

## TERMS AND CONDITIONS

**EFFECTIVE DATE: December 1, 2022**

**THESE TERMS AND CONDITIONS (“TERMS”) CONTAIN IMPORTANT INFORMATION CONCERNING YOUR RIGHTS AND OBLIGATIONS REGARDING YOUR PURCHASE, BORROWING, OR USE OF OUR PRODUCTS AND SERVICES. PLEASE READ AND SAVE A COPY OF THESE TERMS AS A RECORD OF YOUR TRANSACTION.**

These Terms apply to all offers, sales, purchases, and borrowings of products and parts thereof (collectively, the “Product”) offered, sold, loaned to you by Proteor USA, LLC (“Company”) or its authorized affiliates, distributors, or resellers. If you do not wish to be bound by these Terms, you must not submit or place an Order (defined below) for a Product with us or use our Site (defined in our Terms of Use, available at proteorusa.com). All references to “us”, “we” or “our” will be construed to mean Company and its authorized affiliates; and references to “you” or “your” will be construed to mean the original purchaser of the Product (whether purchased from Company or any of its authorized distributors or resellers) or any authorized person borrowing a Product directly from Company.

### **HEALTHCARE PROFESSIONALS**

Company only sells, loans, or otherwise permits the use of its Products to independent third party healthcare specialists, professionals, providers, organizations, or agents thereof (each, an “Authorized Customer”). All purchases and borrowings of any Product from Company are for Authorized Customers only. An Authorized Customer must always rely on its, his, or her own professional clinical judgment when deciding whether to use a particular Product when treating a particular patient. Company does not dispense medical advice or provide any medical diagnosis, or treatment options. Authorized Customers should be trained in the use of any particular Product before using it, purchasing it from Company, or using the Product to treat a particular patient. Authorized Customers must always refer to the Product’s packaging, insert, label, instructions, and any related materials accompanying such Product before using the Product. Unauthorized resale of any Products is prohibited, and any unauthorized resale does not convey any rights under these Terms to any unauthorized buyer or user. **IT IS YOUR DUTY TO INFORM AND EXPLAIN WARNINGS AND RISKS ASSOCIATED WITH THE PRODUCT WHEN USING OR RECOMMENDING THE USE OF THE PRODUCT TO TREAT A PARTICULAR PATIENT OR OTHER INTENDED END-USER. PLEASE READ ALL WARNINGS AND RISKS IN THE LABELLING, MANUALS, OR OTHER MATERIAL ACCOMPANYING THE PRODUCT CAREFULLY.**

### **ACCOUNTS, ORDERS, AND CANCELLATION POLICY**

To place or submit an Order for a Product, you must establish an account with our authorized personnel by email at orders@proteorusa.com or by telephone at 855.450.7300. All accounts established with us will be subject to our policies and procedures adopted from time to time. Once you establish your account, you may place or submit an order to purchase one or more Product(s) (each, an “Order”) with our authorized personnel. We may send you an email confirming your Order, but this confirmation does not signify our acceptance of your Order. Our acceptance of your Order occurs if and only if: (a) we charge your credit card, (b) we process your other form of payment for the Product, (c) we ship the Product to you, or (d) we otherwise fulfill your Order. We may require additional information from you before we accept or process your Order. Each and every Order we accept in accordance with these Terms is hereby incorporated into and made a material part of these Terms.

If you desire to cancel your Order (without liability), you must submit your written cancellation notice to us before we accept your Order (per these Terms) (“Cancellation Policy”). **ALL PURCHASES OF THE PRODUCTS ARE FINAL, NON-CANCELABLE, AND NON-REFUNDABLE, EXCEPT AS SPECIFIED IN THE APPLICABLE CANCELLATION POLICY AND RETURN POLICY SET FORTH BELOW.** Once we accept your Order (per these Terms), you may not modify or cancel your Order without our prior written consent, provided we reserve the right at any time to refuse, reject, decline, or cancel your Order for any reason without liability to you.

