

General Terms and Conditions - Aesculap, Inc.

Terms of Sale: These General Terms and Conditions ("General Terms") are an integral part of the Contract executed by Buyer and Aesculap and, together with the Contract and the Schedules and Addenda attached thereto, the Product Warranty and the Special Terms, if applicable, shall govern the purchase by and sale to Buyer of Aesculap Products, and shall contain the entire Contract between Buyer and Aesculap with respect to the subject matter hereof and supersedes all prior proposals and agreements between the parties, whether oral or written, relating to the Products. Notwithstanding the foregoing, Aesculap has the right from time to time to amend these General Terms and Buyer agrees to be bound thereby. All prices provided by Aesculap are for direct purchases only. Buyer will be responsible for all charges and markups on Products purchased through distribution. Both parties acknowledge and agree that this Contract supersedes the terms and conditions of any purchase order used by Buyer and, except for delivery instructions and quantities ordered, any conflicting or additional terms are void and have no effect, but that Buyer may place orders by use of purchase orders for its convenience and to comply with its internal procedures and requirements. All orders are subject to approval and acceptance by Aesculap.

Governing Law: This Contract, including these General Terms, and any dispute or claim arising out of or relating to this Contract or the sale of Product shall be governed by the laws, but not the law of conflicts of law, of the Commonwealth of Pennsylvania. **Any claim or action brought by either party with respect to this Contract or the Products, shall be tried by a court and not a jury. Each party expressly and irrevocably waives any right to a trial by jury in any such claim or action. This Section constitutes a material inducement upon which Aesculap is relying in entering into the Contract.**

Payment Terms: Payment terms are net thirty (30) days from date of invoice. Credit card payments will not be accepted without prior approval from Aesculap. Any taxes imposed upon the Product, its sale, transportation, delivery, use or consumption shall be the sole responsibility of Buyer. Buyer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Balances remaining unpaid at their due dates are subject to a service charge of 1.5% per month or the highest rate permitted by law, whichever is lower, until paid. Any discounts, rebates, administrative fees, credits, or other fees due or owed by Aesculap to Buyer will be applied against delinquent balances before payment or reimbursement is made. Any disputed amounts should be reported immediately and remitted with the undisputed amount by the payment due date. If Aesculap agrees with the billing dispute, Aesculap will credit Buyer the amount of the agreed-upon billing dispute. All billing disputes must be made within thirty (30) days of the applicable invoice date, or will be deemed to be waived by Buyer. If payments are not made within the credit terms, or if Buyer becomes insolvent or bankrupt, Aesculap, in addition to its other available rights and remedies, may withhold further shipment until all overdue balances are made current, and may require prepayment of future orders prior to shipment. Buyer shall reimburse Aesculap for any costs and expenses incurred for collection of overdue amounts or enforcement of its rights, including without limitation, its reasonable attorneys' fees, expenses and court costs.

Tax: Any taxes, fees or assessments imposed upon the Products, their sale, transportation, distribution, delivery, use or consumption shall be the responsibility of Buyer. Buyer must provide Aesculap with a resale/exemption certificate in order to avoid the withholding by Aesculap of applicable taxes. No refund or adjustment to previously withheld taxes will be made by Aesculap after sixty (60) days of the invoice date. Please mail proof of certification to: Aesculap Inc., 3773 Corporate Parkway, Center Valley, PA 18034.

Returned Goods Policy: Product returns are subject to the following terms and conditions:

1. All returns are subject to the prior authorization of Aesculap, in its sole discretion. To initiate a Product return, Buyer must notify the Aesculap Customer Service Department at (800) 282-9000 and complete a Returned Goods Request ("RGR") Form. The RGR Form requires lot numbers, quantities and catalog numbers along with a specific reason for the return. An Aesculap Service Representative will either authorize or deny the request for return. Aesculap's Sales Representatives are not authorized to accept returns. Only items appearing on an approved RGR Form are acceptable for return and Aesculap reserves the right to evaluate incoming Product returns prior to issuing any credit to Buyer. Unauthorized returns, returns of Non Returnable Products and returns made without a completed RGR Form will be returned directly to Buyer and no credit shall be issued. All authorized returned goods must be shipped freight prepaid to the Aesculap location indicated on the RGR Form and marked Return Goods RGR # _____. Aesculap will pay freight costs for Products shipped-in-error. Returns that are authorized for Products ordered-in-error or shipped-in-error will not be accepted unless returned within 30 days of delivery. All other returns of Products must be made within 60 days of the date of invoice.
2. Except for Products shipped in error, all returns are subject to a 25% handling/restocking charge.
3. Credit for Product returns (other than Non Returnable Products) will be issued as follows:
 - a. Unused Products returned in its original packaging and in resalable condition will receive full credit, subject to a 25% handling/restocking charge.
 - b. Unused Products returned without its original packaging, but in resalable condition, will receive partial credit (as determined by Aesculap in its sole discretion).
 - c. Products returned without its original packaging or not in resalable condition (as determined by Aesculap in its sole discretion) will receive no credit.
4. The following Products are not eligible for return ("Non Returnable Products"):
 - a. Products that have deteriorated because of improper handling, abuse or other factors beyond the control of Aesculap.
 - b. Products that have been opened, partly used or sterilized, or for which the labels or seals have been removed or tampered.
 - c. Broken, damaged or opened cases. Resealed cartons are not eligible for return.
 - d. Products that have been modified, made or customized by or for Buyer to meet its specifications.
 - e. Sterile Products or implants that have been opened, returned out of the original package, or returned within six (6) months of the sterile expiration date. (The sterilization or expiration date is the last day of the given month, e.g., August 31, 2016)
 - f. Products that have been discontinued by Aesculap.
5. Returns made with respect to warranty claims shall be made in accordance with Aesculap's Product Warranty.

