



Terms & Conditions

1. General Terms

These Terms and Conditions are applicable to any proposition, offer, order and agreement relating to the sale of any products (“**Products**”) by Organ Recovery Systems, Inc. (“**Company**”) to customer (“**Customer**”). An order of any Product from Company constitutes acceptance of all applicable Terms (as defined below). Any conflicting or additional terms or conditions in any purchase order or other writing from Customer, or in any order acknowledgement or other writing from Company, whenever transmitted or delivered, are of no binding force or effect whatsoever unless accepted in writing by a duly authorized representative of Company (a “**Representative**”) and Customer. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Terms or any Product.

THE QUANTITY AND DESCRIPTION OF PRODUCTS SHALL BE AS CONFIRMED BY THE COMPANY. THESE TERMS AND CONDITIONS OF SALE, TOGETHER WITH ANY PURCHASE ORDERS AND INVOICES, WARRANTY, AND FOR PURCHASES OF LOCATION AND DATA TRACKING-ENABLED LIFEPORT DEVICES, THE END USER LICENSE AGREEMENT (EULA) (COLLECTIVELY THE “**TERMS**”), CONSTITUTE THE ENTIRE AGREEMENT BETWEEN COMPANY AND CUSTOMER AND SUPERSEDE ANY WRITTEN OR ORAL AGREEMENTS OR ARRANGEMENTS BETWEEN THEM RELATING TO THE PURCHASE AND SALE OF ANY PRODUCTS. If any provision of the Terms is declared invalid or unenforceable by any court, the remainder of the Terms shall remain in effect. Every order is deemed accepted from the date of the order acceptance issued by Company.

Customer acknowledges that all location and data tracking-enabled LifePort devices (the “**LifePort**”) are equipped with GPS transmitters for location and data tracking. Customer agrees that Company may use these transmitters to provide its Products and services, regardless of whether Customer has chosen to activate these features. See the LifePort End User License Agreement for more information.

2. Payment

Prices for Products shall be as set forth on the invoice for such Products provided by Company to Customer or as otherwise agreed by a Representative and Customer in writing. Unless otherwise agreed in writing, all prices given by Company exclude, and Customer shall pay, all applicable shipping and freight costs, sales, use, import, export, VAT, goods and services and other similar taxes, tariffs, duties or charges (excluding taxes on the net income of Company, collectively, “**Charges**”). A particular Charge shall not apply if Customer provides Company with valid exemption documentation with respect to the subject Charge. Company reserves the right, by giving notice to Customer at any time before delivery, to increase the price of Products to reflect any increase in the cost to Company due to any factor beyond Company’s reasonable control. Company shall be entitled to invoice Customer for the price of Products together with any Charges upon acceptance of an order for Product by Company. All Charges are due and owing upon presentation of an invoice for Charges delivered by Company to Customer. All prices are quoted FOB Company’s designated facility for the Products ordered by Customer (“**Facility**”).

Customer shall make full payment of any amount invoiced by Company within 30 days of the date of the invoice, without set-off, counterclaim or deduction of any kind, whether arising from breach of contract, tort (including negligence), breach of statutory duty or any other matter whatsoever. If Customer fails to pay any sum when due, Company shall be entitled to charge Customer interest (both before and after any judgment) on the amount unpaid at the rate of the lesser of 1.5% per month or the maximum rate permitted by law. All payments shall be made in the currency stated in Company’s invoice for Products. Customer



agrees to pay any costs of collection incurred by Company for any past due amounts, including court costs and attorneys' fees and expenses. Any payables owing by Customer to Company may be assigned by Company or pledged as collateral as Company determines in its sole discretion.

Company reserves the right to suspend shipment of any order of Product if any payment for any other order of Product from Customer is late. Customer hereby authorizes Company to make inquiries to obtain credit and other financial information concerning Customer and authorizes Customer's bank(s) of record to release such information regarding Customer to Company.

3. Delivery, Title and Risk of Loss

Unless otherwise agreed by a Representative in writing, all Products will be deemed delivered by Company to Customer at the Facility. Title and risk of loss or damage to Products shall pass to Customer upon shipment of Products from the Facility, regardless of whether Customer or Company arrange for shipment. Unless otherwise agreed in writing by a Representative, Customer is responsible for arranging and paying all shipping from the Facility, and insurance of all Product from delivery and while in transit. Delivery periods noted in any customer order are subject to written confirmation from Company, and once so confirmed will be deemed satisfied if Company makes the subject Products available for delivery at a Facility within the time period designated for delivery. Availability of Product is on a good faith efforts basis. If a Product is in short supply, Company will allocate supply among its customers in such manner and amounts as Company determines. Company shall use reasonable efforts to completely fill accepted orders, but may ship partial orders as Company determines. Once an order for Product has been accepted by Company, it may not be rescinded or canceled by Customer for any reason unless rescission or cancellation is accepted in writing by a Representative.

