

## LUMENIS TERMS AND CONDITIONS OF SALE

**1. Sale.** When the Lumenis Sales Quotation (the “Quote”) to which these Terms and Conditions are attached is signed by Buyer, then this Purchase Agreement (this “Agreement”) shall be a binding contract for the purchase and sale of the products and/or services described in the Quote (collectively, the “Equipment”). This Agreement consists of the Quote and these Terms and Conditions. Any inconsistent terms and conditions on Buyer’s order, acknowledgement form or other forms or documents shall not apply.

**2. Prices and Payment.** All prices are subject to change in the event of untimely payment by Buyer. Payment is due net 30 days of invoice. Accounts 30 days or more past due shall accrue interest at the rate of 18% per annum or, if less, the maximum rate permitted by law. Deposits are non-refundable. In the event Buyer fails to make timely payment, the warranty described below shall be void and of no effect. In addition, Buyer shall reimburse Lumenis for all costs of collection, including payments to collection agencies as well as attorney fees and court costs.

**3. Security Agreement.** To secure the purchase price, Buyer hereby grants Lumenis a purchase money security interest in the Equipment, and the proceeds of any sale thereof. Buyer grants Lumenis a limited power of attorney coupled with an interest to execute financing statements or to take any other action on Buyer’s behalf necessary or appropriate to perfect the security interest granted herein. Buyer unconditionally agrees to execute such additional documents as may be necessary to enforce or protect Lumenis’ interests.

**4. Taxes and Other Charges.** Buyer shall pay all taxes, fees, duty, levy, or charges imposed by any governmental authority. Applicable sales taxes will be invoiced unless Buyer supplies a valid tax-exempt certificate prior to delivery.

**5. Delivery and Claims.** For all purposes of this Agreement, title and risk of loss shall pass to Buyer, and delivery shall be deemed completed, upon Lumenis’ tender of the Equipment to a common carrier. All shipments are fully insured for the benefit, and at the expense, of Buyer. In the event of loss or damage in transit, Buyer’s payment obligations will not be affected and Lumenis will act as Buyer’s agent in making any necessary insurance claim. All delivery dates are approximate. Lumenis will deliver in one shipment when possible, but reserves the right to make delivery in installments, if necessary.

**6. Changes to Equipment.** If the design of the Equipment is changed prior to shipment, Lumenis shall notify Buyer. Buyer shall have three (3) business days from the date of such notification to cancel delivery of the changed Equipment and receive a refund of any money paid to Lumenis for the changed Equipment. The foregoing shall be Buyer’s sole remedy for any change to the Equipment prior to shipment and Lumenis shall have no other liability whatsoever for any such change.

**7. Software License.** Lumenis grants to Buyer a limited, non-transferable, royalty-free and non-sublicensable license to use the software embedded in the Equipment (the “Software”). Any associated documentation provided hereunder by Lumenis to Buyer is solely for Buyer’s internal use in connection with the Equipment purchased hereunder. Buyer shall not make any copies of the Software. The sole remedy for breach of this Section shall be as set forth in Section 9.

**8. Inspection; Returns.** Partial shipment by Lumenis is not a basis for a non-conformity claim. Within ten (10) days of receipt of the Equipment, Customer shall inspect the Equipment, read the owner’s manual and accompanying documentation and give written notice of any error or claim that the Equipment does not conform to the Quote. Customer’s sole remedy is set forth in Section 9, below. Purchase orders may not be cancelled after shipment and Equipment may not be returned without Lumenis’ prior written consent. A Return Material Authorization (“RMA”) will be provided by Lumenis for any Equipment to be returned. Accepted returns are subject to the charges, terms and requirements notified in writing to Customer (which may include, without limitation, a 15% restocking fee). No act by Lumenis (including receipt of returned Equipment) shall constitute Lumenis’ acceptance of the returned Equipment unless Lumenis previously provided an RMA.

**9. Limited Warranty.** Lumenis warrants that the Equipment (excluding consumable or disposable components or accessories such as heads and fibers, which will be subject to the warranty terms, if any, included therewith) will be free from defects in materials and workmanship and will conform in all material respects to Lumenis’ technical specifications. The foregoing limited warranty shall continue for a period of time which is the shorter of (a) fifteen (15) months from the date of Buyer’s receipt of the Equipment or (b) twelve (12) months from the date of installation if the

Equipment requires installation or from the date of Buyer's receipt of the Equipment if the Equipment does not require installation. During the warranty period, Lumenis shall repair or replace the Equipment at Lumenis' sole option. Such repair or replacement shall be Lumenis' sole obligation and Buyer's sole remedy hereunder, and shall be conditioned upon Lumenis receiving written notice of such claimed defect within ten (10) days after its discovery and, at Lumenis' option, return of the Equipment to Lumenis, F.O.B. Lumenis' facility. The foregoing limited warranty shall be void and of no effect if: (a) anyone other than Lumenis or a person acting on Lumenis' express or written instructions, removes Equipment casing or makes or attempts to make any modifications, repairs, attachments or additions to the Equipment or installs or moves Equipment for which installation is required by Lumenis; (b) the Equipment is not maintained or operated in accordance with Lumenis' instructions or non-Lumenis authorized / 3rd party parts or fibers (as determined by Lumenis from time to time) are used with the Equipment without Lumenis' consent; (c) the Equipment has been subjected to misuse, abnormal conditions or negligent handling or operation; or (d) the Equipment is resold, leased or rented to or for the use by any person other than the original Buyer without Lumenis' consent. Used and refurbished Equipment does not have any warranties, and Equipment not manufactured by Lumenis shall only have such warranties (if any) as may be provided by the manufacturer.

**10. Exclusions.** No representation or warranty will be implied from any description of, or claims regarding, the Equipment or its effectiveness or ability to achieve any particular clinical results, whether written or oral, contained in specifications, samples, bulletins, marketing or promotional materials or similar statements made or furnished to Buyer by any person. Use of the Equipment requires the exercise of sound medical judgment, and clinical results may vary based on operator skill and experience, patient suitability, patient response to treatment, and other factors beyond the control of Lumenis. Lumenis make no representation or warranty of revenue or profits from use of the product, and no such representation or warranty shall arise from projections, studies, illustrations, marketing or promotional material, or other statements made to Buyer.

**11. Warranty Disclaimer.** The above limited warranty is exclusive and in lieu of all other representations and warranties of Lumenis, express or implied, written or oral; Lumenis disclaims and excludes any implied warranty, including, without limitation, warranties of merchantability and fitness for a particular purpose. In no event shall Lumenis be liable for loss of use, loss of profits, punitive damages, attorney's fees and expenses, consequential, incidental or special damages, or any other direct or indirect damages whatsoever.

**12. Liability Disclaimer.** In the event Buyer uses any 3<sup>rd</sup> party parts or fibers that are not certified or authorized in writing by Lumenis, then Lumenis is not liable for any loss or damage whatsoever that may occur after such items are used by Buyer (including any damage to the Equipment as well as personal injury and property damage). Lumenis reserves the right to determine from time to time which 3rd party parts or fibers are certified and authorized.

**13. Patents, Trademarks and Copyrights.** Lumenis will, at its own expense, defend any suits which may be instituted against Buyer for alleged infringement of any United States patent, trademark or copyright relating to the Equipment (without modification, alteration or improvement), *expressly provided* that: (a) such alleged infringement consists solely of the use of such Equipment, in Buyer's business for any of the purposes for which the same were sold by Lumenis; (b) Buyer has made all payments then due hereunder; (c) Buyer gives Lumenis immediate notice in writing of any such suit and transmits to Lumenis immediately upon receipt all processes and papers served upon Buyer and provides all needed information, assistance and authority to enable Lumenis' defense of such suit; (d) Buyer has not made any compromise or settlement without Lumenis' prior written consent, and (e) such suit does not include claims for infringements of combination or process patents covering the use of the Equipment in combination with other goods or materials not furnished by Lumenis, claims for infringement of patents covering methods of use not recommended by Lumenis, or claims arising from any modifications to the Equipment by Buyer or third parties. The foregoing states the entire liability of Lumenis for infringement.