Miscellaneous:

1. Except as expressly provided herein, no changes to this Contract, or waiver of any of the terms hereof, shall be effective unless in writing and signed by both parties. Any failure by Aesculap to enforce any of its rights hereunder shall not be deemed to be a waiver of such rights, and Aesculap may, at its option, from time to time, enforce any of its rights herein. This Contract binds Buyer and its successors and permitted assigns.
2. Aesculap will use its reasonable efforts to fill orders, but Aesculap shall not be liable for nonperformance or delays caused by a shortage of raw materials, manufacturing problems, delivery or labor problems, priorities, acts of regulatory agencies or judicial bodies, discontinuation of a product line, acts of God or third parties, or other causes beyond its reasonable control. Buyer agrees that in such events Aesculap may allocate Products among all of its buyers, without liability.
3. Aesculap shall promptly deliver written notice or verbal notice, followed by written notice of any recall of Product. Aesculap shall replace, to the extent reasonably possible, any such recalled Products as soon as practicable with comparable Products not subject to such recall.
4. Buyer may not change, adulterate, obscure, remove or deface trademarks, trade names or labels appearing on any Product.
5. AESCULAP SHALL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGE FOR LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH FURNISHING OF PRODUCTS, PARTS OR SERVICE HEREUNDER, OR THE PERFORMANCE, USE OF, OR INABILITY TO USE ANY PRODUCTS, PARTS OR SERVICE, OR OTHERWISE, WHETHER BASED IN CONTRACT, WARRANTY, TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY. AESCULAP'S TOTAL LIABILITY FOR ANY CLAIM OR ACTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OUT OF WHICH SUCH CLAIM OR ACTION AROSE.
6. All intellectual property rights in and to, and all technology relating to, the Products supplied to Buyer, their design and all improvements thereto, whether or not such Product, design or improvement is made pursuant to Buyer's specifications or at Buyer's expense, shall be and remain the exclusive property of Aesculap.
7. Any knowledge or information which Buyer may disclose to Aesculap shall not be deemed to be confidential or proprietary information, and shall be acquired by Aesculap free from any restriction as part of the consideration of this Contract.

Shipping & Charges:

1. Freight charges will be prepaid when orders are shipped via a transportation mode and carrier selected by Aesculap. Unless otherwise stated in a written agreement between Buyer and Aesculap, shipment of Products will be made by F.O.B. Origin.
2. When expedited transportation, specialized service, or alternate transportation modes requested by Buyer are inconsistent with efficient distribution practices of Aesculap, an additional charge to cover the premium expense will be added to the invoice.
3. Aesculap will make partial shipments, which Buyer shall accept and pay for at the prices specified on the invoice.
4. Shipment schedules are approximate and are as accurate as conditions permit on the date such schedule is prepared. Aesculap assumes no liability for delays in delivery of Products. If Aesculap is unable to deliver any Product(s) within a mutually-agreed upon period, Buyer may purchase any substitute product(s) from another source(s) without liability to Aesculap.
5. Aesculap will provide a proof of delivery upon Buyer's request. If excessive requests are made for proofs of delivery, Aesculap may charge a service charge to offset its administrative costs.
6. Any order less than \$100.00 will incur a \$25.00 minimum order charge.
7. Any direct purchase order greater than \$100 that is not submitted using the EDI system will incur a \$25 service charge.

Damage or Loss in Transit: Identity of items and extent of damage or loss must be noted on Buyer's copy of delivery document by an agent of the transportation company. If damage is discovered after receipt of shipment, Buyer must notify the transportation company immediately and request that inspection be made and an inspection report rendered. Aesculap will issue a credit for the loss or damage and file a claim with the carrier, if Buyer's request is promptly forwarded to Aesculap's principal office and received within seven (7) days after receipt of shipment. This claim request must be accompanied by a delivery receipt or an inspection report upon which the transportation company has properly noted such damage or loss. Buyer must count and inspect its freight before carrier departs. Damaged merchandise should not be accepted by Buyer. **Buyer must send a copy of the carrier freight bill to Aesculap indicating item and quantity damaged or not received. Please forward all information to Attn: Distribution, Aesculap, Inc., 615 Lambert Pointe Drive, Hazelwood, MO 63042-2609.**

Toll Free Order Number 1 (800) 282-9000
Fax Order Number 1 (610) 791-6886
Repair Order Number 1 (800) 214-3392

Product Warranty

Aesculap, Inc.