4. Limited Warranty - Return of Products – Non-Conformity and Hidden Defects – Recalls – Limited Remedies – Specifications – Liability

Customer has been provided with Company's Limited Product Warranty for Products ("**Warranty**"). Company does not offer or accept any liability for any other representations, warranties or liabilities with respect to Products or services offered by Company except as expressly set forth in the Terms. All obligations of Company with respect to return of Products, recalls, non-conformity and latent or obvious defects, the performance and handling of Products, indemnifications with respect to Products, if any, and limitations of liability of Company and the remedies of Customer with respect to Products are as set forth below.

No claim subject to the Terms may exceed the purchase price for the subject Products actually paid by Customer, except as otherwise expressly set forth in the Terms, or otherwise required by law. No claim for any liability may be brought later than 90 days following the later of (i) the date on which the event or circumstance that may give rise to liability on the part of Company has occurred, or (ii) the date on which Customer first becomes aware of such event or circumstance, provided that no claim against Company may be brought later than 1 year after the occurrence of such event or circumstance.

Company reserves all rights not expressly granted to Customer in the Terms. Company reserves the right to change, without prior written notice to Customer, any Product specifications which do not materially affect performance, use or price of such Product as determined by the Company.

IN NO EVENT IS COMPANY LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED (INCLUDING FAULT OR NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT, THE USE OF THE PRODUCT OR THE TERMS OR OTHERWISE. THIS LIMITATION APPLIES EVEN WHERE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH



DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THE TERMS.

5. Indemnity

Customer hereby indemnifies, defends and holds harmless Company, its affiliates and its and their respective officers, directors, employees, insurers, agents and representatives from and against any and all losses of any kind or nature whatsoever arising out of any claims or suits resulting from (i) Customer's acts or omissions concerning the purchase, transportation, storage or use of Products, (ii) Customer's breach of any representation, warranty or covenant contained in the Terms, (iii) Customer's failure to comply with Laws, or (iv) injury or damage to any third party (including death) or damage to any property arising out of any storage, transportation or use of Products by Customer (including its affiliates or its or their officers, directors, employees, independent contractors or agents) or third parties.

6. Limitations of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY TO CUSTOMER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.

THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE PRODUCT SHALL BE THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT, AT COMPANY'S OPTION. IF COMPANY IS UNABLE TO REPAIR OR REPLACE THE PRODUCT, COMPANY MAY, AT ITS SOLE DISCRETION, REFUND THE PURCHASE PRICE PAID BY THE CUSTOMER FOR THE DEFECTIVE PRODUCT.

7. Retention of Title

Notwithstanding Article 3 of the Terms and Conditions, transfer of title of any delivered Product takes place upon effective payment of all amounts due under the Terms. PRIOR TO COMPLETE AND FINAL PAYMENT OF ALL AMOUNTS, CUSTOMER (i) IS NOT ENTITLED TO RESELL PRODUCTS AND (ii) AGREES TO NOTIFY COMPANY IMMEDIATELY OF ANY SEIZURE OR ATTACHMENT OF PRODUCTS BY CUSTOMER'S CREDITORS. Nothing in this Article 7 alters the transfer of risk of loss or damage to Products to Customer under Article 3 hereof.

8. Intellectual Property

All intellectual property rights in Products are owned by Company or third-party suppliers of Products and are protected by United States and foreign trade secret, patent and copyright laws and international treaty provisions.

Company and its suppliers retain all rights not specifically and expressly granted to Customer herein. Customer agrees it will not remove, cover, mar, deface or alter any trademarks or other intellectual property of Company or its suppliers placed on any Product. Customer agrees that all software programs contained in any Product or otherwise offered by Company (including related documentation, updates and new versions, "**Software**") remain the sole and exclusive property of Company, may not be copied, duplicated,



reproduced, reverse-engineered, or disassembled, or otherwise used for any other purpose or for the benefit of any third party. Customer is hereby granted a non-exclusive, non-assignable, non-transferable right to use the Software only for Customer's operation of the Product for which the Software is provided and for no other purpose or use. Except for the limited rights and licenses expressly granted under the Terms, nothing in the Terms grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to Company intellectual property.

