Accessories, intravenous, irrigation, and nutritional solutions ("**Solutions**"), Disposables, Consumables, batteries for Infusion Pumps and Equipment, single patient-use products used for venous access ("**Vascular Access Products**"), and Critical Care Products, for a period of ninety (90) days from the date of delivery to Customer.
- 9.4. Warranty Obligations for Products. All warranty repairs, replacements or refunds shall be limited to product issues which are, as reasonably determined by ICU Medical, due and traceable to defects covered by the corresponding warranty for the Products. Customer's sole and exclusive remedy, and ICU Medical's sole obligation, under the warranty for the Products shall be for ICU Medical to:
 - 9.4.1 If the Products are Infusion Pumps or Equipment or Accessories, repair or replace the Products under warranty, or
 - 9.4.2 If the Products are Solutions, Consumables, Disposables, Vascular Access Products, or Critical Care Products, replace the Products under warranty, or
 - 9.4.3 If, in ICU Medical's sole opinion, the Products cannot be repaired or replaced, in particular where such actions would not be commercially reasonable or feasible, refund or credit (at ICU Medical's discretion) any sums paid by Customer to ICU Medical for the relevant Products under warranty.
- 9.5. Voiding of Warranties. The warranties set out herein shall not apply and shall be void if and to the extent that the corresponding Products and/or repair Services have been:
 - 9.5.1 damaged, misused, neglected or subjected to improper storage while in Customer's possession;
 - 9.5.2 used, handled, maintained, or implemented other than in accordance with their Product Documentation, such prohibited uses including but not limited to:
 - 9.5.2.1 re-use of single-use and/or single patient-use Products,
 - 9.5.2.2 use of single-use and/or single patient-use Products beyond the indicated maximum duration of use,
 - 9.5.2.3 use of Disposables with any Infusion Pumps or Equipment or other devices other than those explicitly authorised by ICU Medical and as stated in the Product Documentation,
 - 9.5.2.4 use of Infusion Pumps or Equipment with any consumables/disposables other than those explicitly authorised by ICU Medical and as stated in the Product Documentation,
 - 9.5.2.5 cleaning, modification, fitting or repair of Products with non-ICU Medical approved (i) replacement parts, (ii) accessories or components, or (iii) cleaning agents.
 - 9.5.2.6 altered by Customer, including the alteration, defacement or removal of serial numbers;
 - 9.5.2.7 subject to implementation, repair or attempted repair by unauthorised personnel;
 - 9.5.2.8 resold, leased or otherwise transferred possession to the benefit of a third party;
 - 9.5.2.9 damaged due to unsuitable power sources or other environmental conditions;
 - 9.5.2.10 used by Customer notwithstanding the fact that Customer knew or ought to have known the relevant Products were defective or damaged.
- 9.6. EXCEPT FOR THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ICU MEDICAL DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE REMEDIES SPECIFIED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES AND APPLY REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

10. ONWARD SALE – DISTRIBUTION; EXPORT

- 10.1. Customer may not (i) sell, distribute, convey, barter or otherwise transfer the Products purchased from ICU Medical except to individual persons in the course of providing health care services for use solely at Customer's sites or (ii) export or re-export the Products, without the prior express written agreement of ICU Medical. Customer shall not resell or distribute the Products to areas which are allocated exclusively by ICU Medical to other distributors or reserved exclusively to ICU Medical, except as authorised by ICU Medical or to the extent that the foregoing restriction is not permitted under Applicable Laws. This limitation shall not limit Customer's right to conduct passive sales in such areas to the extent such resale or distribution is otherwise permitted under Applicable Laws.
- 10.2. Intentionally omitted.
- 10.3. With respect to any Products held for resale or distribution by Customer, Customer shall implement quality management systems and protocols as follows:
 - 10.3.1 Customer shall, at its own expense, obtain and maintain any and all licenses, permits registrations, approvals and the like necessary to permit Customer to lawfully sell, distribute and deliver Products in Australia.
 - 10.3.2 Customer shall maintain true, accurate, complete and current records relating to its purchases, sales and dispositions, logistics procedures, quality systems, and storage relating to Products. For each sale, transfer or conveyance of Products, Customer shall collect and maintain the following information:
 - 10.3.3 Product Traceability, including:
 - i. Customer/Transferee Name and Full Address
 - ii. Customer's Internal End User Number
 - iii. Invoice Number and Date

