

1. SCOPE

The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Faxitron Bioptics, Inc. ("Faxitron Bioptics"), and all sales made by Faxitron Bioptics except to the extent the Terms conflict with a separate sales agreement signed by each of Faxitron Bioptics and Customer. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Customer. In such case, the Terms contained herein shall govern, and acceptance of Customer's order is conditioned upon Customer's acceptance of the terms and conditions herein, irrespective of whether the Customer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of Products ordered hereunder. Faxitron Bioptics' failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of Faxitron Bioptics before becoming binding on either party.

2. PRICE, TAXES AND QUOTATIONS

Any order that can be cancelled and rescheduled pursuant to paragraph 7(a) of these Terms is subject to a price change immediately upon written notice from Faxitron Bioptics. All prices are exclusive of any present or future sales, use, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any Product. Such taxes, when applicable, shall be paid by Customer unless Customer provides a valid tax exemption certificate. The prices quoted by Faxitron Bioptics are those current at the date of quotation and shall be subject to variation by Faxitron Bioptics immediately upon written notice.

3. DELIVERY

All Product sales are Ex-Works (EXW, Incoterms 2000). Faxitron Bioptics may deliver Products in one or more shipments and invoice each shipment separately. Faxitron Bioptics reserves the right to ship Product in advance of the agreed shipping date. Delivery time is not of the essence. Except as specified in paragraph 7(b) of these Terms, Faxitron Bioptics does not accept liability for any loss arising from delay in delivery of Products.

4. PAYMENT TERMS

Payment terms shall be net thirty (30) days from the date of invoice. Customer agrees to pay interest of 1.5% per month on all past due amounts. All payments are to be in United States Dollars. For contracts outside of the US, Faxitron Bioptics may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Faxitron Bioptics. In the event that Faxitron Bioptics is required to bring legal action to collect delinquent accounts, Customer agrees to pay reasonable attorneys' fees, costs of suit and other costs of collection incurred by or on behalf of Faxitron Bioptics.

5. TRANSFER OF TITLE

Title to Products will transfer from Faxitron Bioptics to the Customer only upon receipt by Faxitron Bioptics of payment in full for the Products. Until such time as the title to the Products passes to the Customer, Faxitron Bioptics may, without prejudice to any other rights or remedies available to it, repossess any or all of the Products. For the purpose of so taking possession, the Customer gives Faxitron Bioptics irrevocable authority without notice to enter the Customer's premises for the purpose of collecting and removing the Products.

6. NON-CONFORMING DELIVERY AND RISK OF LOSS

Customer shall notify Faxitron Bioptics of any visible defects, quantity shortages or incorrect Product shipments within ten (10) days of receipt of the shipment. Failure to notify Faxitron Bioptics in writing of any visible defects in the Product, quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any right to return Products on the basis of visible defects, quantity shortages or incorrect shipments, subject to Customer's rights under paragraph 8 of these Terms. Risk of loss shall pass to Customer as soon as the Products have been placed with a transport agent.

7. ORDER CANCELLATION

(a) Customer's Cancellation for Convenience: Customer may cancel any order for convenience on the following terms: (i) For standard Products, Customer may cancel or reschedule delivery of a Product without penalty by notice to Faxitron Bioptics if the change is made more than thirty (30) days prior to the Confirmed Shipping Date (as specified in Faxitron Bioptics' Order Acknowledgement or other document); cancellations within 30 days of a Confirmed Shipping Date must be approved in writing by a Faxitron Bioptics' sales manager and may be subject to special charges; and (ii) For nonstandard parts or custom Products, Customer may cancel or reschedule delivery by notice to Faxitron Bioptics more than ninety (90) days prior to the Confirmed Shipping Date, except that Customer must accept delivery of all such Products which are completed at the time of cancellation or rescheduling. Customer shall pay a cancellation fee for nonstandard parts or Products which are in work-in-process inventory at the time of cancellation or rescheduling equal to the completed percentage of the Product multiplied by the price of the finished Product, and Customer also shall pay promptly to Faxitron Bioptics the costs of settling and paying claims arising out of the termination of work under Faxitron Bioptics' subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation.

