

## **Terms and Conditions**

**Payment Terms.** Payment terms are Net 30 days from invoice date unless otherwise expressly stated on invoice. Edwards may suspend sales of products to the Purchaser in the event that the Purchaser delays payment or fails to pay any sum owed by Purchaser to Edwards hereunder. Edwards agrees that it will not impose a credit hold or otherwise restrict Purchaser from purchasing Edwards' products or services without first serving Purchaser with advance notice of 15 business days. Payments due to Edwards shall be made without any deduction or offset for any costs, expenses or credits of any kind. Purchaser shall be responsible for payment of all applicable state and/or local sales, use, and/or gross receipts tax receipts resulting from the transactions hereunder. Any invoice claims or disputes by Purchaser must be made in writing within 90 days of invoice date. Edwards will not make payments for, or investigate, any invoice claims or disputes which are made more than 90 days after invoice date.

**Shipping.** Edwards may implement a shipping charge for any of the products. Additional charges for emergency or overnight deliveries will be the responsibility of Purchaser and will be added to the invoice.

**Returns.** All returns must be authorized by Edwards and may be subject to a 20% restocking fee. Authorization may be obtained through the Customer Service department. A Return Goods Authorization number will be issued upon approval of the return and the number must be referenced on all returned packages. The following merchandise is not acceptable for return: (1) Sterile items that are returned without factory seals intact; (2) special order products; (3) incomplete cases or kits; (4) expired product; (5) product which has been marked or labeled with anything other than the standard Edwards label. Edwards does not offer any reculturing, resterilization or refurbishing service for any Heart Valve Therapy or Transcatheter product.

**No Charge Product.** If this product is provided to Purchaser by Edwards at no charge for evaluation or demonstration purposes, Purchaser agrees to not bill any third party for the no-charge product, and if covered under a government reimbursement program, Purchaser will not seek reimbursement under the billing procedures applicable to the payment system and/or the no-charge product must be treated appropriately under the billing procedures applicable to the payment system. Unless purchased or consigned, any unused product at the end of an evaluation period must be destroyed or returned per Edwards' instructions. If the product was provided to Purchaser in replacement of previously purchased product, and if Purchaser has previously billed for and/or sought reimbursement for the previously-furnished product, Purchaser may not bill third parties for the replacement product and the replacement product must be treated appropriately under the billing procedures applicable to the payment system.

**Warranty.** Edwards warrants that each of the products it manufactures, when used in accordance with the directions on the labeling, is fit for the purposes and indications described in the labeling. A product distributed by but not manufactured by Edwards is warranted by its manufacturer. Unless a product is used in accordance with its instructions, these warranties are void and of no effect. THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EDWARDS' SOLE OBLIGATION AND PURCHASER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT EDWARDS' OPTION, TO REPAIR OR REPLACE THE PRODUCT. NEITHER EDWARDS NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR ANY PROXIMATE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR THE PRODUCTS SOLD HEREUNDER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any warranty or liability is excluded where the warranty claim, in Edwards' reasonable opinion, arises out of (1) accident, theft, misuse, or neglect; (2) use of the products outside of normal operating conditions, specifications, or environment or in a manner not authorized by Edwards; (3) lack of routine care or maintenance as indicated in any Edwards' operating or maintenance instructions; (4) failure to use or take any proper precautions under the circumstances; (5) user modification of any Product; (6) computer viruses and other changes to the operating system or environment which adversely affect the applicable Product; (7) defects, problems, or failures created by third party products (except those comprising parts or components of Edwards' products) or their interface with Edwards' products; (8) Force Majeure, and (9) latent defects discovered after the expiration of the applicable warranty period.

**Indemnification.** Purchaser agrees to indemnify and hold harmless Edwards, its agents and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorneys fees and court costs) which Edwards or such persons may be required to pay to third parties for bodily injury or property damage resulting from any negligent or wrongful act or omission by Purchaser, its agents or employees.

**Software.** Edwards hereby grants a nonexclusive, nontransferable, limited license to use any software included within the products, but only in conjunction with Purchaser's internal business use of the products purchased hereunder. Purchaser receives no title or ownership rights to the software. Purchaser may not (a) modify, adapt, decompile, disassemble, or reverse engineer the software; (b) create any derivative works based on the software; (c) make any copies of the software, except for one copy solely for backup or archival purpose; (d) allow any third party to use or have access to the software; or (e) sell, transfer, assign or sublicense the software except as provided herein. Updates to the software may become available from time to time. Purchaser agrees that Edwards shall have the right to access the capital equipment upon reasonable prior notice to install any and all such updates. If Purchaser does not permit Edwards to update the software in a timely fashion, Edwards may void the capital equipment warranty.

**Product Training.** As necessary to fulfill applicable regulatory requirements or otherwise assure the safe and effective use of the product, Edwards will provide training and education to Purchaser. Such training and education will be provided at no additional charge at Purchaser's location or other appropriate venue permitted by the AdvaMed Code of Ethics on Interactions with Health Care Professionals.

**Confidentiality.** Neither Purchaser nor Edwards shall disclose any of these Terms and Conditions to any third party or otherwise make such terms public, unless such party receives the prior written approval of the other party or such disclosure is required by law.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law provisions.

**Compliance with Laws.** Purchaser shall comply with all federal, state and local laws, rules and regulations applicable to the purchase and use of the goods. In addition, Purchaser shall obtain all permits and licenses required by federal, state or local authorities in connection with any of the goods and shall bear all expenses in obtaining such permits and licenses or in complying with any related rules, regulations, ordinances and statutes. Products are subject to the export laws and regulations of the United States and other countries. And diversion or re-export contrary to, or any violation of, applicable export control laws and regulations is prohibited.

**Independent Contractors.** The parties are acting independently and shall at all times act as independent contractors of each other in the manufacture and sale of the goods and are not partners, joint venturers, agents, or legal representatives of each other, for any purpose. Neither party shall have any right or power to act for or bind the other, in any respect, to pledge its credit, to accept any service of process upon it, or to receive any notices of any nature whatsoever.

**Recall.** If Edwards is required by a regulatory agency to recall products, or Edwards voluntarily initiates a recall of products, Purchaser agrees to cooperate with and assist Edwards in locating and retrieving the recalled products. Purchaser shall promptly report to Edwards any complaints or other information regarding the products of which it becomes aware that could reasonably be expected to lead to recall or other regulatory action.

**General.** Edwards may assign these Terms and Conditions to an affiliate upon written notice to Purchaser. Subject to the precedent, neither party may make such an assignment to a third party without the prior written consent of the other party, which shall not be unreasonably withheld. Neither party shall be liable to the other party in respect of any delay or failure to perform that results from any event or cause that is beyond the reasonable control of the party obligated to perform. Neither party's failure to insist upon the performance of any of these Terms and Conditions shall be construed as a waiver or relinquishment of such party's right to such performance or other future performance of such term or terms, and the other party's obligations with respect thereto shall continue in full force. Either party's consent to or approval of any act by the other party on any one occasion shall not be deemed a consent or approval of the same act on any subsequent occasion. None of these Terms and Conditions shall be deemed to be waived by either party or amended unless such waiver or amendment is written and signed by both parties and recites specifically that it is a waiver of, or amendment to, these Terms and Conditions. This contains the full and complete expression of the rights and obligations of the parties, and it shall cancel and supersede all other written or oral communications heretofore made by the parties (including their affiliates) related to the subject matter hereof.