

TERMS AND CONDITIONS

These “**Terms and Conditions**” supplement the terms of any proposal (the “**Proposal**”) (collectively the “**Agreement**”) between Sumer Medical Technology, Inc., a California corporation (“**Seller**”) and Buyer (as Buyer is defined in the Proposal). As used herein, Buyer and Seller are sometimes referred to herein as a “**Party**” and collectively the “**Parties**.” Capitalized terms used herein but not defined shall have the meanings set forth in the applicable Proposal.

RECITALS

A. WHEREAS, Buyer has agreed to purchase from Seller certain goods (the “**Goods**”) as set forth in the Proposal, in one or more installment payments (each an “**Installment**” or “**Installment Payment**”) and Seller will make deliveries of all or a portion of the Goods (each a “**Delivery**”) pursuant to that “**Delivery and Fee Schedule**” listed in paragraph 4 of the Proposal;

NOW, THEREFORE, in consideration of the mutual promises, the sufficiency of which is hereby acknowledged, the Parties hereby supplement and amend the terms of the Proposal as follows:

1. Sale of Goods. Seller shall sell to Buyer and Buyer shall purchase from Seller the Goods in the quantities and at the Purchase Price set forth in the Proposal as such Goods may be further depicted on Exhibit A (if applicable).

2. Delivery; Storage; Abandonment.

(a) Delivery and Payment. Consistent with the Delivery and Fee Schedule, Seller will deliver each Installment of Goods to Buyer at the Delivery Point unless a different Delivery Point is agreed upon in writing by the Parties. Seller will make reasonable efforts to deliver the first shipment of Goods (the “**First Delivery**”) within thirty (30) days of either (i) the Effective Date; or (ii) the date Seller receives the Deposit (also referred to herein as the “**Initial Installment**”), whichever occurs later; provided however, that Seller’s failure to make the First Delivery by such date shall not be deemed to be a breach of the Proposal or these Terms and Conditions as long as Seller delivers the First Delivery as soon as reasonably practicable thereafter. Each subsequent Delivery (the “**Subsequent Deliveries**”) shall be made within a reasonable time after Seller receives the subsequent Installment Payment. Notwithstanding anything to the contrary, Seller has no obligation to make any Deliveries for which Buyer has not made the appropriate Installment Payment. However, if Seller makes a Delivery for which Buyer has not previously made the appropriate Installment Payment, Buyer shall be obligated to make the appropriate Installment Payment within five (5) days of the Delivery (the “**Installment Deadline**”). If all or part of one or more Installment Payments are not made within the appropriate Installment Deadline, Buyer will be charged a late fee in the amount of fifty dollars (\$50) per day (the “**Late Fee**”), plus Interest Charge and Reimbursements (as such terms are defined in Section 5 below) until the Installment (or remaining portion thereof), the Late Fee, Interest Charge, and any Reimbursements are paid in full.

(b) Inspection of Delivery. Subject to a longer inspection time set forth in the Proposal, upon Buyer’s receipt of each Delivery, Buyer will have twenty-four (24) hours (the “**Inspection Deadline**”) to inspect and/or reject the Goods in the Delivery to ensure the Goods conform to the specifications of the Proposal. Buyer must provide notice (the “**Delivery Rejection Notice**”) Seller in writing before the Inspection Deadline of any Goods that are non-conforming and provide specific details regarding the defective goods, including the quantity of Goods that are defective and quality of the defect. Upon receipt of the Delivery Rejection Notice, Seller will replace the

defective Delivery (or portion thereof) with conforming Goods as soon as reasonably practicable under the circumstances. Buyer's right to replacement, conforming Goods under this paragraph (b) shall be Buyer's sole remedy for nonconforming Goods. If Buyer fails to provide the Delivery Rejection Notice to Seller by the Inspection Deadline, then Buyer will be deemed to have irrevocably accepted the Delivery as conforming, and Buyer waives its right to reject all or any portion of the Delivery, including any right to demand conforming Goods.

(c) Storage Fees. If Buyer fails to make all the Installment Payments within one hundred eighty (180) days after the Effective Date of the Proposal (the "**Final Installment Deadline**"), then Buyer shall pay to Seller a storage fee of up to One Hundred Fifty Dollars (\$150.00) per day (the "**Storage Fee**") commencing the day after the Final Installment Deadline until either: (i) all unpaid Installments (the "**Unpaid Installments**") have been made; or (ii) the Abandonment Date (as such term is defined below), whichever occurs first.