- iv. Shipping Date
- v. Quantity and Unit of Measure
- vi. Company Item Number
- 10.3.4 Storage and environmental conditions
- 10.3.5 Sub-distributor management (including agreements), if applicable
- 10.3.6 Product inspection and quality control
- 10.3.7 Customer complaints and complaint management
- 10.3.8 Field action and recall management
- 10.3.9 Corrective and preventive actions (CAPA)
- 10.3.10 Management of nonconforming and returned products
- 10.3.11 Quality system
- 10.3.12 Product training, if applicable
- 10.3.13 Customer shall maintain such records for the greater of five (5) years or such other period required by applicable local, state, region, territory, government or country requirements under laws and regulations in effect and as amended during the term of the Contract. In connection with any regulatory or compliance matter, quality systems review, audit any government agency or notified body, or any quality audit pursuant to clause 12.8 below, or otherwise as required by law, Customer shall furnish copies of any distributor records requested by ICU Medical either to ICU Medical or ICU Medical's auditors, as applicable, within ten (10) business days of such request. ICU Medical shall not use any such records for the purpose of soliciting the purchase of Products by any of Customer's customer directly from ICU Medical.
- 10.3.14 In the event that Customer sells, transfers or conveys the Products to any sub-distributor or other third party prior to sale or distribution of the Products to the end user, Customer shall cause such sub-distributor or other third party to maintain the records listed above for the applicable period and to make copies of such records available to ICU Medical as described.

11. HANDLING AND STORAGE OF PRODUCTS

- 11.1. Customer shall comply with all laws and regulations applicable to the storage, handling (and distribution, if any) of the Products, including, but not limited to those applicable to the import (and potential export) of the Products and the registration or licensing of the Products prior to a potential sale.
- 11.2. Customer shall, while the Products are under its responsibility, ensure storage and transport conditions do not jeopardise compliance with the general safety and performance requirements set out in the applicable medical device laws and regulations and maintain environmental controls for the storage and transportation of products in compliance with all labelling and any written instructions from ICU Medical.
- 11.3. Where Customer is to make onward deliveries, Customer shall ensure that inventory is rotated so that delivery of Products with the shortest remaining useful life is shipped first.

