

# NIPRO Medical Corporation Terms and Conditions of Sale

Version Rev3 (20200603)

## 1. Applicability

NIPRO Medical Corporation Terms and Conditions of Sale, ("Terms and Conditions"), apply to the purchase of any product ("Product(s)") sold by NIPRO Medical Corporation ("NIPRO", also known as "NMC"), which are accepted by, and shall be deemed binding on the Buyer upon placing an order for Product(s). No changes to, waiver of, or addition to any of these Terms and Conditions shall be effective unless agreed to in writing and signed by NIPRO. In the event of a change, waiver of or addition to any of these Terms and Conditions in a writing signed by NIPRO these Terms and Conditions shall nonetheless govern with respect to any particular term, condition or subject matter not addressed in such writing.

Buyer acknowledges and agrees that these Terms and Conditions supersede the terms and conditions of any purchase order or other documentation used by Buyer. Except for delivery and billing addresses, quantities, prices and items ordered, any conflicting or additional terms in documents used by Buyer are void and have no effect on these Terms and Conditions. Buyer may place orders by use of purchase orders and other documentation for its convenience purposes only.

NIPRO reserves the right at any time to amend these Terms and Conditions by posting such amended Terms and Conditions on NIPRO's website [<https://www.nipro.com/terms-and-conditions>], and Buyer shall be deemed to accept such amended Terms and Conditions by ordering NIPRO Products after the date of the posting of such amended Terms and Conditions on NIPRO's website.

## 2. Tax, Tax-Exempt Status and Other Fees

Buyer agrees to pay all applicable federal, state, and local taxes; license and registration fees, and all other fees and costs based on Buyer's purchase, possession or use of Product. A Buyer that is exempt from taxation is required to provide valid certification of its exempt status to Nipro.

## 3. Pricing

All pricing quotes must be documented in writing and signed by NIPRO to be valid. Prices quoted, unless otherwise stated, refer to full case quantities. **Any disputed prices must be identified to NIPRO in writing within ten (10) business days from the invoice date.**

NIPRO reserves the right to change the prices and specifications of its Products at any time without notice.

## 4. Ordering and Freight Terms

Buyers are welcome to place orders by one of the following methods:

**Email:** [USOrders@nipromed.com](mailto:USOrders@nipromed.com)

**Electronic Data Interface ("EDI"):** EDI requires system set-up prior to ordering. Please contact Nipro Partner Solutions for more information.

- Product which is factory sealed in master case or overpack quantities must be ordered as such in increments of the overpack / master case quantity. Please contact Nipro Partner Solutions for more information.
- All orders are subject to credit approval and acceptance by NIPRO. These Terms and Conditions shall be effective on the date of the Order Acknowledgement.
- Orders for Disposable products need to be received prior to 12:00 noon EST in order to be processed for shipping out the next business day.
- Orders for Solution products require a three (3) week Lead Time for all initial orders. Subsequent Orders for Solution product must be received by Monday 12:00 noon EST for delivery the following week.
- The following information is requested for new customer set up and must be validated by Buyer, prior to placement of purchase orders.
  - New Customer Set up Form
  - W9
  - Signed Sales Contract
  - Ship-to location form with delivery detail
  - License requirements
  - Tax-exemption certification, if applicable

Buyer must validate the following information on all new purchase orders placed with NIPRO.

- Buyer Name
- Complete Delivery Address
- Buyer purchase order number
- Contact name and phone
- NMC product code number
- Quantities in case configuration
- Requested delivery date
- Any special delivery instruction

Orders to be shipped to locations in the contiguous U.S.A. with a minimum value of \$1,000.00, unless alternative terms agreed upon, shall qualify for free freight with a NIPRO approved carrier and will be shipped FOB/Destination with the risk of loss on any Product shipped passing to the Buyer upon receipt at the Buyer's delivery address.

With respect to shipments (a) with less than the minimum value of \$1,000.00 to locations in the contiguous U.S.A., (b) to locations in Canada, Alaska, Hawaii, Guam, US Trust Territories or the Virgin Islands irrespective of the value of the shipment, and (c) when Buyer requests a carrier not approved by NIPRO, all freight costs will be borne by the Buyer and all such shipments will be shipped FOB/NIPRO dock with the risk of loss on all Product shipped passing to Buyer at the point of shipment.

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Orders not qualifying for free freight will have the estimated freight cost with a carrier selected at NIPRO's sole discretion added to the invoice as a separate line item unless under sub-section (c) above the Buyer at the time of ordering provides a carrier and a valid Buyer account number with the carrier against which the Product will be picked up and charged by the carrier solely to the Buyer.