(d) Abandonment. If Buyer fails to make all Unpaid Installments within two hundred forty (240) days after the Effective Date (the "**Abandonment Date**"), then in addition to any other remedies available to Seller at law or in equity, (i) Seller, at its sole and absolute discretion, shall be entitled to resell or dispose of any Goods that are subject to Unpaid Installments at a price and on terms and conditions determined by Seller in its sole and absolute discretion; and (ii) Buyer shall pay to Seller, in addition to all other amounts owed under this Agreement, a "**Delivery Breach Payment**" measured as a genuine pre-estimate of Seller's losses and not as a penalty in the amount calculated as:

(i) If the Goods are fungible (as such term is used under the California Commercial Code): the sum of (A) the difference between the Unpaid Installments and the fair market value of portion of the Goods subject to Unpaid Installments plus three percent (3%) of the Unpaid Installments; and (B) the daily Storage Fee multiplied by the number of days between the Abandonment Date and the date that Seller sells or otherwise disposes of the Goods.

(ii) If the Goods are nonfungible, are unique, or Seller is otherwise unable to sell or dispose of the Goods: the sum of (A) all Unpaid Installments and (B) the Storage Fee.

(e) Liquidated Damages. Any Delivery Breach Payment payable in accordance with Section 2(a) shall constitute reasonable liquidated damages and is not intended as a forfeiture or penalty. The Parties agree that it would be impractical and extremely difficult to estimate the total detriment suffered by Seller as a result of Buyer's breach of Section 2(a), and under the circumstances existing as of the Effective Date, the Delivery Breach Payment represents a reasonable estimate of the damages which Seller will incur as a result of such breach. Therefore, the Parties agree that a reasonable estimate of the total detriment that Seller would suffer in the event of the breach of Section 2(a) by Buyer is an amount equal to the Delivery Breach Payment. The foregoing provision shall not waive or affect either party's indemnity obligations or the Parties' respective rights to enforce those indemnity obligations under this Agreement or waive or affect either party's obligations with respect to any other provision of this Agreement which by its terms survives the termination of this Agreement.

3. Title and Risk of Loss. Risk of loss of the Goods passes to the Buyer once Buyer makes the Initial Installment Payment to Seller. However, Buyer will receive title to only the portion of the Goods already paid for by Buyer. For avoidance of doubt, title transfers at the time of each Installment Payment,

but only as to those Goods which are subject to that Installment Payment, and Buyer will have title to all the Goods only after Buyer makes the Final Installment Payment.

4. Purchase Price. Buyer shall purchase the Goods from Seller at the Purchase Price set forth in the applicable Proposal. The Purchase Price is exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, however, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income.

5. Payment Terms. Buyer shall pay each Purchase Price Installment in accordance with paragraph 4 of the Proposal, unless the Parties agree in writing to a Delivery at an earlier date than what is required under the Delivery and Fee Schedule (an "**Early Delivery**"). In such case, the respective Installment shall be due within five (5) days after Seller makes the Early Delivery. If Buyer fails to make the required Installment when due, then Buyer will pay Seller a Late Fee, plus interest on the late Installment at a rate of three percent (3%) per annum (the "**Interest Charge**"). Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and costs including fees of collection agencies, and interest computed at the lesser of one percent (1%) per month or part thereof from the due date(s) or the maximum legally permissible rate (collectively the "**Reimbursements**").

6. Setoff. Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or its affiliates, whether relating to Seller's or its affiliates' breach or non-performance of this Agreement or any other agreement between Buyer or any of its affiliates, and Seller or any of its affiliates, or otherwise. Seller may set off any amount payable to Buyer under this Agreement from any amount payable by Buyer to Seller.

7. No Representation and Warranty. EXCEPT AS SPECIFICALLY PROVIDED IN THE PROPOSAL, SELLER DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES ASSOCIATED WITH THE GOODS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTY ARISING OUT OF USAGE OF TRADE OR COURSE OF DEALING. BUYER AGREES TO ACCEPT THE GOODS ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" BASIS. WITHOUT LIMITING THE FOREGOING, SELLER DISCLAIMS ANY AND ALL WARRANTIES THAT IT MAY OTHERWISE BE LIABLE FOR IN CONNECTION WITH THIS AGREEMENT, IF ANY, OR OTHERWISE.

8. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF GOODWILL, DIMINUTION IN VALUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE GOODS, THE PROPOSAL, THESE TERMS AND CONDITIONS, OR TRANSACTIONS CONTEMPLATED THEREIN, AND/OR FROM ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH

THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE GOODS, THE PROPOSAL AND THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS BUYER ACTUALLY PAID TO SELLER FOR THE GOODS.

