

DWL USA, Inc. | Standard Terms & Conditions of Sale

1. SUPPLY OF GOODS: DWL USA, Inc. agrees with the party to whom DWL USA supplies goods ("Customer") that, unless expressly amended in writing by DWL USA, the goods are only supplied by DWL USA on these Terms and Conditions ("Contract"). This Contract shall supersede all other conditions and agreements between the parties notwithstanding anything that may be implied or expressed to the contrary on the Customer's inquires, order form, or other document submitted by the Customer. Upon receipt by the Customer of these Terms and Conditions, any conduct by the Customer that confirms this transaction, including the giving of any delivery instructions or acceptance of delivery, shall be deemed to constitute acceptance by the Customer of this Contract. The terms and conditions of this Contract shall without further notice apply to all future transactions between DWL USA and the Customer whether or not this Contract is delivered or executed in the course of such transactions.

2. QUOTATION: A quotation or estimate by DWL USA does not constitute an offer and will remain valid for thirty (30) business days from the date of the quotation after which it is subject to alteration or withdrawal without further notice.

3. PRICES: Any price lists or price indications are subject to alteration at any time. Unless otherwise stated on the attached invoice by DWL USA, all prices are ex-warehouse in US Dollars and exclude the costs of delivery, installation, and taxes (including sales tax). All taxes payable will be charged to the Customer's account as of the date of invoice unless an approved tax exemption certificate or tax accreditation number is provided. DWL USA reserves the right to charge prices ruling as of the date of delivery.

4. PAYMENT: Invoices are payable in the net amount within 30 days from the date of shipment and invoice of the goods, unless otherwise agreed in writing. The above payments terms will not apply to international sales which must be made, at DWL USA's option, by telegraphic transfer at the time of placing the order to the account nominated by DWL USA or confirmed irrevocable letter of credit against documentation at the time of delivery. No discount is allowed and interest will be charged on all overdue accounts at the rate of 18% per annum calculated daily or at the maximum rate legally permissible under applicable law. At any time prior to delivery of the goods, DWL USA reserves the right to require the Customer to pay such part or whole of the contract price as DWL USA considers appropriate.

5. DELIVERY: The cost of freight, delivery, unloading, and transporting of the goods on their arrival at the agreed place of destination shall be borne by the Customer and the Customer shall reimburse DWL USA for all such costs which it incurs on the Customer's behalf. While DWL USA will use its best endeavors to deliver by the delivery date mentioned in any document, such date shall be indicative only and will not give rise to any legal obligation to supply on that date. DWL USA reserves the right to deliver using any mode of transport and/or by installments. Each installment shall be deemed to be sold under a separate contract, provided always however that DWL USA may suspend delivery whilst payment is overdue in respect of any previous installment. The Customer is deemed to accept delivery of the goods when the goods are placed at the Customer's disposal at the agreed place of destination, namely, when the goods are available for collection at DWL USA's warehouse if sold "ex-warehouse" or, when DWL USA has loaded the goods into the charge of the agreed carrier if sold "FCA DWL USA Store," notwithstanding that delivery of the goods may be staggered or that the Customer may not have signed a receipt for the goods. If the Customer is unable or fails to accept delivery of the goods, DWL USA may deliver the goods to a place of storage nominated by the Customer and failing such nomination to a place nominated by DWL USA and the Customer shall be liable for all costs incurred by DWL USA in transporting the goods to, and storage at, such nominated place. Such delivery shall, for the purposes of Clause 5(c) above, be deemed to be delivered.

6. CLAIMS & RETURNS: Upon delivery of the goods or any part thereof, the Customer will inspect the goods and within fourteen (14) days deliver to DWL USA notice in writing of any claim against DWL USA. If no such notice is received by DWL USA within the said period of fourteen (14) days, the goods shall be deemed to be in all respects in accordance with the order and the Customer shall be bound to accept and pay for the same accordingly and, subject to clause 9, the Customer shall have no claims against DWL USA. The failure of any delivery or the rejection by the Customer of any goods delivered or part thereof shall not vitiate or affect this Contract regarding the balance of the goods to be delivered and Payment thereof. Other than as set out in this Clause 6, no goods may be returned to DWL USA without the prior written approval of DWL USA and then only on such terms as DWL USA may require.

7. DELAY: DWL USA is not liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of manufacturer/supplier to supply whole or part of the goods to DWL USA, prohibitions or restrictions under any law or by any government or authority, inability to obtain any necessary export license or import license, or any act of force majeure including, but without limitation, any act of war, fire, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, strikes or lockouts, shortage of labor, or due to any other circumstances, whether of a similar nature or beyond the control of the DWL USA. In the event of any such failure or delay, DWL USA may, at its discretion, terminate whole or any part of any order or postpone its performance.

8. RISK AND TITLE: Until payment in full of all amounts owing by the Customer to DWL USA on any account whatsoever: The title in the goods shall not pass to the Customer and the Customer shall keep the goods as bailee for DWL USA. The goods shall nevertheless be at the risk of the Customer from the time of delivery, and the Customer shall indemnify DWL USA against all loss or damage to the goods whatsoever occurring after such time. The Customer must store the goods so as to clearly identify them as the property of DWL USA, and ensure that the Customer is not, nor is deemed to be, a reputed owner of the goods. The Customer irrevocably authorizes DWL USA or its servants or agents to enter the Customer's premises and recover and dispose of the goods and the Customer will not make any claim against DWL USA in respect of such entry or disposal. The Customer also appoints DWL USA as its attorney to do all such acts and things as are necessary to enable DWL USA to recover and dispose of the goods. The Customer shall hold the goods in a fiduciary capacity and may only sell the goods in the ordinary course of business as agent for DWL USA. Furthermore, the Customer must hold the proceeds of any such sale in a fiduciary capacity for, and to the account of, DWL USA and the Customer must take all steps necessary to keep such proceeds separate from other monies and pay over such proceeds to DWL USA to the extent necessary to discharge in full the Customers indebtedness to DWL USA.

9. GUARANTEE AND WARRANTIES: All parts manufactured by Compumedics Germany GmbH / DWL and supplied by DWL USA (excluding software, cables, and third party accessories, or unless otherwise stated on the attached invoice) carry a guarantee against defects in materials and workmanship for a period of twelve (12) months from the date of delivery ("Guarantee Period"), fair wear and tear excepted and, subject always to the other provisions of this Clause 9. At DWL USA's option, defective goods may be replaced, repaired, or refunded in accordance with this subclause. In order to qualify for this guarantee, a claim must be made in writing to and received by DWL USA within the Guarantee Period and, must be returned at the Customer's cost in the manner directed by DWL USA failing which, this guarantee shall not apply and DWL USA shall be discharged from all liability under this sub-clause. Cables, consumables, and accessories will carry a 90-day warranty or the third party warranty, whichever is less. Any advice, recommendations, information, assistance, or service provided by DWL USA in relation to the goods or their use will be given in good faith. DWL USA only undertakes that the goods sold pursuant to this Contract will correspond to the description (if any) in the latest issue of the manufacturer's/supplier's applicable label, data sheet, or brochure relating to that class of goods and that the Customer will be given a good legal title. The Customer shall be responsible for ensuring the fitness of the goods for the Customer's particular purpose. To the maximum extent permitted by applicable law, DWL USA disclaims all other warranties, express,

implied, statutory, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose, or based on course of dealing and usage of trade. DWL USA's liability to the Customer for breach of any non-excludable right or pursuant to any express warranty of this Contract, will be limited, insofar as the same may legally be done, at DWL USA's option to: Refunding the price of the goods in respect of which the breach occurred, or the repair or replacement of those goods; or in relation to the provision of advice or services by DWL USA, refunding the price of such advice or services in respect of which the breach occurred, or the provision of such advice or services again.

Notwithstanding any other provision of this Contract, DWL USA will not be liable for any special, indirect, punitive, incidental, or consequential loss or damages (including any lost profits) whether arising from negligence, breach of contract, statute, or otherwise in connection with or arising out of or in any way related to the goods, or the provision by DWL USA of advice or services as the case may be, pursuant to this Contract. Except as otherwise stated in this Contract, the Customer undertakes that it will not at any time seek to rely on any term, condition, warranty, guarantee, or representation as against DWL USA or any officer, servant, contractor, or agent of DWL USA. The Customer is put on notice that no officer or employee of DWL USA is authorized or permitted to make or give any undertaking, warranty, statement, assertion, admission, or other representation in relation to goods or services supplied by DWL USA other than in accordance with this Contract except with the prior written authority of the Managing Director of DWL USA or his authorized representative. Only authorized service personnel and DWL USA are allowed to repair products and only original spare parts are used. Unauthorized repairs or modifications to the products by unauthorized third personnel release DWL USA from their liability. During the warranty period, this leads to the expiration of the warranty.

10. INDEMNIFICATION: Customer shall indemnify, defend, and hold DWL USA harmless from and against any and all claims, actions, losses, damages, demands, liabilities, costs and expenses, including reasonable attorney's fees and expenses, whether a suit or other proceeding is initiated or not, which may arise from, but not limited to, the following events: (1) representations or misrepresentations made by Customer; (2) any neglect by Customer or end-users; (3) Customer's or end-users' use of goods not in compliance with published specifications thereto or not for their intended purposes; (4) Customer's or end users modifications or alterations of goods; (5) damage from Customer or end-user misuse, or operation outside of the environmental specifications for the goods; or (6) any other act, or failure to act, not in accordance with the terms and conditions of this Agreement by Customer, or any other breach by Customer of any representation, warranties, or covenants of Customer under this Agreement.