(b) Customer's Cancellation for Default: Upon written notice to Faxitron Bioptics, any order may be cancelled in whole or in part in accordance with the terms hereof because of Faxitron Bioptics' failure to timely ship Product on or before the Confirmed Shipping Date (this failure hereinafter called "Late Shipping"). Cancellation by Customer for Late Shipping shall be effective only if Faxitron Bioptics' fails to correct such Late Shipping within thirty (30) days after receipt by Faxitron Bioptics of written notice of such Late Shipping. Upon cancellation, Customer, as its sole remedy, may recover from Faxitron Bioptics as damages the lesser of (a) the difference between cost of procurement from another source (cover) and the contract price, less expenses saved as a consequence of Faxitron Bioptics' Late Shipping, and (b) ten percent (10%) of the Product price for such Late Shipping Product.

(c) Faxitron Bioptics' Cancellation: Faxitron Bioptics shall have the right to cancel any unfulfilled order without notice to Customer in the event that Customer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business or in the event that Customer has failed to timely pay any amount owed to Faxitron Bioptics. Any order that can be cancelled or rescheduled by Customer pursuant to paragraph 7(a) of these Terms may be cancelled or rescheduled by Faxitron Bioptics if notice is given to Customer.

8. LIMITED WARRANTY

Except as stated below, Faxitron Bioptics warrants that the Products manufactured and supplied by Faxitron Bioptics to Customer will be free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of shipment. Faxitron Bioptics warrants components supplied by others and incorporated into the Products only to the extent of the express warranties made by the suppliers of such components. This limited warranty extends only to the original end user purchaser of Products and does not cover normal wear and tear of parts or damage or loss resulting from misuse, accident, neglect, improper installation or maintenance. In order to qualify for this warranty coverage, the Products must be installed, used and maintained strictly in accordance with the instructions and recommendations contained in Faxitron Bioptics' literature. If Customer claims that the Products do not conform to this limited warranty, it must, at Faxitron Bioptics' option, either return any defective part(s) to Faxitron Bioptics for inspection with freight or other transportation costs prepaid or allow Faxitron Bioptics' personnel to inspect the Faxitron Bioptics products at the site of their installation or use. If, after inspection, Faxitron Bioptics determines that the Products do not conform to this limited warranty, Faxitron Bioptics, in its sole discretion, will choose to (a) repair the defective Product or part without charge, (b) replace the defective Product or part without charge, or (c) repay the purchase price paid by Customer for such defective Product or part. The warranty period for repaired or replaced components shall be the remainder of the original warranty period.

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Standard Terms & Conditions of Sale V 1.2

THE WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY PROVIDED BY FAXITRON BIOPTICS AND IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES OF QUALITY, AND OF ALL OTHER LIABILITIES AND OBLIGATIONS, ALL OF WHICH ARE HEREBY DISCLAIMED. CUSTOMER HEREBY WAIVES ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE. NOTWITHSTANDING ANY PRIOR STATEMENT, WRITTEN OR ORAL, FAXITRON BIOPTICS MAKES NO OTHER WARRANTIES REGARDING THE QUALITIES OF ITS PRODUCTS OR THE MATERIALS INCORPORATED THEREIN.

9. LIMITED LIABILITY

UNDER NO CIRCUMSTANCES WILL FAXITRON BIOPTICS BE LIABLE OR RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING DAMAGES FROM LOSS OF BUSINESS, LOST PROFITS, HARM TO REPUTATION OR GOODWILL, OR THE LIKE), SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES, UNDER ANY LEGAL THEORY (INCLUDING TORT, WARRANTY, CONTRACT, PRODUCT LIABILITY OR OTHERWISE), THAT ARISE OUT OF OR RELATE TO THESE TERMS OR THE PRODUCTS. IF FAXITRON BIOPTICS HAS ANY LIABILITY TO CUSTOMER WHATSOEVER, FAXITRON BIOPTICS LIABILITY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO IT FOR ANY DEFICIENT PRODUCT OR SERVICES.

10. PATENTS

(a) Indemnification: Subject to the limitations herein, Faxitron Bioptics agrees to defend, at its expense, Customer in any suit brought against Customer alleging that the Products hereunder and not combined with other equipment, infringe upon any patents owned or held by others, provided Faxitron Bioptics is promptly notified, given the assistance required at Faxitron Bioptics' expense, and permitted to direct the defense of such claim. Faxitron Bioptics' obligation to defend is wholly conditioned upon Customer's immediate notification to Faxitron Bioptics of any notice of alleged infringement and Customer's full cooperation with the defense of any such claim. Further, Faxitron Bioptics will pay any judgment of a court of last resort, but shall not be responsible for settlement or costs incurred without its consent. If use of such Products is enjoined, or in the event Faxitron Bioptics desires to minimize its liability hereunder, Faxitron Bioptics may exercise any of the following options:

- (a) Substitute other equally suitable Products.
- (b) Modify the Products so they no longer infringe.
- (c) Obtain for Customer the right to continue their use.
- (d) Take back the Products and refund to Customer an amount equal to its purchase price for the Products less depreciation, which shall be determined on a five (5) year straight line basis.

The foregoing states the entire liability of Faxitron Bioptics for patent infringement. Exercise by Faxitron Bioptics of any of the foregoing options fully relieves Faxitron Bioptics of all liabilities and obligations. No indemnity shall apply to Products made or modified to Customer's or other's specifications or design. In no event shall Faxitron Bioptics' liability for such damages and costs (including legal costs) exceed the contractual value of the Products or services that are the subject of the lawsuit.

(b) Faxitron Bioptics Retains its Intellectual Property: The sale of any Products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the Products with other equipment data or programs. Faxitron Bioptics retains the copyright in all documents, catalogs and plans supplied to Customer pursuant to or ancillary to these Terms. Customer shall obtain no interest in any mask or other tooling used in the production of any Faxitron Bioptics' Product.

11. LIFE SUPPORT

Faxitron Bioptics' Products are not authorized for use as critical components in life support devices or systems without the express written approval of an officer of Faxitron Bioptics. As used herein: (a) life support devices or systems are devices which (i) are intended for surgical implant into the body, or (ii) directly support or sustain life and whose failure to perform when properly used can be reasonably expected to result in significant injury to the user; (b) a critical component is any component in a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system or to affect its safety or effectiveness.

12. CONFIDENTIAL INFORMATION

Except as required by law, Customer shall not use, divulge or communicate to any third party any information of Faxitron Bioptics it reasonably knows to be confidential.

13. FORCE MAJEURE

Faxitron Bioptics shall not be liable for any damages or penalties for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Customer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Faxitron Bioptics. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

14. EXPORT REGULATIONS

Customer agrees to comply fully with all laws and regulations concerning the purchase and sale of Products. In particular, Customer agrees to comply with the Export Administration Regulations of the United States in so far as they apply to the sale of Products. The Products are intended for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

15. NOTICES

Any notice hereunder shall be deemed to have been delivered if sent by prepaid first class mail to the party concerned at its last known address. Notice to Faxitron Bioptics shall be to Faxitron Bioptics, LLC, Attn: Company Secretary, 3440 E Britannia Drive, Suite 150, Tucson, Arizona, 85706, USA.

16. WAIVER, COMPLETE CONTRACT

Failure by Faxitron Bioptics to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. These Terms supersede and replace any prior agreement between the parties, constitute the complete and exclusive statement of the terms of the contract between the parties hereto with reference to the subject matter hereof, and no statements or agreements, oral or written, made prior to or at the signing hereof shall vary or modify the written terms hereof.

17. APPLICABLE LAW

These Terms shall be governed by and construed under the laws of the State of Arizona, USA, including the Uniform Commercial Code as enacted in that state. The parties agree to exclude application of the U.N. Convention on Contracts for International Sale of Goods.

18. ARBITRATION

Any dispute, controversy or claim arising out of or relating to these Terms, or the breach, termination or invalidity thereof, shall be settled by binding arbitration before a single arbitrator under the American Arbitration Association Rules then in effect. The appointing authority shall be the American Arbitration Association. The place of arbitration shall be Tucson, State of Arizona, and the arbitration shall be conducted in the English language.

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