

## Terms & Conditions

### GENERAL

The terms and conditions of the purchase and sale of goods from Kingfisher Medical, Inc., an Ohio corporation ("Kingfisher Medical"), to you shall be as set forth herein (these "Terms and Conditions"). In the event of a conflict between any of these Terms and Conditions and (1) any provision of any purchase order issued by you, (2) any acceptance by you of any offer or quote from Kingfisher Medical, or (3) any other communication from or by you, written or verbal, relating to any such purchase and sale, these Terms and Conditions shall control. Kingfisher Medical's acceptance of any order from you is expressly conditioned upon your assent to each of these Terms and Conditions, and Kingfisher Medical objects to all additions, exceptions, or changes to these Terms and Conditions, whether contained in any of your pre-printed forms or elsewhere, except to the extent any such additions, exceptions, or changes are approved by Kingfisher Medical in writing. The validity and interpretation of the terms and conditions of any purchase and sale of goods transaction between Kingfisher Medical and you shall be governed by the laws of the State of Ohio, without regard to its conflicts of law provisions.

### PAYMENT AND PRICE

The total price payable for the goods will be stipulated at the time you place your order, whether or not the order has been confirmed. Kingfisher Medical is entitled to make adjustments to the price, whether or not the order has been confirmed, to take account of any increase in our supplier's prices, or the imposition of any taxes or duties, or if due to an error or omission the price published for the goods is incorrect. Kingfisher Medical will inform you of the correct price and give you the opportunity to cancel the order.

You hereby grant Kingfisher Medical a security interest in the goods supplied to you by Kingfisher Medical and in the proceeds thereof (such goods and proceeds, collectively, the "Collateral"). You agree, upon request, to execute any necessary documents (including without limitation financing statements and a separate security agreement) and otherwise cooperate timely and in good faith with Kingfisher Medical's reasonable efforts to perfect any security interest in Collateral contemplated hereby. In the event you do not do so, you hereby grant Kingfisher Medical an irrevocable special power of attorney to execute such documents in your name and on your behalf. If you default on your payment obligations to Kingfisher Medical, your interest in and title to the Collateral reverts to Kingfisher Medical, which shall then have the right to re-possess the Collateral through any lawful means; provided, however, that risk of loss of the Collateral shall remain with you unless and until Kingfisher Medical takes actual possession of Collateral.

### SHIPPING

Orders are usually shipped within 1 week of receipt. Special items may take longer. If we are temporarily out of stock, items will be back-ordered and shipped upon receipt. Continental United States orders are shipped via ground transportation.

As soon as Kingfisher Medical has delivered the goods to the agreed delivery address you will be responsible for them. We will only deliver goods to the address on the order unless agreed in writing. Kingfisher Medical shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of fire, labor disputes, accident, acts of civil or military authorities, acts of God or from any other cause beyond our control.

### PRODUCT RETURN POLICY

Prior to returning a product, please contact the Kingfisher Medical Customer Service Department at 614 568 4000 to obtain a return authorization number. This will help us to expedite your return and allow us to give you the proper credit. Once you have received your authorization number please follow the return policy guidelines.

All pharmaceuticals, items with expiration dates, and items that are subject to FDA tracking requirements are not returnable. Kingfisher Medical will only accept returns for pharmaceuticals if it was an error on our part. If so, please contact us within 5 days of receipt of the product to obtain an RMA number.

If Kingfisher Medical makes an error in fulfilling or shipping your order, we will promptly rectify the mistake at no cost to you. If we have made an error and you wish to return the product(s) to us, notification must be received within 5 days of receipt.

Following the initial error notification, please follow the return policy guidelines:

Non-returnable Items Include:

- A product that is a special order.
- Items that have been marked or engraved.
- Items returned with broken packaging or not in original packaging.
- Customized items, any sterile product that has been opened or items determined by Kingfisher Medical not to be in resalable condition.
- Product that is more than 60 days older than the invoice date.

Return Policy Guidelines:

- Items returned within 30 days of the invoice date will not be subject to a restocking fee.
- Items returned 31 – 60 days than the invoice date will be subject to a 15% restocking fee.
- Items older than 60 days from the invoice date will not be accepted in our warehouse and will be returned to the customer.
- Please write the RMA number clearly on the package label.
- Enclose a copy of the original invoice or packing list in the box.
- Send the package freight prepaid.
- Returns must be received by Kingfisher Medical within 60 days of issuance of RMA number.

