

Mammotome Master Sales Terms and Conditions (US Customers)

These Mammotome Master Sales Terms and Conditions ("Terms") apply to the quotation, order received from Customer, sale or use of Mammotome equipment ("Equipment"), disposables ("Disposables"), consumables ("Consumables") and supplies ("Supplies") (Equipment, Disposables, Consumables, Supplies, and any included Software, collectively referred to as "Product" or "Products") between Devicor Medical Products, Inc. ("Mammotome") and Customer. Mammotome and Customer may hereinafter be referred to individually as a "Party" and collective as the "Parties." The Parties agree as follows:

1. **Agreement.** These Terms, together with any applicable Mammotome quotes, attachments or other purchasing program documents executed by the Parties constitute the complete and entire agreement between the Parties (collectively referred to herein as the "Agreement") with respect to the Products. The Agreement shall supersede all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. Customer acknowledges that there are no warranties or representations, which have been made by Mammotome or any of its agents other than those expressly contained in the Agreement. If any action in law or equity is necessary to enforce or interpret the terms of the Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the Party may be entitled. No provision of the Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced. Headings and captions in the Agreement are for convenience only, do not form a part of the Agreement, and shall in no way affect its interpretation.

2. **Prices.** Prices, fees and charges for Products and services (including maintenance, installation, and training as described in Mammotome's then-published service description) ("Service" or "Services") are payable in United States Dollars ("USD") only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate to Mammotome before shipment of Products. Unless price protection is explicitly agreed to by Mammotome in writing, Mammotome reserves the right to increase prices no more than once per calendar year.

3. **Payment.** Payment terms are net thirty (30) days. An interest charge of 1% per month (or the maximum rate permitted by law if less than 1% per month) will apply to payments received more than 30 days after the invoice date. Orders of less than \$500 are subject to a handling fee of \$20. If Customer believes that an invoice contains any errors, it must notify Mammotome's customer service department no later than 30 days after the date of the invoice if it wishes to have those errors rectified. Pricing may be subject to change as outlined in this Agreement. Mammotome shall notify Customer in writing at least thirty (30) days before the effective date of any such increase. If Customer wishes to make a claim for loss or damage to any products covered by this Agreement because of shipment, it must include a copy of the delivery receipt. Mammotome retains a purchase money security interest in all Equipment sold to Customer to secure payment of the total purchase price thereof; Customer hereby grants Mammotome the right to file a copy of the Agreement, with any appropriate authorities to evidence this security interest. The prices set forth herein shall be held and remain strictly confidential. Mammotome shall not be obligated to deliver any Product or perform any Service during any period when Customer payment is past due.

4. **Taxes.** In addition to the prices set forth in the Agreement, Customer shall pay any sales tax, duty, or other fee imposed on the transactions between the Parties by any federal, state, or local governmental authority.

5. **Credit Application.** Customer agrees to comply with all credit application requests of Mammotome and Mammotome shall not be obligated to accept the Agreement unless and until it has approved of credit respecting Customer, in Mammotome's sole discretion.

6. **Security Interests.** Customer hereby grants Devicor a security interest in all products covered by this Agreement as security for payment of all amounts due under this Agreement. Customer shall assist Devicor in perfecting that security interest by signing at Devicor's request appropriate documents (including without limitation Form UCC-1 financing statements) and cooperating with Devicor (at Devicor's expense) in taking any further actions reasonably necessary to perfect that security interest. Customer's nonpayment of any amounts due under the Agreement will entitle Mammotome to all remedies of a secured creditor under the Uniform Commercial Code.

7. **Product Shipment and Risk of Loss.** Unless otherwise agreed to in writing by Mammotome, all Products will be shipped F.O.B. Origin, regardless of any provisions for payments of freight, insurance, the form of shipping documents, or selection of carrier by Mammotome. Customer to pay shipping charges. Mammotome is not liable for any delay in any delivery, including, but not limited to delays due to product shortages, force majeure events, regulatory or carrier issues, or any circumstance beyond its reasonable control.

8. **Returns.** The following terms apply to non-quality related returns of Disposable/Single Use Products: Customer may only return Products for credit if the Product is returned within ninety (90) days of the invoice date, and only if Mammotome has previously authorized the return. Except for Product defects, Customer is responsible for all freight charges associated with any Product return. A 15% restock fee applies to all returns unless the return is due solely to error by Mammotome and Product defects. Except for Product defects, no credit will be issued if the returned Product is damaged or in non-saleable condition, or if the Product is not returned in the original unopened packaging and as the full, original unit of sale. CAPITAL AND REUSABLE PRODUCTS MAY NOT BE RETURNED FOR CREDIT.

9. **Firm Orders and Acceptance.** All orders are firm and binding when accepted by Mammotome.

10. **Warranties.** Except as otherwise expressed stated in this Agreement, any warranties and exclusions provided by Mammotome with respect to any Product covered under the Agreement are as described in the package inserts accompanying units of that Product on purchase. OTHER THAN AS SET FORTH IN THE PREVIOUS SENTENCE, THERE IS NO IMPLIED OR EXPRESS WARRANTY ON THE PRODUCTS COVERED BY THE AGREEMENT, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. Services are warranted to be supplied in a workman-like manner. Non-Mammotome manufactured equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Mammotome's customers, to the extent permitted by the manufacturer of such non-Mammotome manufactured equipment. Mammotome does not warrant that use of Products will be uninterrupted or error-free, or that Products will operate with non-Mammotome authorized third-party products.

11. **Warranty Claims and Remedies.** In the event of any warranty claim, Mammotome will replace with new or remanufactured items any Equipment, part, component, or consumable supply that is in breach of warranty. Alternatively, Mammotome may elect to repay or credit to Customer an amount equal to the purchase price of the defective Equipment, consumable supply, or Service. Items replaced shall become Mammotome property. All claims shall be initiated by contacting Mammotome within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Mammotome must be given reasonable access and an opportunity to inspect all associated materials. If Mammotome and Customer are unable to settle any claim and Customer has not notified Mammotome within one (1) year after the claim arises, Customer shall be barred from

instituting any legal action thereafter. These remedies shall comprise Mammotome's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. MAMMOTOME'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT MAMMOTOME'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT MAMMOTOME'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE MAMMOTOME PRICE, FEE OR CHARGE THEREFOR. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO HAS LESS THAN FIFTY (50) PERCENT OWNERSHIP IN THE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Mammotome authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; or (c) stored, maintained, or operated in any manner inconsistent with applicable Mammotome specifications or instructions.

12. **Force Majeure.** Mammotome will not be liable to perform, or any delay in performance, due to strikes, fire, explosion, flood, riot, injunction, interruption of transportation, unavoidable accidents, acts of government or public enemy, terrorism, inability to obtain supplies at reasonable prices, or any other causes beyond its control.

13. **LIMITATION OF LIABILITY.** IT IS UNDERSTOOD AND AGREED THAT MAMMOTOME'S LIABILITY HEREUNDER OR IN CONNECTION WITH THE MANUFACTURE, SALE, OR USE OF THE PRODUCTS DESCRIBED HEREIN, HOWSOEVER ARISING, SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH PRODUCT, HOWEVER, LIABILITY FOR INTENTIONAL MISBEHAVIOR WILL NOT BE LIMITED. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD MAMMOTOME, ITS EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS (COLLECTIVELY, THE "MAMMOTOME INDEMNITEES") HARMLESS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS AND ASSOCIATED LIABILITIES, OBLIGATIONS, DAMAGES, JUDGMENTS, PENALTIES, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) ("CLAIMS") IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY OF THE MAMMOTOME INDEMNITEES FOR BODILY INJURIES (INCLUDING DEATH) OR DAMAGES TO OR LOSS OF REAL OR TANGIBLE PERSONAL PROPERTY, TO THE EXTENT THAT ANY SUCH CLAIM ARISES IN WHOLE OR IN PART FROM ANY ONE OR MORE OF THE FOLLOWING: (A) THE FAULT, NEGLIGENCE, OR WILLFUL MISCONDUCT OR OMISSIONS, OF CUSTOMER, ITS EMPLOYEES OR AGENTS, OR OTHERS ACTING ON ITS BEHALF, INCLUDING THE BREACH BY ANY OF THEM OF ANY PROVISION OF THIS AGREEMENT; (B) ANY ALTERATION OF THE PRODUCT NOT AUTHORIZED BY MAMMOTOME OR BY A PERSON NOT AUTHORIZED BY MAMMOTOME; (C) COMBINING MAMMOTOME'S PRODUCT WITH ANY PRODUCT FURNISHED BY OTHERS WHERE SUCH COMBINATION CAUSES FAILURE OF OR DEGRADATION TO PERFORMANCE OF MAMMOTOME'S PRODUCT; (D) COMBINING INCOMPATIBLE PRODUCTS OF MAMMOTOME, AND (E) FAILURE TO COMPLY WITH ANY APPLICABLE WRITTEN INSTRUCTIONS OF MAMMOTOME.

14. **Governmental Authorizations.** Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange permit, or the like ("Licenses"), even if applied for by Mammotome on Customer's behalf. If any authorization is delayed, denied, revoked, restricted or not renewed, Mammotome shall not be liable, and Customer is not relieved of its obligations. Customer represents and agrees that it will handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not trans-ship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Mammotome except as U.S. laws and regulations expressly permit.

15. **Single-Use Products and No Resale.** Customer shall ensure that units of Consumables and any other patented Single-Use Product that it purchases are used once and only once in delivering patient care and Mammotome conveys no right in such patented Single-Use Product other than the right to use those units once and only once. A "Single-Use Product" means any product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the product is to be used once and only once in delivering patient care. Mammotome does not grant Customer or any other person or entity any license to reprocess, remanufacture, or reconstruct any patented Single-Use Product. In addition to other available remedies, the sale or use of any reprocessed, remanufactured or reconstructed patented Single-Use Product will be subject to available remedies for patent infringement. The Products covered by the Agreement are intended for Customer's own use in the United States and are not for resale unless Customer is Mammotome's authorized distributor.

16. **Intended Uses.** Products are only intended for the uses listed in the applicable manual or instructions for use. Customer assumes all risks associated with non-listed uses of Products and hereby indemnifies and holds Mammotome harmless from any claim associated with such non-listed uses.

17. **Compliance with Stark Law and Anti-Kickback Statute.** The Parties acknowledge their intention that this Agreement fully complies with 42 U.S.C. §1320a-7b(b) (the "Anti-Kickback Statute") and with 42 U.S.C. § 1395nn (the "Stark Law"). No part of this Agreement is intended, and no part of this Agreement shall be construed, to induce, encourage, solicit or reimburse the referral of any patients or business, including any patients or business funded in whole or in part by a federal healthcare program. All referrals shall be in the unfettered professional discretion of the parties. The parties acknowledge that there is no requirement under this Agreement or any other agreement between parties that either party refer any patients to the other or to any of their respective affiliates. No payment made or other remuneration provided under this Agreement shall be in return for, or intended to induce the referral of patients or business, including those paid in whole or in part by state or federal government programs. Nevertheless, the parties agree that if either party determines at any time, or for any reason, that any aspect of the terms or operation of this Agreement may be deemed to constitute a violation of the Stark Law or the Anti-Kickback Statute, or any other federal, state, or local statute, rule, or regulation, then that party may give written notice to the other party, and both Parties shall use their best efforts to restructure their respective rights and obligations in a manner allowed by law and to amend this Agreement accordingly. Additionally, (a) the parties each acknowledge and agree that the supply of products to Customer by Mammotome does not exceed what is reasonable and necessary for Customer's legitimate business purpose and the aggregate products provided does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of this Agreement; (b) the products are used exclusively by Customer and are not shared with or used by Mammotome or any person or entity related to Mammotome; and (c) the parties each represent and warrant that the Agreement Term is consistent with fair market value in arms-length transactions, not determined in a manner that takes into account the volume or value of any referrals or other business generated between the Parties.

18. **HIPAA Compliance.** Customer and Mammotome agree that Mammotome's provision of Products is not anticipated to involve any access by Mammotome to protected health information as that term is defined under the Health Insurance Portability and Accountability Act of 1996, the HITECH Act, and regulations promulgated thereunder (collectively, "HIPAA").

19. **Confidential Information.** Both Parties agree to hold in strict confidence the terms of the Agreement and all information provided to the other in connection with the performance of their respective obligations under the Agreement, including without limitation, financial information and information relating to the Customer and pricing, except to the extent that disclosure is required by applicable law. Notwithstanding the above, the terms and conditions of the Agreement will not be disclosed to any third-party without the prior written consent of the other Party, except either Party may disclose the terms and conditions of the Agreement to its employees, professional advisors, agents or independent contractors that are providing contractual services for the applicable Party and who require knowledge of the terms and conditions of the Agreement, so long as such individuals are subject to applicable non-disclosure agreements.

20. **Assignment.** Customer may not assign the Agreement or any right or obligation arising out of the Agreement without the express written consent of Mammotome, and such consent shall not be unreasonably withheld. Customer must provide Mammotome with prompt written notice of any change in ownership, change in control or operations or any other change which would affect the ordering, shipment, invoicing or payment of products.

21. **Cost Reporting.** Customer represents and warrants that it shall comply with (a) the applicable requirements of the Discount Statutory Exception, 42 U.S.C. 1320a-7b(b)(3)(A), and the Discount Safe Harbor, 42 C.F.R. § 1001.952(h), with respect to any discounts Customer may receive under the Agreement and (b) the Warranties Safe Harbor, 42 C.F.R. § 1001.952(g), with respect to any price reductions of an item (including one at no charge) which were obtained as part of a warranty under the Agreement. Customer agrees to file all appropriate reports and to properly disclose and reflect all discounts in any report filed in connection with state or federal cost reimbursement programs.