12. GOOD USE - COMPLIANCE WITH MEDICAL DEVICE LAWS

- 12.1. Consumables and Disposables are for use only as explicitly authorised by ICU Medical and as stated in the Product Documentation. Customer shall use the Products only in accordance with the Product Documentation and shall procure that Customer's personnel using the Products comply with the same. Customer is responsible for ensuring all preventive maintenance and repairs of Products are completed in accordance with the corresponding Product technical service manuals.
- 12.2. At ICU Medical's option, products and Firmware requiring service shall be either: (i) repaired on site by regional Field Service Engineers ("FSE") (if locally available); or (ii) packed securely and shipped freight prepaid by Customer to an ICU Medical service facility indicated by ICU Medical, all at Customer's expense. Customer agrees to (i) clean and decontaminate all products prior to shipment to ICU Medical personnel repairing the products and to (ii) delete all user data in accordance with clause 6.6 and to act in a way that is conducive to complying with applicable data protection laws and principles. Upon completion of this repair, ICU Medical will return the products to Customer, at Customer's expense. In the event that a product (including an Infusion Pump) cannot be adequately repaired or if the cost thereof is excessive, ICU Medical shall inform Customer; and Customer shall elect to either discard, or discard and replace the product at Customer's expense. In the event of a replacement, the parties shall update, among other things, all relevant records containing the serial number of the replaced product (including the Infusion Pump). For the aforementioned purposes, the party shipping a product shall be responsible for adequately packaging the product and for the costs and risks of shipping such product to the other party.
- 12.3. Customer may from time-to-time request ICU Medical to perform additional (professional) Services for Customer and these Terms and Conditions will apply to the Contract for such Services. The parties agree to negotiate in good faith a Work Order ("WO") for these Services. Subject to the terms of the Contract, ICU Medical shall perform the Services described in each WO. In consideration for ICU Medical's performance of the Services, Customer shall pay ICU Medical the agreed amount as set forth in the applicable WO. Customer shall also pay ICU Medical for all reasonable and necessary out-of-pocket expenses incurred by ICU Medical in performing the Services, including costs of travel, food and lodging where applicable.
- 12.4. Prior to the first clinical use of any Products, Customer agrees that Customer and all of Customer's personnel using the Products are required to read all Product Documentation and complete all training provided by ICU Medical for the Products. (Online Product Documentation and training resources are available on-line and/or by contacting ICU Medical's Customer Care representatives). Additionally, Customer shall not make any changes to any Products, including Product labelling and packaging, without the prior written authorisation of ICU Medical.
- 12.5. At all times, Customer shall use ICU Medical-approved cleaning solutions and techniques for the Products (e.g. Infusion Pumps and Equipment) in accordance with Product Documentation, and clean and decontaminate all such Products (e.g. Infusion Pumps and Equipment) prior to the same being shipped to or handled by ICU Medical's personnel. Approved cleaning solutions and disinfecting agent guides are available from ICU Medical's Technical Support Centre (and on-line from the Technical Support Centre)
- 12.6. If Customer considers or has reason to believe the Products present any risk to a patient, user or other person (including to ICU Medical's personnel), Customer shall notify ICU Medical immediately. The obligation in this clause 12.6 shall apply in addition to, and not in place of, any other legal reporting obligations Customer may have.
- 12.7. If Customer receives any complaints or otherwise becomes aware of any suspected incident, defect or non-conformity of the Products, Customer shall notify ICU Medical immediately. In the event of a recall or corrective action, regardless of whether it is required by any regulatory agency or voluntarily undertaken by ICU Medical, Customer shall cooperate with the reasonable requests of ICU Medical with respect to the notification of customers and end users and the collection, shipment and storage of any returned Products. ICU Medical shall reimburse Customer for any reasonable, directly incurred out-of-pocket costs payable to any third party in connection with providing such cooperation. In addition to the foregoing, ICU Medical may, at any time immediately upon written notice to Customer, remove or cease use of Products as may be required by ICU Medical (i) in determination with applicable regulatory bodies or (ii) as determined to be required by counsel of ICU Medical in light of any suspected incident, defect or non-conformity of the Products.
- 12.8. ICU Medical has the right to conduct audits at Customer's facilities upon reasonable notice to assess compliance to agreements, regulatory requirements and quality standards. Customer shall provide access to books, records, and other documentation and facilities as part of these assessments.
- 12.9. In the event that Customer sells, transfers or conveys Products to any sub-distributor or other third party prior to sale or distribution of the Products to the end user, Customer shall cause such sub-distributor or other third party also to cooperate with any such audit by ICU Medical.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 13.1. Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party and its authorised representatives and agents ("Indemnified Party") from and against any and all liabilities, losses, or damages, expenses, demands, claims, suits or judgments, including without limitation reasonable attorney's fees and expenses, which are brought by a third party against the Indemnified Party to the extent they arise from the Indemnifying Party's: (a) breach of any provision of these Terms and Conditions; (b) negligence or willful misconduct; or (c) violation of any Applicable Laws; (d) with respect to Customer as the indemnifying Party, any death, bodily injury or property damage caused by Customer; or (e) with respect to ICU Medical as the Indemnifying Party, ICU Medical's Products causing death, bodily injury, or property damage, provided that such Products were used in accordance with the respective Product Documentation.
- 13.2. To the fullest extent permitted by Applicable Laws, ICU Medical shall not be liable for any lost profits, loss of use, business interruption, loss of data, cost of cover, nor for

any indirect, special, incidental, punitive or consequential damages of any kind, whether in contract or tort, including negligence, even if ICU Medical has been advised of the possibility of such damages. ICU Medical's aggregate liability hereunder shall be limited to the total of all sums paid by Customer to ICU Medical under the Contract(s) in the twelve (12) months period ending in the month immediately prior to the month in which any such breach, fault, defect or event giving rise to the claim(s), first became known to Customer.

14. FORCE MAJEURE

ICU Medical reserves the right to defer the date of delivery or to cancel the Contract or reduce (or otherwise allocate) the volume of the Products ordered by Customer (without liability for loss or damage of any kind to Customer), and is otherwise excused from any failure to perform its obligations hereunder, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of ICU Medical including but without limitation: acts of god; governmental actions; war or national emergency; acts of terrorism; protests; riots; civil commotion; fire; explosion; flood; epidemic; lock-outs; strikes or other labour disputes (whether or not relating to ICU Medical's or another party's workforce); restraints or delays affecting carriers; or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of ninety (90) days, Customer shall be entitled to give notice in writing to ICU Medical to terminate the Contract.