### INSOLVENCY

In the event of the Insolvency (as defined below) of Kingfisher Medical, you may cancel any unfilled orders, and any outstanding amounts owed by you to Kingfisher Medical shall immediately and automatically become due and payable without any further action required on the part of Kingfisher Medical.

In the event of your Insolvency, Kingfisher Medical shall have all the rights of a secured party, whether at law or in equity, with respect to any of your unfulfilled payment or other obligations to Kingfisher Medical.

A party, whether you or Kingfisher Medical, shall be deemed to have suffered "Insolvency" upon the occurrence of any one or more of the following events: (1) a bankruptcy petition is filed against such party and is not dismissed within 30 days from the date of such filing; (2) a receiver, trustee, or other custodian is appointed for all or any substantial portion of the assets or business of such party and is not dismissed within 30 days from the date of such appointment; (3) a voluntary petition of bankruptcy is filed in any court of competent jurisdiction by such party; (4) such party suffers or permits the entry of an order adjudicating it to be bankrupt or insolvent and such order is not discharged within 30 days; or (5) such party enters into an agreement with its creditors or makes an assignment for the benefit of its creditors.

### TYPOGRAPHICAL ERRORS

In the event a product is listed at an incorrect price due to typographical error or error in pricing information, taxes or duty changes, we shall have the right to refuse or cancel any orders listed at the incorrect price whether or not the order has been confirmed. If you have already been charged and we subsequently cancel your order, we will immediately issue a credit for the invoiced but unpaid amounts or, if you have already paid, give you a full refund.

### LIMITATION OF LIABILITY

KINGFISHER MEDICAL DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES WILL KINGFISHER MEDICAL BE LIABLE FOR: (1) ANY GOODS DAMAGED IN TRANSIT UNLESS YOU REPORT SUCH DAMAGE WITHIN 48 HOURS; (2) DEFECTS OR DAMAGE RESULTING FROM ORDINARY WEAR AND TEAR, NEGLIGENCE, IMPROPER USE, OR FAILURE TO FOLLOW INSTRUCTIONS; (3) ADJUSTMENT, ALTERATION, ADAPTATION, OR REPAIR OF ANY GOODS (EXCEPT TO THE EXTENT MADE BY KINGFISHER MEDICAL); (4) THE SUITABILITY OR UNSUITABILITY OF ANY GOODS FOR A PARTICULAR PURPOSE OR USE, WHETHER OR NOT ANY SUCH PURPOSE OR USE WAS COMMUNICATED BY YOU TO KINGFISHER MEDICAL; OR (5) ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS. THESE LIMITATIONS APPLY EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF RECOVERING THESE DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

### CLAIMS

All claims for damage occurring in transit must be made upon receipt of goods by customer directly to the carrier. Please save all boxes and packing material. All shipment errors must be reported immediately upon receipt of goods.

### INVOICING; PAYMENT IN ADVANCE; FAILURE TO TAKE DELIVERY

Kingfisher Medical will invoice you at the time of shipment. Unless otherwise provided in Kingfisher Medical's quote or order confirmation/acknowledgement payment of the invoiced amount is due within 30 days and will be credited when the funds paid are available to Kingfisher Medical without any restriction. If at any time, in Kingfisher Medical's sole discretion, your credit is impaired, Kingfisher Medical shall have the right to require payment in advance before making any further shipments. If you fail, within a reasonable time, to make such payment in advance, or if you fail to make payment when due, Kingfisher Medical shall have the right, at its option, to suspend further shipments until such default is corrected. If you fail to take delivery on any scheduled delivery date, you will be billed at that time and on the first of each month thereafter for reasonable administration and storage costs. For each such shipment of undelivered goods, you agree that: (1) you have made a fixed commitment to purchase such goods; (2) risk of ownership for such goods shall be borne by you; (3) such goods shall be on a bill-and-hold basis for legitimate business purposes; and (4) if no delivery date is determined at the time of billing, Kingfisher Medical shall have the right to ship such goods to you within four (4) months after billing.