9. Release of Liability. Buyer releases, waives and discharges Seller and its affiliates, and their respective directors, officers, employees, agents, contractors and insurers (each a "**Released Party**") from any and all future claims, demands or causes of action, whether actual or alleged, which Buyer may have against any Released Party from any damage, liability, cost and/or expense of any kind or nature incurred or sustained by Buyer in connection with the Goods, including, without limitation, the manufacture, storage, delivery, or handling and any use by itself and/or any other third party(ies) of the Goods (each a "**Release of Liability Event**").

10. Assumption of Risk. Upon the earlier of either (i) Buyer's acceptance of a Delivery; or (ii) Buyer's waiver of its right to reject a Delivery: Buyer (a) acknowledges that it has had the opportunity to inspect the Goods, Buyer has accepted the Goods in their existing condition and is fully aware of the risks and hazards associated with using the Goods, has voluntarily elected to proceed with the purchase and use of the Goods, and retains no right to reject any Goods as nonconforming, and (b) accepts and assumes any and all risks of loss, property damage or personal injury that may arise out of the use of the Goods, including but not limited to all costs and charges related to recall, replacement, freight, destruction, inventory, filled product, filling and associated costs of disposal of product or other packaging components, and any costs associated therewith, including, but not limited to, additional overhead and labor. Seller does not assume any risks or loss, property damage or personal injury which arises as a result thereof.

11. Indemnification. Buyer shall defend, indemnify and hold harmless each Released Party from and against any and all losses, liabilities, damages, obligations, fines, penalties, claims, demands, suits in law or in equity, assessments, judgments, costs and expenses (including reasonable attorneys' fees and other costs of collection, investigation and defense) incurred by such Released Party arising out of, due to, or in any way connected with any claim, demand, action or lawsuit, whether actual or alleged, (each, a "**Claim**") asserted by any party (including, without limitation, any end customer, manufacturer, or distributor of Buyer or any other third party) against such Released Party arising out of, related to, resulting from or in connection with the Goods or this Agreement, including, without limitation, any Claim related to any Release of Liability Event.

12. Confidentiality. All non-public, confidential or proprietary information of Seller including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, suppliers, manufacturers, ingredients, components, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing under this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all confidential information, documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this section. This section shall not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure without an obligation of confidentiality; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party. In furtherance, but not in limitation, of the foregoing, Buyer shall not use Seller's name in any manner in

connection with the Goods. The Parties shall maintain the absolute confidentiality of this Agreement, the terms of this Agreement, and the transactions contemplated by this Agreement.

13. Termination. In addition to any remedies that may be provided in these Terms and Conditions, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

14. Assignment. Buyer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer, delegation, or subcontract in violation of this section shall be null and void. No assignment, transfer, delegation, or subcontract shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate, or subcontract any or all its rights or obligations under this Agreement without Buyer's prior written consent.

15. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

16. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter, and the Parties hereby expressly agree that in the event of any conflict between the terms and conditions of the Proposal and these Terms and Conditions, these Terms and Conditions shall govern.

17. Survival. Subject to the limitations and other provisions of these Terms and Conditions, Section 2, Section 5, Section 7, Section 8, Section 9, Section 10, Section 11, Section 12, Section 21, Section 22, and Section 23 of these Terms and Conditions, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination (including any provision in the Proposal), shall survive the expiration or earlier termination of this Agreement.

18. Severability; Amendments; Governing Law. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. This Agreement may not be modified or amended in any way, unless such modification or amendment is in writing and signed by an authorized representative of each of the Parties. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California (without reference to its law of conflict of laws). The place of the making and execution of this Agreement is San Diego, California.

19. Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach or termination hereof, or whether the claims asserted are arbitrable, shall be referred to and finally determined by binding arbitration conducted by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures (the “**Rules**”), and to the extent applicable, the United States Federal Arbitration Act. The venue for all arbitration commenced hereunder shall be in San Diego, California. The language to be used in all arbitration proceedings shall be English. Judgment upon any award rendered may be entered in any court having jurisdiction thereof. In the event the amount of the dispute, controversy or claim arising out of or relating to this Agreement or the breach or termination hereof is less than One