15. AUTHORITY- NOTICES - GENERAL

- 15.1. Customer represents and warrants that (a) if it is a legal entity, it is a corporate entity duly organised, validly existing and in good standing under the laws of the jurisdiction of its organisation; (b) it has all requisite power and authority to execute, deliver and perform the Contract; (c) the Contract creates legal and valid obligations binding upon Customer and enforceable in accordance with their terms; and (d) the execution, delivery and performance of the Contract by Customer has been duly authorised by all necessary corporate action and do not conflict with any agreement to which it is a party or by which it is bound, nor violate any Applicable Laws or any order or award of any court or governmental body applicable to Customer.
- 15.2. Any notices, or other information given, made or delivered to either party hereunder shall be sufficient if personally delivered, mailed, or sent by electronic transmission to the address of such party set forth on the Order Confirmation.
- 15.3. Each right or remedy of ICU Medical under the Contract is without prejudice to any other right or remedy of ICU Medical whether under the Contract or not.
- 15.4. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.5. Failure or delay by ICU Medical in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.6. Any waiver by ICU Medical of any breach of, or any default under, any provision of the Contract by Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.7. A person who is not a party to the Contract has no right to enforce any term of the Contract.
- 15.8. ICU Medical may assign the Contract or any part of it to any person, firm or company.
- 15.9. Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of ICU Medical.
- 15.10. These Terms and Conditions constitute the entire understanding and agreement between ICU Medical and Customer concerning the subject matter hereof, and supersede all prior negotiations, agreements and understandings between ICU Medical and Customer, whether oral or in writing, concerning the subject matter thereof. Except for terms identifying Products ordered and their quantities, no additional terms, contained in any purchase order, acknowledgment form, or other document of Customer shall be binding on ICU Medical.
- 15.11. Neither party shall make any press or other public announcement in relation to its contractual relationship with the other without its prior written consent, not to be unreasonably withheld or delayed; provided that ICU Medical shall be permitted to make a reasonable public announcement upon advance written notice to Customer, and provided further that ICU Medical deems while acting in good faith that such public announcement is necessary for ICU Medical to comply with its securities and exchange laws and/or other similar regulations. Following the date of the Contract, and irrespective of any dispute that may arise in the future, the parties agree that they will not disparage, criticise, or make statements which are negative, detrimental, or injurious to the other to any individual, entity or body. Customer shall provide to ICU Medical in a timely manner any information necessary for ICU Medical to fulfil any obligations of disclosure under any Applicable Laws.

16. LAW AND JURISDICTION; COMPLIANCE

- 16.1. The construction, validity and performance of these Terms and Conditions, the Contract and matters pertaining thereto shall be governed in all respects by the laws of New South Wales and the Courts of New South Wales shall have exclusive jurisdiction to settle any action brought in connection therewith.
- 16.2. Each party shall:
 - 16.2.1 comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**");
 - 16.2.2 have and maintain in place throughout the term of the Contract its own policies and procedures, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 16.2.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Contract; and
 - 16.2.4 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and each party warrants that it has no foreign public officials as officers, employees or direct or indirect owners on commencement of any Contract).
- 16.3. Each party understands the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the US Foreign Corrupt Practices Act and the UK Bribery Act 2010 and agrees to comply with the same.
- 16.4. Customer acknowledges and agrees that the ultimate destination of the Products sold hereunder is in the country where ICU Medical is incorporated, unless otherwise stated in writing. Customer shall not authorise or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to transfer, export, re-export, or import any of the Products to any person without complying with applicable export, import, and economic sanctions laws and regulations of the country where ICU Medical is incorporated, the United States or any other applicable jurisdictions. Customer agrees to notify ICU Medical immediately if Customer or the end-user (if not Customer and known) is specifically or otherwise effectively listed on any relevant government restricted or prohibited parties lists, including the Denied Persons List, Entity List, Sectoral Sanctions Identifications List, or Specially Designated Nationals List, or if the export privileges of Customer or any relevant third party whom Customer will involve in this transaction (including its customer, if applicable), are otherwise denied, suspended or revoked in whole or in part by any relevant government authority. Customer shall ensure that the Products are not used in relation to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons. Customer shall indemnify ICU Medical against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Customer's breach of this clause 16.4.
- 16.5. Breach of condition 16.3, 16.4, or 16.5 by a party shall entitle the other party to terminate the Contract with immediate effect.
- 16.6. ICU Medical and its affiliates are committed to conducting their business ethically and lawfully. To that end ICU Medical, through its ultimate parent, ICU Medical, Inc., maintains a Code of Conduct and Business Ethics and mechanism for reporting unethical or unlawful conduct. ICU Medical expects that Customer will also conduct its business ethically and lawfully. If Customer has cause to believe that ICU Medical, or any employee or agent of ICU Medical, has behaved unethically or unlawfully under, or in connection with this Agreement, Customer is encouraged to report such behaviour to ICU Medical or to ICU Medical, Inc. A copy of ICU Medical, Inc.'s Code of Conduct and Business Ethics and mechanisms for making such reports are available at <https://www.icumed.com/about-us/corporate-policies-and-disclosures/code-of-conduct-and-business-ethics>
- 16.7. Customer shall not, directly, or indirectly, in connection with any Contract and the business resulting from it, offer, pay, promise to pay, or authorise the giving of money or anything of value to any government official, to any political party or official thereof or to any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any government official, to any political party or official thereof, or to any candidate to political office, for the purpose of:
 - 16.7.1 influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or

its official functions; or

- 16.7.2 inducing such official, political party, party official, or candidate to use his or its influence with the government to affect or influence any act or decision of such government or instrumentality, in order to assist ICU Medical in obtaining or retaining business for or with or directing business to ICU Medical.
- Breach of this condition 16.7 by Customer shall entitle ICU Medical to terminate all Contracts with immediate effect.

17. CONFIDENTIALITY- DATA PROTECTION

- 17.1. Each party agrees: (a) to keep confidential all Confidential Information disclosed to it by the other party; (b) not to use the other party's Confidential Information except to the extent necessary for the purposes of the Contract; and (c) to protect the confidentiality of the other party's Confidential Information in the same manner as it protects the confidentiality of its own Confidential Information. For purposes of these Terms and Conditions, Confidential Information includes any non-public technical or business information of either party, including any information relating to a party's techniques, algorithms, know-how, research, engineering, designs, financial information including pricing, customer lists, business forecasts, marketing plans, trade secrets and information or any materials marked confidential. Confidential Information shall also include any discussions or documentation relating to potential future products, software, features, and/or services. The obligations contained in this clause 17.1 shall survive and continue in effect after termination or expiry of any Contract.
- 17.2. The parties acknowledge that each party is a separate and independent controller of personal data disclosed by each party to the other pursuant to the Contract. In no event will the parties process the personal data as joint controllers.
- 17.3. Customer acknowledges that Customer Data Files are prepared solely by or for Customer and for its specific purposes. Customer shall be the sole owner of Customer Data Files and Customer retains all rights, title, and interest thereto.
- 17.4. Each party shall be individually and separately responsible for complying with the obligations that apply to it as a controller under applicable data protection laws (including, in the case of Customer, the obligations set out in clause 6.6, in particular (and without limitation) all necessary transparency and lawfulness requirements).
- 17.5. Customer acknowledges that, when ICU Medical provides support in the creation or management of products such as Infusion Pumps using Customer Data Files, Customer understands and agrees that it has sole control over, and sole responsibility for, such files. In the event ICU Medical obtains access to any such files, it shall keep them private and secure in accordance with Applicable Laws and the Contract. Except as otherwise stated herein, ICU Medical will have no responsibility or liability for any claim, liability, loss, damage, cost or expense arising out of the Customer Data Files, their content and/or their use. ICU Medical and its affiliates are granted the following rights by Customer; (i) the rights to collect and process Customer Data Files for the purposes of maintaining a large database of anonymous data processed by its products and Software, as applicable, (including anonymised and de-identified Customer Data Files), and (ii) to access, use, process, and disclose the Customer Data Files as may be required for ICU Medical to comply with laws applicable to medical infusion pump manufacturers and for the purposes of providing maintenance and support and other Services to Customer, for complaint investigation, handling and reporting, and for maintaining, developing and improving ICU Medical's products and services.

[END]