**EACH TIME YOU SUBMIT AN ORDER TO PURCHASE A PRODUCT, ACCEPT DELIVERY OF A PRODUCT, OR OPEN THE PRODUCT PACKAGING, YOU REPRESENT, WARRANT, AND COVENANT THAT YOU: (A) HAVE READ, UNDERSTOOD, AND ASSENT TO AND AGREE TO BE BOUND BY THESE TERMS (AND IF ASSENTING OR AGREEING ON BEHALF OF AN ORGANIZATION, YOU REPRESENT AND WARRANT YOU HAVE THE AUTHORITY TO BIND SUCH ORGANIZATION), (B) ARE AN AUTHORIZED CUSTOMER, (C) ARE ELIGIBLE TO USE OR PURCHASE PRODUCTS AND USE OUR SERVICES IN THE JURISDICTIONS WHERE YOU RESIDE, AND YOU ARE DULY AUTHORIZED TO PRESCRIBE, PURCHASE, AND FIT OUR PRODUCTS IN SUCH JURISDICTIONS, (D) HAVE READ ALL OF THE WARNINGS AND RISKS ASSOCIATED WITH THE PRODUCT; (E)**

**ASSUME THE DUTY TO WARN YOUR PATIENT OR INTENDED END-USER OF ALL SUCH ASSOCIATED WARNINGS AND RISKS ASSOCIATED WITH THE PRODUCT; AND (F) WILL USE YOUR MEDICAL OR OTHER SPECIALIZED OR TECHNICAL KNOWLEDGE TO INFORM YOUR PATIENT OR INTENDED END-USER OF THE PRODUCT RISKS AND WARNINGS.**

### **BORROWED PRODUCTS**

If you borrow a Product from us, you may use it for the sole purpose of evaluating the Product and will not let any other person borrow or use it. You must return any Product borrowed from us by the date we identify to you as the return date. If no return date is identified by us, you must return the borrowed Product within thirty (30) days from the date we delivered the borrowed Products to you. If we do not receive the borrowed Products by the applicable return date, you will be charged for (and must pay) the full purchase price of the borrowed Products, plus any of our shipping and handling charges. All borrowed Products returned to us must be in the same working and physical condition in which you received them. All returns of borrowed Products must be complete with all manuals, cables, hardware bags, etc. If any borrowed Product is damaged, you will be liable to us for the amount necessary to restore the Product to such condition, or, if not restorable, the full purchase price of such Product.

### **PRODUCT PRICE AND PAYMENT TERMS**

Prices payable for the Product are those in effect at the time of dispatch or delivery of the Product, unless you and Company have agreed to another price in writing. Before we accept your Order in accordance with these Terms, we may withdraw any discount or revise prices to take into account increases in costs or taxes (including materials, shipping, or labor costs, or any tax, duty, or other levy and any variation in foreign currency exchange rates). All invoices are due and payable within 30 days (net 30) of the invoice date. Payment must be in U.S. dollars and any payment made with a credit card is subject to additional fees. Unless otherwise specified by us, any prices we quote do not include: (a) costs of shipping or carriage to the agreed upon place of delivery (including drop shipments); and (b) value-added or any other tax or duty subject to assessment by any jurisdiction. Unless we agree otherwise in writing, you agree to pay all shipping and handling fee, taxes, and costs associated with any shipment of Product(s), each of which may be estimated by us and subject to change.

### **TERMS OF DELIVERY**

Any delivery timeframes we may specify to you are estimates only. While we endeavor to meet any such timeframes, we will not be liable to you for any delays or failure to dispatch or deliver the Product to you by a particular date. Except as expressly provided in these Terms, title and risk of loss to any Product passes to you upon our delivery of such Product to a commercial carrier, such as FedEx or UPS, or, if no such carrier is used, when actually delivered to you.

### **RETURN POLICY**

Unless a Product qualifies for a return in accordance with our return policy described below or Limited Warranty, we have no obligation to authorize or accept your Product return. You may return any Product purchased from us, for any reason, within ninety (90) days of the date such Product is delivered to you, provided you obtain an RMA# and remit to us an amount equal to the restocking fee identified below. We will classify (in our sole discretion) a returned Product as (a) an unopened and undamaged return, (b) an opened and undamaged return, or (c) a return of a defective or damaged Product. Any shipping charges or service fees invoiced to you are and remain nonrefundable. Each authorized returned of a Product must be shipped to Proteor USA, 1236 W. Southern Ave., Ste. 101, Tempe, AZ 85282 and any such Product received by us after sixty (60) days from the invoice date is subject to a restocking fee equal to the greater of \$50 or twenty percent (20%) of such Product’s purchase price, not to exceed \$150.