Recognizing that hospitals and centers have unique delivery and service requirements, Buyer and NIPRO will set a mutually agreed upon delivery schedule.

When Buyer requests expedited delivery for any reason, specialized services or alternate transportation modes, or if Buyer requests are inconsistent with efficient distribution practices as determined at NIPRO's sole discretion, irrespective of whether minimum quantities are met, all expense of transportation is to be borne by the Buyer and such Product will be shipped FOB/NIPRO dock with the risk of loss on all Product shipped passing to Buyer at the point of shipment.

NIPRO reserves the right to ship per pre-determined carrier. Palletized deliveries are encouraged.

NIPRO will attempt to ship all expedited requests to Buyer on an expedited basis based on Buyer request, but NIPRO will not be liable for any loss or damage arising out of delay or failure of shipment or delivery.

## 5. Special Services

Special services related to packing and/or shipping are subject to commensurate service fees per occurrence as listed below. These charges are added to the invoice as separate line item charges.

- |                        |   |  |      |
|------------------------|---|--|------|
| ▪ Lift Gate            | \$50  | ▪ Proof of Delivery  | \$40 |
| ▪ Inside Delivery      | \$75  | ▪ Pump-off Services  | \$75 |
| ▪ Custom Palletization | \$75  | <i>(Per delivery, applicable for 55 Gallon Drum liquid concentration supply)</i> |      |
| ▪ Residential Delivery | \$95  |  |      |
| ▪ White Glove Service  | Fee determined based on services required at time of delivery |  |      |

## 6. Billing and Payment

All orders are subject to credit approval and acceptance by NIPRO. Payment terms are net thirty (30) days from date of invoice ("Due Date"). Unless alternative terms are mutually agreed upon all payments are to be received in full within thirty (30) days from date of invoice. Payment may be made by check or wire transfer. A service charge of \$50.00 will be assessed for all returned checks. Buyer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional.

Balances remaining unpaid at Due Date are subject to an interest charge of 1½% 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 to Buyer will be applied against delinquent balances before payment or reimbursement is made.

Buyer acknowledges and agrees that any rebates, reimbursement for returned Product, damaged Product, loss and/or other sums due or owed Buyer by NIPRO will not be deducted from any open invoice and that settlement of such sums due or owed Buyer by NIPRO will be handled by a separate process unless an alternate process is mutually agreed upon in writing signed by NIPRO.

Credit card payments will not be accepted without prior approval from NIPRO. Credit card payments over \$5,000.00 will incur a 3.5% handling charge.

NIPRO reserves the right in its sole discretion to require prepayment from any Buyer at any time and may refuse to sell and/or withhold further shipment until all overdue balances are made current.

Buyer shall be liable for, and shall reimburse NIPRO for all costs and expenses NIPRO may incur in connection with collection of any amounts owed to NIPRO by Buyer or enforcement of NIPRO's rights, including without limitation, reasonable attorneys' fees and expenses, costs, and costs, including the costs of any collection agency(ies) engaged by NIPRO.

## 7. Returned and Lost Goods Policy

No returns are permitted unless authorized by NIPRO in its sole discretion. If Buyer wishes to return Product(s) for any reason Buyer must notify NIPRO at [USNiproRMA@nipromed.com](mailto:USNiproRMA@nipromed.com) and provide written notice identifying the original purchase order number, lot numbers, quantities and Product code numbers along with a specific reason for return. Only Product for which NIPRO has issued a Return Material Authorization, ("RMA"), will be accepted on return.

- a. Product damage, shortage, incorrect shipment issues and other non-conformances must be reported within three (3) days of delivery or credit will not be allowed. Buyer should notify NIPRO ([USNiproRMA@nipromed.com](mailto:USNiproRMA@nipromed.com)) of such issues upon delivery with the following information:
  - i. Shipment issue
  - ii. NIPRO delivery order number
  - iii. Buyer purchase order number
  - iv. All relevant Product information associated with the issue including Product number(s), lot number(s) and quantities
  - v. Photos of damages (cases and/or pallets)
- b. If further information/documentation is needed by NIPRO to process a carrier claim or perform an investigation for resolution it must be provided by Buyer within ten (10) days of request by NIPRO or no credit will be issued.
- c. If Buyer discovers damage or an incorrect shipment issue upon delivery, freight should be accepted and NIPRO should be immediately notified at [USNiproRMA@nipromed.com](mailto:USNiproRMA@nipromed.com) about the issue. Buyer must visually inspect and count all Product received prior to acceptance of delivery from the carrier. Any exception must be notated on:
  - i. The packing list accompanying the shipment and

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- ii. The carrier's Bill of Lading and must be signed by the Buyer.
- d. Buyer should not make the following markings on the Bill of Lading:
  - i. "Subject to Inspection or Count" as this is not an acceptable notation for NIPRO or the carrier to support a claim or credit.
  - ii. "Shrink wrap intact and in good condition", because if there is damage this notation may also void the claim. Damaged cases must not be opened. Case contents should remain intact.
- e. Freight should never be refused unless the shipment is clearly not intended for the Buyer. Refusing a shipment puts the Buyer at risk of delaying or preventing NIPRO from being able to properly credit for damage or the shipping issue.
- f. When NIPRO issues an RMA based upon the Buyer's receipt of damaged Product or Product shipped in error a prepaid carrier "call tag" will be issued to the Buyer to return the RMA authorized Product to a NIPRO facility. A replacement order will be shipped, if requested. Only Product numbers, lot numbers, and quantities appearing on an approved RMA are acceptable for return. Unauthorized returns received will be destroyed and no credit issued.
- g. All Products must be shipped by Buyer for return within thirty (30) days of issuance of the RMA or before expiration of the issued carrier "call tag", whichever comes first, to the named NIPRO facility. A carrier "call tag" can be rescheduled upon request.
- h. Products being returned, even for damage or incorrect shipment, must be in their original packaging and not defaced with external markings by Buyer or no credit will be given. Products being returned must contain all original contents. Any Product, (including damaged Product), opened prior to return with partial contents missing will not be issued credit upon return.
- i. No credit will be issued until Product is satisfactorily received. Except for cases in which an RMA was issued because Product was delivered in damaged condition no credit will be issued unless the Product returned is received by NIPRO in salable condition.
- j. Only items, lot numbers, and quantities appearing on an approved RMA are acceptable for return.
- k. Product returns will only be accepted from the original purchaser. Product returns will not be accepted from third party return companies. Unauthorized returns will be destroyed and no credit issued.
- l. Product returned to any address other than the address indicated on the RMA will be destroyed and no credit issued.
- m. At NIPRO's sole discretion it may issue an RMA to allow Buyer to return Products that were ordered as a result of Buyer error or in circumstances where a Buyer's order resulted in Buyer having excess stock. In such circumstances the returned Product must be shipped by Buyer for return within thirty (30) days of issuance of the RMA and are subject to a 25% restocking charge. All transportation charges for the return are to be borne by the Buyer. In the case of an RMA issued for returns allowed due to Buyer error or excess stock NIPRO will issue a credit at the net purchase price less the 25% restocking charge and subject to the Buyer paying all freight provided all of the following criteria are met:
  - i. Products have at least twelve (12) months of shelf-life remaining.
  - ii. An RMA was properly obtained prior to return of Products.
  - iii. Products are in their original packaging, not damaged or defaced with external markings by Buyer.
  - iv. Products are current inventory items.
  - v. The Products have been shipped and billed to Buyer by NIPRO and Buyer has paid for said Products.
  - vi. Product received is of the correct Lot number and quantity for which the RMA was issued.
  - vii. Lot numbers must match those shipped against the Purchase Order / Invoice number against which the RMA was requested.
- n. Certain Products are not eligible for return. These are:
  - i. Products that have deteriorated because of improper storage, handling, abuse or other factors.
  - ii. Products that have been opened, partly used or which the labels or seals have been removed or tampered.
  - iii. Products that have been involved in a special promotion sale.
  - iv. Broken, damaged or opened cases. Resealed cartons are not eligible for return.
  - v. Special Products made to Buyer's specification.
  - vi. Products with less than twelve (12) months of remaining shelf-life.
  - vii. Any item purchased on a "special order" basis including non-stock orders and drop ships.
- o. Product must be handled, maintained and stored properly at all times to be eligible for return and/or credit. Product must be returned in the original, unopened, undamaged factory-sealed case.
- p. Credits for Product returned pursuant to a properly issued RMA will be provided subject to the limitations above and conditioned upon NIPRO's inspection and approval of such Products upon their return.
- q. If NIPRO determines, in its sole discretion, that any returned Product are not eligible for return due to any of the reasons provided above, Buyer will not receive a credit, even if an RMA was issued. No advance credits will be accepted.
- r. Unless otherwise specified in the RMA all authorized returned Product must be shipped freight prepaid to the NIPRO location indicated on the RMA.
- s. For all Solution product Orders, there will be a **\$120.00** charge for lost and/or damaged 55-gallon drums caused by Buyer, and a **\$50.00** charge for lost pallets.

## 8. Contingencies and Force Majeure

NIPRO will use its reasonable efforts to fill orders, but NIPRO 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, natural disasters, pandemic, or other causes beyond its reasonable control. Buyer agrees that in such events NIPRO may allocate Products among all Buyers as it deems reasonable, without liability. NIPRO reserves the right from time to time to substitute a Product with a Product that has the same function as such Product, or to delete a Product.

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## 9. Warranty

With respect to Products manufactured by NIPRO, NIPRO warrants to the original Buyer that, at time of delivery, each Product manufactured by NIPRO shall be free of defects in material and workmanship and, when used for the purposes and indications described on the labeling, is fit for the purposes and indications described on the labeling. All warranties for a Product shall expire as of the Product expiration date.

NIPRO's warranty hereunder shall not apply if: (i) a Product is not used in accordance with its instructions or if it is used for a purpose not indicated on the labeling; (ii) any work including but not limited to re-sterilization has been performed by Buyer or others on such item; or (iii) the alleged defect is a result of abuse, misuse, accident or the negligence of any party other than NIPRO. The warranty set forth herein is conditioned upon proper storage and use in accordance with applicable written Instruction for Use of NIPRO.

**NIPRO's sole obligation shall be to replace any defective item and pay transportation expenses for such replacement.** Buyer shall bear all risk of loss or damage to returned Product while in transit. In the event no defect or breach of warranty is discovered by NIPRO upon receipt of any returned item, the item will be returned to Buyer at Buyer's expense and Buyer will reimburse NIPRO for the transportation charges, labor and associated charges incurred in testing the allegedly defective item.

**Except as expressly provided herein, NIPRO makes no representation or warranty of any kind, expressed or implied with respect to any Products, or services provided by NIPRO including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Products distributed, but not manufactured, by NIPRO are not warranted by NIPRO and Buyer must instead rely on the representations and warranties, if any, provided directly to Buyer by the manufacturer of such Product. The sole and exclusive remedy for breach of any warranty is limited to the remedies provided in the paragraph above.**

## 10. Limitations of Liability

**NIPRO SHALL NOT IN ANY EVENT BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, PENAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR LOST PROFITS, LOST REVENUE, PROMOTIONAL COSTS, MANUFACTURING COSTS, ASSEMBLY COSTS, RECEIVING COSTS, INSPECTION COSTS, STORAGE, CARE AND CUSTODY COSTS, HANDLING COSTS, TRANSPORTATION COSTS, INJURY TO REPUTATION, LOSS OF GOODWILL, LOSS OF CUSTOMER, LEGAL COSTS, ATTORNEY FEES OR DAMAGES OF ANY OTHER TYPE ARISING OUT OF, RELATED TO OR IN CONNECTION WITH NIPRO'S FURNISHING OF PRODUCTS, PARTS OR SERVICE, OR OTHERWISE, WHETHER BASED IN CONTRACT, STATUTE, TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. NIPRO'S TOTAL LIABILITY FOR ANY CLAIM OR ACTION BY BUYER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OUT OF WHICH SUCH CLAIM OR ACTION AROSE, IS RELATED TO OR IS CONNECTED WITH.**

## 11. Creative Material Usage

NIPRO is the owner of all copyrights for all brand logos and trademarks, documentation, text, data, labels, graphics, photographs, videos, creative materials and all interfaces contained on its Website. NIPRO reserves all rights.

From time to time, NIPRO may provide Buyer with copies of NIPRO's trademarks, brand logos, labels, images, and/or other creative materials (the "**Creative Materials**"), which are owned by or under license to NIPRO or its affiliates, in graphical image files or other media.

Buyer agrees that it will request the Creative Materials allowing not less than five (5) days for NIPRO to process the request. The Creative Materials provided by NIPRO will be used by Buyer solely in connection with the marketing and/or sale of NIPRO Products as approved by NIPRO in advance on a case by case basis. Buyer agrees that it will only use the Creative Materials as authorized by NIPRO and within the time period approved by NIPRO.

Buyer agrees not to alter, deface or otherwise change the appearance of any Creative Materials, including, but not limited to the color, character, and integrity of same. In no event shall Buyer use the Creative Materials in a manner which will weaken or disparage NIPRO's Products, trademarks, or reputation. Buyer will not use the Creative Materials in any way, or in conjunction with other indicia, language or image(s) of any kind, to suggest Buyer's ownership of the Creative Materials.