Company and any Company partner service marks, logos and product and service names are marks of their respective owners ("**Company Marks**"). Customer agrees not to display or use the Company Marks in any manner without the express prior written permission of their owner.

9. Export Control Laws

Customer acknowledges that any Products supplied to Customer may be subject to export control laws and regulations of the United States and other jurisdictions, and that such laws and regulations may prohibit or delay future delivery of Products. Customer agrees to comply, in the United States and worldwide, with all export laws, trade sanctions, regulations and restrictions of the United States or any foreign government or entity which regulates their shipment (collectively "Export Control Laws").

Customer further agrees to ensure that Products will not be re-exported, sold or otherwise transferred to countries or persons in violation of any Export Control Laws. Customer certifies that neither Products nor information supplied by Company shall be used in the development, production, stockpiling or use of any weapons by Customer or anyone acting for Customer.

10. No Waiver

Customer agrees that Company's failure at any time to require compliance by Customer of any of the provisions of the Terms shall not operate as a waiver of Company's right to require strict performance of the same or like provisions at a later time.

11. Miscellaneous Matters; Applicable Law and Jurisdiction

a) The Terms may not be amended or waived in any respect unless agreed to in writing by a duly authorized officer of Company. Headings are for convenience only and may not be used to construe or interpret the Terms or the intentions of the parties.

b) Customer may not use, authorize or permit use of any Products in a manner that does not comply with applicable laws, rules and regulations or the Warranty. The Warranty is void if any Product covered by the Warranty is so used, or is used or exported for any purpose not permitted hereunder or contemplated by Company.

c) Each party will treat the other party's proprietary information as confidential and will not use or disclose it to any third parties unless expressly permitted under the Terms, as mutually agreed in writing by the parties, as otherwise required by applicable laws, rules or regulations, or as appropriate to enforce or defend its rights under the Terms.

d) Customer may not assign, delegate or otherwise transfer its rights and obligations hereunder or the Warranty except with the prior written consent of a duly authorized officer of Company.

e) The Terms represent the entire agreement between Company and Customer and supersede in their entirety all prior agreements, proposals and understandings concerning the subject matter hereof and



thereof. Any oral or written representation, warranty, course of dealing or trade usage not set forth in the Terms shall not be binding. Company offers no warranties or guarantees of any kind with respect to its services, except as set forth in a separate written agreement executed by a duly authorized officers of Company and Customer. In the event of a conflict between the Terms and Conditions, the EULA, and the Warranty, the EULA, then the Terms and Conditions, and then the Warranty shall be the order which the respective terms prevail.

f) Company is not liable for any failure or delay in performing any obligation under the Terms, and shall not be deemed to be in breach of its obligations hereunder, if such failure, delay or breach is due to any cause beyond the reasonable control of Company (a "Force Majeure Event"). Such non-performance shall be excused for as long as the particular Force Majeure Event is continuing, provided that Company has so notified Customer.

g) The Terms are provided solely by and between, and may be enforced only by, Company and Customer (and their respective successors and permitted assigns) and are not intended to confer on any third party or person any rights, remedies, obligations or liabilities under or by reason of the Terms or the purchase and sale of Products.

h) Company and Customer are independent contractors, and shall not be deemed to be partners, joint venturers or otherwise be in any similar relationship, and neither party shall be deemed to be an agent of the other party.

i) If any provision of the Terms or the application thereof is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision hereof and the remaining provisions of the Terms, as applicable, shall remain in full force and effect and shall not be affected or invalidated. Failure by a party to enforce any rights it may have under the Terms shall not be construed as a waiver of such rights nor shall a waiver by either party in any one instance be construed as constituting a waiver in any other instance.

j) THE TERMS ARE SUBJECT TO THE LAWS OF THE STATE OF ILLINOIS, U.S.A., WITHOUT APPLICATION OF CONFLICT OF LAW PRINCIPLES.

k) ANY DISPUTE OR CONTROVERSY BETWEEN COMPANY AND CUSTOMER RELATED TO THE TERMS OR PRODUCTS WHICH IS NOT RESOLVED BY THE PARTIES SHALL BE SUBMITTED TO ARBITRATION IN THE CITY OF CHICAGO, ILLINOIS, U.S.A. UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION BEFORE A SINGLE ARBITRATOR. EACH OF COMPANY AND CUSTOMER AGREES TO BE BOUND BY THE DECISION OF SUCH ARBITRATION. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION.