



Edwards

Terms and Conditions for Capital Equipment

This Capital Equipment Terms and Conditions Agreement (this "Agreement") is entered into by and between Edwards Lifesciences LLC, a Delaware limited liability company, with an address of One Edwards Way, Irvine, California 92614 ("Edwards") and a purchaser who issues a purchaser order ("Purchaser") for the purchase of equipment set forth in an applicable quote ("Equipment"). Purchaser desires to buy the Equipment listed on the applicable quote from Edwards at the prices set forth therein ("Quote"). Edwards is willing to supply the Equipment to Purchaser upon the terms and conditions set forth herein.

- Products.** Edwards agrees to supply Purchaser with the Equipment, and Purchaser agrees to buy the Equipment solely for its own use from Edwards.
- Term.** The term of this Agreement shall be as set forth in the Quote to Purchaser ("Term"). This Agreement shall not be automatically extended or renewed for successive terms. Upon termination of this Agreement, Edwards will not honor the pricing contained in this Agreement or issue credits or re-bills for Equipment ordered or received after the date of termination.
- Pricing; Payment.** Pricing shall remain firm for the term of the Quote. Payment terms are net 30 days from invoice date. Purchases shall be shipped F.O.B. Destination, freight prepaid and charged back and made in accordance with such further terms (including returned goods policies) as set forth in Edwards' product price list in effect on the date of shipment. Purchase order placement, confirmation, and invoices for Equipment shall be sent by use of electronic data interchange (EDI), except where Purchaser does not have such capability. Edwards may suspend sales of the Equipment to Purchaser or terminate this Agreement with respect to Purchaser in the event that Purchaser delays payment or fails to pay any sum owed by Purchaser to Edwards hereunder.
- Limited Warranty.** EDWARDS WARRANTS THAT THE EQUIPMENT IT MANUFACTURES, WHEN USED IN ACCORDANCE WITH THE DIRECTIONS ON THE LABELING, IS FIT FOR THE PURPOSES AND INDICATIONS DESCRIBED IN THE LABELING FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF PURCHASE. UNLESS EQUIPMENT 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 EQUIPMENT. EDWARDS SHALL NOT BE LIABLE FOR PROXIMATE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. EDWARDS SHALL NOT BE OBLIGATED UNDER THIS WARRANTY TO REPAIR OR REPLACE A DAMAGED OR MALFUNCTIONING EQUIPMENT IF SUCH DAMAGE OR MALFUNCTION IS CAUSED BY THE PURCHASER'S USE OF CATHETERS, FINGER CUFFS, OR SENSORS OTHER THAN THOSE MANUFACTURED BY EDWARDS.
- Exclusions from Coverage.** 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 Equipment 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 Equipment; (6) computer viruses and other changes to the operating system or environment which adversely affect the applicable Equipment; (7) defects, problems, or failures created by third party products (except those comprising parts or components of Edwards' Equipment) or their interface with Edwards' Equipment; (8) Force Majeure (as further described below), (9) latent defects discovered after the expiration of the applicable warranty period; (10) any disassembled, open, repaired, or altered Equipment or Equipment with broken internal warranty seals; (11) any attempts to copy, disassemble, decompile, reverse engineer, or otherwise attempt to derive any code or other trade secrets of or pertaining to the Equipment or software; and (12) any attempts by third party service entity or bio-med to disassemble, open, repair or alter Equipment. For greater clarity, Equipment requires only Edwards' authorized sensors to be used with them. Purchaser agrees to use only Edwards' authorized sensors in connection with the Monitors. Use of sensors other than Edwards' authorized sensors shall void Edwards' warranty and liability.
- Indemnification.** Purchaser agrees to use only Edwards disposable products with Equipment. Edwards can make no guarantee to the accuracy and validity of the parameters displayed by any monitor contained in our Equipment when used with the sensors, finger cuffs or catheters other than Edwards disposable products. Use of non-approved sensors, finger cuffs or catheters will void the Edwards product warranty and shall have the effect of immediately terminating this Agreement. If Purchaser uses any sensors, finger cuffs or catheters that are not genuine Edwards products in connections with Equipment then Purchaser will indemnify, defend and hold harmless Edwards, its affiliates, shareholders, directors, officers, employees, successors, and assigns from and against all claims, liabilities, losses, damages, liabilities costs and expenses (including reasonable attorneys' fees and expenses and court costs) arising from or related to any actual or alleged death or bodily injury to any individual arising from or related to the use of such third party product.
- Software Updates.** During the Term, updates to the Monitor's software may become available from time to time. Purchaser agrees that Edwards shall have the right to access the Monitors 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 Monitor's warranty and/or terminate this Agreement.
- Force Majeure.** Edwards will use commercially reasonable efforts to fill orders, but Edwards shall not be liable for nonperformance or delays caused by shortage of raw materials, manufacturing problems, labor problems, acts of regulatory agencies, discontinuation of a product line, acts of God, or other causes beyond Edwards's control. Purchaser agrees that in such events Edwards may allocate products among all purchasers without liability. In the event that Edwards ceases to manufacture or distribute any of the Equipment for any reason, Edwards shall have no obligation to supply such Equipment.
- Direct Order Purchases.** Edwards will provide the Equipment to Purchaser for direct order purchases only at the prices set forth in the Quote.
- General.** This Agreement, including without limitation the Quote attached hereto, shall supersede all other agreements between Edwards and Purchaser with respect to the Equipment. No changes to this Agreement, including any conflicting or additional terms contained in any purchase order or other document submitted by Purchaser, shall be valid unless approved in writing by Edwards at its home office. Edwards may assign this Agreement to any successor of all or substantially all of the business to which this Agreement relates without the prior consent of Purchaser. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any invoice claims or disputes by Purchaser must be made in writing within ninety (90) days of invoice date. Edwards will not make payments for, or investigate, any invoice claims or disputes which are made more than ninety (90) days after invoice date. Purchaser and Edwards agree not to disclose the financial terms and conditions of this Agreement without the prior written consent of the other party, except as required by applicable law or regulatory authority. Each party agrees that all information provided to it by the other party pursuant to this Agreement, including information concerning pricing, products and customers, is confidential and proprietary information of the disclosing party. Each party agrees not to disclose such confidential information directly or indirectly to any third party or to use such confidential information for any purpose other than for fulfilling its obligations under this Agreement. Upon either party's request, the other party shall return all confidential information to the requesting party or destroy all such information and certify in writing as to its destruction. This provision shall survive the termination or expiration of this Agreement.

Edwards Lifesciences LLC

One Edwards Way • Irvine, CA USA • 92614

Phone: 949.250.2500 • Fax: 949.809-7783 • www.edwards.com