Authorization to use NIPRO creative materials does not grant ownership of content, the right to modify content or for any use other than that expressly granted.

The usage rights regarding any Creative Materials may be terminated at any time by NIPRO upon written notice to Buyer. Upon such termination, Buyer shall immediately discontinue any and all use of the Creative Materials. Furthermore, upon notice from NIPRO, Buyer will immediately discontinue any use of Creative Materials objected to by NIPRO. Upon NIPRO's request, Buyer shall also promptly remove any content related to the Creative Materials or to NIPRO from its website(s) as instructed by NIPRO.

## 12. Intellectual Property

All intellectual property rights in and to, and all technology relating to, Products supplied to Buyer by NIPRO, including, but not limited to, the Product, Product design, all improvements thereto or thereof, 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 NIPRO. Any knowledge or information that Buyer may disclose to NIPRO shall not be deemed to be confidential or proprietary information, and shall be acquired by NIPRO free from any restriction.

### 13. State Licensing Requirements

Buyer agrees to maintain all federal and state mandated licenses required to purchase and dispense prescription medical devices. Buyer shall provide all applicable licensing information, including license name and type, license number and license expiration date to NIPRO promptly upon request and when licenses are modified and/or renewed. Buyer hereby represents and warrants the validity of all current licenses required to purchase NIPRO's Products.

### 14. Product Complaints

A Complaint is defined as any of the following:

- a. Any written or oral expression of dissatisfaction relating to the identity, quality, durability, reliability, safety, effectiveness or performance of a product;
- b. Information received that adversely characterizes the identity, quality, durability, reliability, safety, effectiveness or performance of a product;
- c. Reports that result from the possible or actual failure of a product to perform its intended function because of inadequate design, manufacturing defects, packaging or labeling deficiencies, or unanticipated failure;
- d. Reports on a product involving a death, injury or a safety hazard.

When in receipt of a complaint for a NIPRO Product contact your Nipro representative with complaint details including name of device, lot number, description of incident and any adverse effect on the patient. Samples may be requested to support the complaint. Actual sample or samples from the same lot should be retained for return to NIPRO Quality Assurance / Regulatory Assurance, ("QA/RA"), for investigation. If no Product is returned, only a paper-investigation can take place. Nipro will make a good faith effort to obtain necessary information for a full investigation of the complaint, however if the Buyer does not respond to these attempts the complaint may be closed due to lack of information.

Buyer agrees to notify NIPRO within five (5) days of the complaint occurrence, unless the complaint qualifies for Reportability under the MDR Regulation (21 CFR Part 803) within three (3) days.

### 15. Medical Device Reporting Responsibilities

Buyer herein certifies understanding of the Medical Device Reporting (MDR) Regulations (21 CFR Part 803) and reporting responsibilities relating to manufacturers and importers. If Buyer is the importer of record, they have the responsibility to report MDR's to the United States Food and Drug Administration, (US FDA), within the 30-day reporting timeframe. Buyer agrees to notify Nipro of any incident that constitutes an MDR reportable event within three (3) days, and forward a copy of the MDR Form 3500A to Nipro upon completion and submission to the FDA.

### 16. Product Recalls

In the event of a recall, NIPRO will notify the Buyer of Product codes, descriptions, lots and quantities that are affected and provide instructions on disposition of recalled Product. Buyer agrees to respond to a recall notification within five (5) days of receipt. It is the responsibility of the Buyer to notify their customers of Product recalls and coordinate return of recalled Product to NIPRO. Nipro shall reimburse the Buyer of expenses incurred by the recall, including, costs of notifying Buyer's customers and costs of returning goods. Buyer will maintain adequate procedures for traceability of Product in order to notify the affected customers that received recalled lots in a timely manner.

### 17. Price Reductions

If the pricing offered by NIPRO to a Buyer constitutes a discount or other reduction in price under Section 1128(b)(3)(a) of the Social Security Act 42 U.S.C. 1320a-7b(b)(3)(a), and C.F.R. § 1001.952(h), Buyer shall disclose the discount or reduction in price to the full extent required under any state or federal program that provides cost or charge-based reimbursement to Buyer for Products. This act requires, among other things, that Buyer fully and accurately report on any claim or request for payment it submits to Medicare and Medicaid the actual purchase price paid by Buyer for Products, net of any discounts, rebates or allowances. Buyer may also be required, upon request, to provide documentation of the discount or other reduction in price to the Secretary of Health and Human Services.

### 18. Indemnification

Buyer agrees to indemnify, defend and hold harmless NIPRO, its affiliates, parent company(ies), subsidiaries and their respective officers, directors, employees, agents and insurers, ("NIPRO Indemnified Parties"), from and against any and all third party claims, demands, actions, damages of any kind, expenses, costs, claims, judgments and liabilities, including but not limited to and without limitation, interest, penalties, reasonable attorney fees, investigative and expert costs, including claims for personal injury, death or property damages, all of the foregoing being considered together as "Claims", incurred by NIPRO, related to, in connection with or as a consequence of

- i. any negligent or wrongful act or omission by Buyer;
- ii. Buyer's improper possession, operation, maintenance, delivery, return, handling or storage of Product and/or;
- iii. Buyer's transfer, use or sale of Product, except to the extent that such suit or demand arises out of the failure of the Product to meet NIPRO's express warranty(ies).

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## 19. Successors and Assigns

These Terms and Conditions bind the Buyer and all of Buyer's successors and permitted assigns.

## 20. Savings Clause

If any provision in these Terms and Conditions shall be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision in these Terms and Conditions which shall remain in full force and effect.

## 21. Captions

The captions in these Terms and Conditions are for convenience only and are not to be considered in their construction.

## 22. Notices

Any required notices shall be given in writing, in the case of NIPRO, at the address set forth on this document, and in the case of Buyer, at the billing address designated on Buyer's purchase order or to such other address as either party may substitute by written notice to the other. Notices shall be deemed properly given if personally delivered or delivered via registered or certified mail or by nationally recognized overnight carrier.

## 23. No Waivers

Except as expressly provided herein, no changes or modifications to, or waiver of, any of these Terms and Conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. NIPRO's failure or delay to exercise or enforce any of its rights hereunder shall not constitute or be deemed to be a waiver of such rights or forfeiture of such rights, and NIPRO may, at its option, from time to time, exercise any of its rights or remedies.

## 24. Governing Law

These Terms and Conditions and the Products sold by NIPRO are governed by Florida law without regard to its choice of law principles. Any dispute, claim or controversy between NIPRO and the Buyer arising out of, relating to or in connection with the purchase or sale of NIPRO Products or these Terms and Conditions, collectively referred to as "Dispute(s)", shall be governed by and construed under Florida law, without regard to its choice of law principles.

## 25. Dispute Resolution and Jury Trial Waiver

### I. Mediation – Arbitration

#### Dispute Resolution and Locale for Mediation and Arbitration

In the event of any Dispute(s), NIPRO and Buyer shall first make good faith efforts to consensually resolve such Dispute(s) through direct negotiations. In the event NIPRO and the Buyer are unable to resolve such Dispute(s) through direct negotiations, NIPRO and the Buyer agree that they will next try in good faith to settle the Dispute(s) by mediation administered by the American Arbitration Association, ("AAA"), under the AAA's Commercial Mediation Procedures. The locale for such mediation will be at the Miami, Florida Regional Office of the AAA or if said office moves or ceases to exist the AAA office located in Florida closest to the City of Miami, Florida. In the event such mediation does not result in resolution of the Dispute(s), NIPRO and Buyer agree to have the Dispute(s) settled by arbitration administered by the AAA under its Commercial Arbitration Rules. The locale for such arbitration will be at the Miami, Florida Regional Office of the AAA or if said office moves or ceases to exist the AAA office located in Florida closest to the City of Miami, Florida. Arbitration awards shall not be accompanied with findings of fact or reasoned opinions.

### Confidentiality

All Disputes and the underlying information related to same, information disclosed in the course of direct negotiations, mediations and arbitrations and any settlement or award reached or determined in such negotiations, mediations or arbitrations shall remain confidential between the parties, the AAA, the mediators and arbitrators. At the inception of any arbitration the parties shall consent to the arbitrator's entry of a protective order encompassing and setting forth procedures to further such confidentiality. This confidentiality requirement shall not bar a party from filing a written settlement agreement or an application for judgment on an arbitration award in a Court having jurisdiction thereof if required to enforce a party's rights in the event of the other party's noncompliance. Such Court filing(s) shall not occur unless the aggrieved party has provided the other party with a notice of the default and a thirty (30) day period to cure.

### II. JURY TRIAL WAIVER

**BUYER EXPRESSLY AND UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL WITH RESPECT TO DISPUTE(S) BETWEEN BUYER AND NIPRO.**