Unopened Return. All returns of an Unopened Product (defined below) in accordance with this return policy are eligible for a credit of the purchase price for such Product. If you break the seal or open the package, you cannot return the Product as an Unopened Return. For purposes of these Terms, “Unopened Product” means (a) the Product remains in its original packaging, (b) the Product is undamaged, (c) the shrink-wrap covering the Product’s packaging remains intact, (d) the Product’s packaging remains unopened; and (e) all security and other verification seals remain sealed.

Opened and Undamaged Return. All returns of an opened, but undamaged Product in accordance with this return policy are eligible for a credit of the

purchase price for such Product if and only if we determine in our sole discretion that the Product remains in new or saleable condition.

**Damaged or Defective Products.** Any Product manifesting defects in materials or workmanship may be returned, repaired, or replaced solely in accordance with our Limited Warranty.

To initiate any return of Products in conformance with this return policy or Limited Warranty, you must first contact our Customer Service Department at 855.450.7300 and request an RA# from us. You must provide the serial number of the applicable Product, the quantity of Products being returned, the invoice number under which you were billed for such Product(s) or parts, and, if returning a Product in connection with a claimed breach of the Limited Warranty, you must provide a reasonably detailed description of the basis for the claimed breach (collectively, the “**RA# Request**”). We will determine if your RA# Request qualifies for a return under these Terms (in our sole discretion). We will endeavor to accept or reject your RA# Request within ten (10) business days of our receipt of your RA# Request. If we request additional information from you, such ten-day period described in the immediately preceding sentence will be extended an additional five (5) business days from the date we receive such requested information from you. If we accept your RA# Request, we agree to issue you an RA# that corresponds with such RA# Request, and you agree to return the applicable Product in accordance with our written instructions.

#### **LIMITED WARRANTY AND DISCLAIMER**

Company warrants to the original purchaser (and only the original purchaser) that all of its Products and services are free from defects in materials and workmanship (collectively, “**Limited Warranty**”) for the period of time specified in our published warranty policy in effect at the time of sale with respect to any particular Product. This Limited Warranty applies only when the Products are used as intended (in accordance with all applicable labeling, instructions, manuals, or other written material accompanying the Product), have not been modified, disassembled, decompiled, or repaired without our written approval, and have been fitted by or under the direct supervision of a certified and licensed healthcare professional for use by the end-user. This Limited Warranty does not cover defects or damages to Products (a) not caused directly by us or (b) due to improper installation, alteration, or repair by any third party, in each case, not approved by us, or due to accidents, neglect, misuse, or operation beyond capacity.

If we determine a Product is defective during the Product’s warranty period, we will (at our election) repair or replace the defective Product (except expendable parts thereof) at our facility or credit the Product’s purchase price to you, provided we receive your written notice of the warranty claim within the Product’s warranty period, and you obtain return authorization number in accordance with these Terms and return the defective Product to us, shipping charges prepaid. The warranty period for any replaced or repaired Product will equal the remaining term of the warranty period applicable to such Product. Any failure to return the defective Product immediately voids the Limited Warranty applicable to such Product and requires you to pay for the replacement Product shipped to you (if any).

THE LIMITED WARRANTY SET FORTH ABOVE IS THE COMPLETE AND SOLE WARRANTY FOR OUR PRODUCTS AND SERVICES AND STATES YOUR EXCLUSIVE REMEDIES. THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF ANY THIRD PARTY RIGHT WITH RESPECT TO THE PRODUCTS OR ANY RELATED SERVICES AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY COMPANY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THE SOLE AND EXCLUSIVE LIABILITY OF COMPANY TO YOU WILL BE TO REPLACE, REPAIR, OR REFUND THE PURCHASE PRICE OF A DEFECTIVE PRODUCT AS DESCRIBED ABOVE. NO WAIVER, ALTERATION, OR MODIFICATION OF THE LIMITED WARRANTY IS BINDING AGAINST COMPANY UNLESS IT IS IN WRITING AND DULY SIGNED BY COMPANY. No oral or written statement given by any person or entity will create a warranty or representation, other than the Limited Warranty, or in any way increase the scope of any warranty offered by us.