**14. Proprietary Rights.** The purchase and sale of the Equipment to Buyer shall in no way be deemed to confer upon Buyer any right, interest or license in any patents, patent applications, designs, copyrights, trademarks, service marks, trade names or other intellectual property rights Lumenis may have covering the Equipment. Lumenis hereby reserves all such rights. Buyer warrants that it will not, and will not permit or assist any other person or entity to, divulge, disclose, or in any way distribute or make use of such intellectual property, and that it will not, and will not engage, permit or assist any other person or entity to, modify, reverse engineer or manufacture any Equipment.

**15. Financing and Assignment.** This Agreement binds Buyer, regardless of any financing arrangements, subrogations or assumptions. Buyer may not assign its rights or delegate its obligations hereunder except with the prior written consent of Lumenis (which consent may be withheld in its sole discretion).

**16. Certifications and Authorizations.** Federal (USA) law restricts (and state law may restrict) the Equipment to sale by or on the order of a physician, dentist, veterinarian or other practitioner licensed in the state in which the Equipment is used or ordered (a "Prescribing Practitioner"). Buyer and Buyer's Prescribing Practitioner are solely responsible for the use and operation of the Equipment in accordance with all applicable laws and regulations, and medical and treatment guidelines, and for ensuring that each operator of the Equipment is adequately trained and qualified to use and operate the Equipment safely and properly and to perform medical procedures in accordance with such laws, regulations and guidelines. Lumenis makes no representations or warranties regarding federal, state or local laws or regulations, or medical or treatment guidelines that may apply to the use and operation of the Equipment. Use of the Equipment may involve certain risks of injury to patients. Buyer and Buyer's Prescribing Practitioner are solely responsible for ensuring that patients are informed of these risks. Improper use of the Equipment may increase the risk of injury to patients. Buyer and Buyer's Prescribing Practitioner are solely responsible for contacting state and local licensing agencies regarding requirements applicable to the use and operation of the Equipment. Buyer is responsible for timely obtaining all necessary certifications, authorizations, permits, licenses, approvals and consents required in connection with the purchase and use of the Equipment in the State in which Customer is located and in the State in which the Equipment is used. Lumenis relies on Buyer's commitment to fulfill such obligations, including any special certifications that may be required by the FDA.

**17. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Lumenis and Buyer and supersedes all prior or contemporaneous promotional material, contracts, agreements, statements, promises, representations, warranties, purchase orders or quotations, whether written or oral. The signed Sales Quotation and these Terms and Conditions may not be amended or modified except in writing by an authorized signatory of Lumenis. No other purported additions, amendments, alterations or modifications by Buyer or any other person, whether oral or written, shall be binding on Lumenis, regardless of Lumenis' failure to object or Lumenis' shipment of the Equipment. In the event of a conflict between these Terms and Conditions and any other part of this Agreement, these Terms and Conditions shall govern.

**18. Governing Law; Jurisdiction and Venue; Time Limit.** This agreement shall be governed by and construed according to the laws of the state of California, exclusive of conflicts of law provisions that would permit or require the application of the laws of a different jurisdiction. The 1980 U.N. convention on contracts for the international sale of goods hereunder shall not govern the rights and obligations of the parties. Buyer agrees that any action for enforcement of this agreement or any other dispute arising hereunder shall be filed exclusively in courts located in Santa Clara County, California, and buyer hereby consents and waives any objection to the jurisdiction and venue of such courts. Any action hereunder for breach of warranty or contract must be commenced not later than one year from the date on which such action accrues or be forever barred.

**19. Arbitration.** Lumenis or Buyer may require that any claim or dispute arising out of or related to this Agreement, including but not limited to those based on or arising from any alleged injury related to the Equipment (collectively, the "Claims") be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted by three (3) arbitrators sitting in Santa Clara County, California. If any party institutes any judicial proceeding relating to any Claim, that action shall not be a waiver of the right of the other party to require submission of such Claims to arbitration so long as the other party initiates arbitration within thirty (30) days of commencement of such judicial proceeding.

Acknowledged and Agreed:

BUYER OR BUYER'S REPRESENTATIVE:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date