11. TERMINATION: If the Customer fails to comply with any of the terms of this Contract or fails to make payment for goods as and when they fall due; or if the Customer shall become bankrupt or commit any act of bankruptcy; or if the Customer (being a company) goes into liquidation or provisional liquidation, has a receiver appointed; or, if in the opinion of DWL USA, the Customer is no longer able to meet its debts as and when they fall due, DWL USA may at its discretion suspend or postpone any delivery without being liable for any loss or damage suffered by the Customer in that regard, or terminate this Contract by notice in writing to the Customer. Upon termination, DWL USA shall be entitled to recover all costs incurred by it including, without limitation, payment for all deliveries already made and the cost of materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the goods being purchased by Customer). Termination pursuant to this clause shall not affect any other rights or remedies that DWL USA may have under law or, this Contract.

12. PALLETS/CONTAINERS: Any pallets or containers owned by DWL USA and used for the delivery of goods remain the sole property of DWL USA and are to be returned in good order and condition to DWL USA or any of its agents upon its request as directed and at the Customer's expense. In the event that pallets or containers in which goods are delivered are not owned by DWL USA ("Hire Equipment"), the Customer will return the Hire Equipment to DWL USA in good order and condition and at the Customer's expense within one (1) month of delivery and the Customer shall indemnify DWL USA for all liability, costs, and damages however caused relating to that Hire Equipment. Any pallets or containers not returned in accordance with this clause, may, at the election of DWL USA, be deemed to be purchased by the Customer and shall then be promptly paid for in full by the Customer at a value determined by DWL USA.

13. REALES AND USES: Customers are responsible for obtaining, at their expense, any licenses, permits, or authorizations required under any regulations in force within the country of export and destination of the goods. Particularly, United States' Federal law may restrict the sale of certain of DWL USA's goods to registered and licensed physicians. DWL USA reserves the right to refuse to supply or cancel this Contract at any time in whole or in part if it considers that the Customer has not provided satisfactory evidence of any such applicable licenses, permits, or authorizations. On any resale, the Customer must ensure that the transferee holds all applicable licenses and, will inform that transferee of such restrictions. Systems comprising DWL USA's goods must be sold as complete systems. Parts must not be sold separately.

14. SOFTWARE AND SERVICES: Any software supplied by DWL USA shall be subject to and on the conditions set out in DWL USA's End-User License Agreement. Any services performed by DWL USA in connection with or in any way associated with the supply of goods shall be subject to and on the conditions set out in DWL USA's Service Contract. Notwithstanding, any services provided to the Customer are subject to a charge by DWL USA and DWL USA reserves the right at any time to refuse to perform any services.

15. INTELLECTUAL PROPERTY: Goods offered for sale by DWL USA may be the subject of patents, registered designs, trademarks, or other proprietary and legal protection and the Customer will immediately notify.

DWL USA of any suspected infringement of such rights. To the best of DWL USA's knowledge, goods sold do not infringe any patent, trademark, registered design, or copyright of any third party.

16. GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the State of Delaware. The rights and obligations of the parties under this Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).

17. CONSENT TO JURISDICTION: Any legal suit or action arising out of or relating to this Agreement may be instituted in a state or federal court of competent jurisdiction in Delaware. Customer waives any objection which it may now otherwise have or hereafter have to the waiving of the venue of any such suit, action, or proceeding and hereby subjects itself to the jurisdiction of any such court.

18. LIMITATION OF TIME: No action, regardless of form, arising under this Agreement, may be brought by Customer more than one (1) year after the occurrence of the events which gave rise to the cause of action.

19. ATTORNEY FEES: Customer shall be liable to DWL USA for any attorney fees and costs incurred by DWL USA in enforcing any of its rights hereunder.

20. FURTHER PROVISIONS: The Customer must not, without DWL USA's prior written approval, assign or transfer this Contract or the benefit thereof to any person. No indulgence or forbearance extended to the Customer shall limit or prejudice any other right of claim to DWL USA. The supply of goods by DWL USA shall not confer any right upon the Customer to use any DWL USA's trademark or trade name without DWL USA's written consent, and at all times such marks or names remain the property of DWL USA. If any provision or part of a provision of the Contract shall be found to be unlawful or unenforceable, that provision or part of a provision shall be deleted from this Agreement and the remaining provisions shall, insofar as possible, be given full force and effect.