22. **Medicare Access to Books and Records.** If applicable, the Parties intend to comply with Section 1861(v)(1)(I) of the Social Security Act, as amended, and written regulations promulgated thereunder. Accordingly, to the extent applicable, the Parties agree to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of any product or service rendered pursuant to the Agreement: (i) until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, each Party will make available, upon written request of the Secretary of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, copies of the Agreement and any books, documents, records, or other data of the parties that are necessary to certify the nature and extent of cost incurred for such product or service; and (ii) if either Party carries out any of its duties under the Agreement through a sub-contract with a related organization involving a value or cost of \$10,000 or more over a twelve (12) month period, such party will cause such sub-contract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any product or service pursuant to said sub-contract, the related organization will make available, upon written request of the Secretary of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, copies of said sub-contract and any books, documents, records, or other data of said related organization that are necessary to certify the nature and extent of such costs. This provision will survive termination of the Agreement or expiration of the Agreement term.

23. **Condition of Participation.** During the Agreement Term, each party shall notify the other party of any exclusion of such party, any of its employees, contractors or agents providing services hereunder, or its affiliates from participation in any federal health care program, as defined under 42 U.S.C. §1320a-7b(f), for the provision of items or services for which payment may be made under such federal health care programs ("Exclusion"), within two (2) business days of knowledge of any such Exclusion or any facts that provide a reasonable basis to believe the Exclusion has occurred or is reasonable likely to occur. The party receiving such notice shall have the right to immediately terminate the Agreement upon receipt of such notice.

24. **Material Breach.** For purposes of this Agreement, a "Material Breach" is the occurrence of any one or more of the following: (a) the failure of a party to fully comply with its obligations under this Agreement; (b) the making of assignment for the benefit of creditors by a party; (c) the institution of bankruptcy, reorganization, liquidation, or receivership proceedings by or against a party; or (d) insolvency of a party. In the event of a Material Breach by Customer, Mammotome may, without limiting its remedies under existing law, pursue any one or more of the following remedies: (i) suspend or cancel its performance under this Agreement, including any pending or future deliveries; (ii) take possession of any or all Capital Products, Consumables, and other products covered under this Agreement, by entering upon Customer's premises; (iii) declare all unpaid balances, payments, and expenses due or to become due under this Agreement immediately due and owing; (iv) terminate this Agreement without additional liability or obligation to Customer; (v) seek any other cumulative remedies at law or in equity; and (vi) exercise any and all rights and remedies available to a secured creditor under the Uniform Commercial Code. The foregoing remedies are cumulative and may be exercised by Mammotome, in whole or in part, at Mammotome's sole discretion.

25. **Bankruptcy.** Except as may be prohibited by applicable bankruptcy laws, a Party to the Agreement may elect to cancel any unfulfilled obligations if any of the following situations arise: (1) the other Party becomes insolvent or is unable to pay debts as they become due; (2) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (3) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.

26. **Governing Law.** Upon execution, the Agreement be governed and viewed under the laws of the state of Ohio without reference to its conflict of laws provisions. The Parties specifically agree that any action relating to the relationship between the Parties, the Agreement, Products, or Services provided, purchased or licensed hereunder, shall be brought and tried in the Courts of Ohio. Customer hereby waives all objections to, and consents to the jurisdiction of Ohio Courts.

27. **US Export Law.** The export or re-export of the products shall be governed by the laws of the United States. Customer agrees to comply with all applicable export laws, regulations and requirements. Customer agrees to be contractually obligated to the export laws of the United States including the Export Administration Regulation.

28. **Notices.** Any notification required under this Agreement shall be deemed to have been given either one (1) day after being given to an express overnight carrier with a reliable system for tracking delivery; or when sent by a confirmed facsimile with another copy sent by any other means specified in this paragraph; or three (3) business days after having been mailed postage prepaid by United States registered or certified mail. Any required notices to Customer will be delivered to the address set forth in the applicable Mammotome quote or other purchasing program document, and to Mammotome at the addresses listed below. Either Party may change its mailing address by notice as provided by this section.

Mammotome
300 E-Business Way, Suite 500
Cincinnati, OH 45241
Attn: Sales Operations

With a copy to:
Mammotome
300 E-Business Way, Suite 500
Cincinnati, OH 45241
Attn: Legal Department

29. **Miscellaneous.** See applicable Mammutome quote, attachment or purchasing program for additional terms and conditions.