Product Warranty

Aesculap warrants to the original purchaser of its Products that each standard Product bearing the Aesculap name is free from defects in materials and workmanship for a period as outlined below from the time of its original delivery (defined by the date of the invoice) for its intended surgical purpose.

Specific Product Warranties Include:

- BipoJet Bipolar Scissors -- 1 Year
- Cameras (single chip and three chip) -- 1 Year
- CO2 Insufflators -- 1 Year
- DUROGRIP TC-Needleholders on wear and tear -- 3 Years
- DUROTIP TC-Scissors on wear and tear -- 3 Years
- Endoscopes -- 1 Year
- Endoscopic Handheld Instruments -- 1 Year
- Fiber Optic Cables, all Video Accessory Cables -- 90 Days
- HF- Surgical Units and HF-Reusable Accessories (handles, neutral electrodes, etc.) -- 1 Year
- Lightsource Units, excluding lamps -- 1 Year
- Motor Systems and Components -- 1 Year
- Pneumatic Kerrison and Components -- 1 Year
- Sterile Containers and Trays (Excluding Accessories) -- Lifetime
- Sterile Container Lid Gaskets -- 3 Years
- Surgical Instruments -- Lifetime
- Video Monitors, Video Recorders, Video Printers -- 1 Year

All warranties exclude periodic maintenance and repair or replacement of parts due to normal wear and tear, unless otherwise noted above. All warranties for Products not listed above shall expire as of the Product sterilization/expiration date, or if none, one (1) year after the date of shipment of the Product by Aesculap. If during the period of Warranty the Product proves defective due to improper materials or workmanship, Aesculap will, without charge for labor or parts, repair or replace the Product or its defective parts, at Aesculap's option, upon the terms and conditions of this Warranty below.

REPAIR AND REFURBISHMENT WARRANTY

Aesculap warrants that any repair or refurbishment service that it performs will be performed in a workmanlike manner, in accordance with industry standards. This warranty shall expire ninety (90) days following the completion of such service. The sole and exclusive remedy for a breach of this warranty shall be the re-performance of such service, at no charge to Buyer.

WARRANTY CONDITIONS AND EXCLUSIONS

AESCULAP'S SOLE OBLIGATION AND BUYER'S SOLE AND EXCLUSIVE REMEDIES ARE AS SET FORTH IN THIS WARRANTY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AESCULAP MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED WITH RESPECT TO ANY PRODUCTS, PARTS, SERVICES OR REPAIRS PROVIDED BY AESCULAP INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Products not bearing the Aesculap name, but which are distributed by Aesculap, are not warranted by Aesculap, and Buyer must instead rely on the representations and warranties, if any, provided directly to Buyer by the manufacturer of such product. These warranties do not extend to damage to Products resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by Aesculap. No agent, employee or other representative of Aesculap has the right to modify or expand the warranties herein and no such modification or expansion should be relied upon by Buyer.

These Warranties will be granted only when the original invoice or sales receipt (indicating the date of invoicing and product type) is presented together with the defective Product. Aesculap reserves the right to refuse free-of-charge warranty service if the aforementioned document cannot be presented or if the information contained in it is incomplete or illegible. Buyer shall bear all transport costs and risk of loss or damage to returned goods while in transit.

These Warranties shall not apply if: (i) any repairs, adaptations, adjustments, alterations, or other work has been performed on a Product by Buyer or other persons other than work performed with Aesculap's written authorization and according to its approved procedures; or (ii) the alleged condition or defect is a result of abuse, negligence or misuse, including but not limited to (a) forcible damage or oversteering, (b) failure to use the Product in accordance with Aesculap's instructions for use or if a Product is used for a purpose not indicated in its labeling or instruction manual, (c) corrosion by chemicals such as, e.g., saline solution, during use, (d) improper care and maintenance such as, e.g., using unsuitable disinfectant and cleansing agents, unsuitable disinfectant and cleansing methods, unsuitable care materials, unsatisfactory water quality and/or sterilization conditions, single-use items are resterilized, (e) installation or use of the Product in a manner inconsistent with the technical or safety standards required under applicable laws, and (f) improper or incorrect installation of software; or (iii) the type or serial number on the Product has been altered, deleted, removed or made illegible; or (iv) a Product or component thereof is modified or customized at Buyer's request, (v) damages resulting from accidents, lightning, water, fire, improper ventilation or any cause beyond the control of Aesculap; or (vi) defects of the systems into which the Product is incorporated.

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1/23/13