#### **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCE AND IN NO EVENT WILL COMPANY BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR FORESEEABLE DAMAGES, LOST PROFITS, OR LOST REVENUE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. WE ARE IN NO

WAY LIABLE TO YOU FOR YOUR UNINTENDED USE OF THE PRODUCT, AND IN ANY CIRCUMSTANCE, OUR AGGREGATE CUMULATIVE LIABILITY TO YOU, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHER THEORY OF LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT YOU PAID FOR THE PRODUCT.

#### **OWNERSHIP**

You agree Company is and remains the sole and exclusive owner of any and all intellectual property in, to, under, or with respect to the Product. You agree nothing in these Terms may be construed as granting any rights to you, whether by license, implication, estoppel, or otherwise, in, under, or with respect to, any patent, copyright, or other intellectual property or other proprietary rights of Company. You will not perform any act or omit to perform an act that interferes with or encumbers our intellectual property or other proprietary rights. You must never copy, decompile, reverse engineer, disassemble, modify, or create derivative works of the Product. All Product components are provided as part of a bundle and may not be separated from the bundle and distributed as standalone Products. You must never rebrand or attempt to pass the Product off as originating from any source other than Company.

#### **PRODUCT SPECIFICATIONS**

THE PRODUCT MUST BE USED SOLELY AS INTENDED AND IN ACCORDANCE WITH THOSE INSTRUCTIONS, LABELS, INSERTS, AND OTHER RELATED MATERIALS ACCOMPANYING THE PRODUCT. WE HEREBY DISCLAIM ALL LIABILITY FOR ANY INCIDENTS OR INJURIES ARISING FROM ANY UNAUTHORIZED USE OF THE PRODUCT. WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY THIRD PARTY PRODUCTS THAT YOU MAY ELECT TO PAIR OR OTHERWISE ACCOMPANY WITH OUR PRODUCT AS PART OF YOUR TREATMENT PLAN AND ANY CLAIM IN CONNECTION WITH SUCH ELECTION. You understand and agree all Product specifications, illustrations, drawings, particulars, dimensions, performance data and other information on our Site or marketing materials are of a preliminary nature, subject to change, and intended to represent no more than a general illustration of the Product and its features and do not constitute a warranty or representation by us that the Product will conform with the same.

You agree to indemnify, defend, and hold harmless, Company, its subsidiaries, affiliates, distributors, fulfillers, and each of their respective officers, directors, employees, agents, licensors, representatives, and third party providers to the Site from and against all losses, expenses, damages and costs, including reasonable attorneys’ fees, resulting from any violation of these Terms by you. We reserve the right to assume, at our sole expense, the exclusive defense and control of any matter subject to indemnification by you, in which event you agree to fully cooperate with us in asserting any available defenses.

#### **CHANGES**

We may modify, amend, or supplement (each, a “**Change**” and collectively, the “**Changes**”) these Terms at any time and we’ll notify you when we do. We may post notice of Changes at [proteorusa.com](http://proteorusa.com) or we may notify you of the Changes by email or other methods available to us. Changes will not apply retroactively and will become effective immediately upon their publication or upon your notice of such Change. If you do not agree any Change or Changes, you should discontinue the exercise of any right or your receipt of benefits under these Terms. Your continued exercise of any right, receipt of a benefit, or performance as under these Terms will mean that you accept and agree to the Changes.

#### **GOVERNING LAW; DISPUTES**

These Terms are governed by, and will be construed in accordance with, the laws of the State of Arizona (without giving effect to its conflict of laws principles), and all forms of dispute resolution will take place exclusively in Arizona. YOU FURTHER AGREE THAT DISPUTES BETWEEN YOU AND COMPANY WILL BE RESOLVED IN ACCORDANCE WITH THESE TERMS OF USE AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS OR COLLECTIVE ACTION LAWSUIT, OR CLASS OR COLLECTIVE ARBITRATION.

#### **GENERAL TERMS**

You agree these Terms will prevail over any other terms or conditions contained in or referred to elsewhere or implied by trade, custom, or course of dealing. Any purported terms or conditions to the contrary are hereby excluded to the fullest extent legally permitted. No waiver of any term or condition under these Terms shall be effective unless made in a writing signed by us. The waiver of any breach of any such term or condition will not be construed as a waiver of any subsequent breach or condition. In no circumstance may you assign, transfer, or delegate your rights in these Terms to any third party.