Million Dollars (\$1,000,000), (a) the arbitration shall be heard by one (1) arbitrator to be selected in accordance with the Rules, (b) within seven (7) calendar days after appointment the arbitrator shall set the hearing date, which shall be within ninety (90) days after the filing date of the demand for arbitration unless a later date is required for good cause shown, and shall order a mutual exchange of what he/she determines to be relevant documents and the dates thereafter for the taking of up to a maximum of five (5) depositions by each Party to last no more than two (2) days in aggregate for each Party, and (c) the arbitrator shall make his or her award no later than seven (7) calendar days after the close of evidence or the submission of final briefs, whichever occurs later. In the event the amount of the dispute, controversy or claim arising out of or relating to this Agreement or the breach or termination hereof equals or is greater than One Million Dollars (\$1,000,000), or in the event a Party seeks to challenge the jurisdiction of the arbitrator(s) or determine whether the claims are arbitrable, (i) the arbitration shall be heard by a panel of three (3) arbitrators to be selected in accordance with the Rules, and (ii) the arbitrators shall set the hearing date and shall order a mutual exchange of what they determine to be relevant documents and the dates thereafter for the taking of depositions by each Party. The remainder of this section applies to all arbitration proceedings commenced under this Agreement regardless of the amount in controversy. The Parties waive the right, if any, to obtain any award for exemplary or punitive damages or any other amount for the purpose of imposing a penalty from any other Party in any arbitration or judicial proceeding or other adjudication arising out of or with respect to this Agreement, or any breach hereof, including any claim that such Agreement, or any part thereof, is invalid, illegal or otherwise voidable or void. No arbitration commenced pursuant to this Agreement may be consolidated with the arbitration of any other dispute and the arbitrator(s) appointed hereunder shall not have the power to hear any arbitration as part of a class action notwithstanding, in either case, the existence of common issues of law and/or fact, or the possibility of conflicting rulings by more than one arbitrator. The Parties expressly waive the right, if any, to consolidated and/or class arbitration under this section and this Agreement. In addition to all other relief, the arbitrator(s) shall have the power to award reasonable attorneys' fees and costs to the prevailing party(ies). The decision of the arbitrator(s) shall be final and binding on all Parties. Notwithstanding anything to the contrary, if any Party desires to seek injunctive or other provisional relief that does not involve the payment of money, then those claims shall be brought in a state or federal court located in San Diego County, California, and the Parties hereby irrevocably and unconditionally consent to personal jurisdiction of such courts and venue in San Diego, California in any such action for injunctive relief or provisional relief. The Parties agree that all arbitration proceedings relating to any matter referred to in this Section 21 shall be exclusively governed by and determined in accordance with the laws of California (without reference to its law of conflict of laws).

20. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.

21. Grant of License. Buyer hereby grants to Seller and Seller's affiliates, a nonexclusive, revocable license to access and use Buyer's trademark, tradename, trade dress, copyrights, and other intellectual property as reasonably necessary to produce and/or acquire the Goods, or otherwise as reasonably necessary for Seller to perform its obligations under this Agreement.

22. Buyer Representations: Intellectual Property. Buyer represents and warrants to Seller that Buyer is valid existing and in good standing under the laws of the state in which Buyer resides, and has all requisite power and authority in and to any intellectual property used in the manufacture or production of the Goods and any logos, words, images, or material that will appear thereon (the "**Intellectual Property**"), and Seller's manufacture or use of the Intellectual Property will not result in a breach of any patent,

trademark, copyright, or other intellectual property right. Any Claim brought by a third party against a Released Party shall be a Release of Liability Event.

23. Attorney's Fees. In the event any litigation, arbitration, mediation, or other proceeding (“**Proceeding**”) is initiated by any Party against any other Party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with this Agreement, the prevailing Party in such Proceeding will be entitled to recover from the unsuccessful Party all costs, expenses, actual attorneys' and expert witness fees, relating to or arising out of: (a) such Proceeding (whether or not such Proceeding proceeds to judgment); and (b) any post-judgment or post-award proceeding, including without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award will contain a specific provision for the recovery of all such subsequently incurred costs, expenses, actual attorneys' and expert witness fees.

24. Force Majeure. Seller shall not be liable for any delay or failure to perform any of its obligations under this Agreement if the delay or failure is caused by a Force Majeure Event. A “**Force Majeure Event**” means any event beyond the reasonable control of the Seller, including but not limited to acts of God, war, terrorism, embargo, civil commotion, labor disputes, pandemic, fire, flood, or other natural disaster. If a Force Majeure Event occurs, Seller will notify the Buyer and shall use reasonable efforts to minimize the impact of the event. Nothing in this Section shall be construed to release the Buyer from its obligations under this Agreement.

25. Miscellaneous. This Agreement will only become effective on the Effective Date. Seller's failure to enforce any provision of this Agreement shall not constitute a waiver of Seller's rights or remedies under this Agreement or at law. The rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement. Nothing in this Agreement, express or implied, is intended or shall be construed to give any person, other than the Parties and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained in this Agreement. Each Party will execute all documents and take all actions reasonably required to effectuate this Agreement. Time is of the essence in this Agreement.

26. Counterparts; Execution of Agreement. This Agreement may be executed and delivered (including by facsimile, DocuSign, .pdf, or other similar electronic transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

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