

## TERMS AND CONDITIONS

### 1. General Information

These Terms and Conditions (these "Terms") govern the sale and delivery of all products (the "Products"), and all transactions incidental thereto, by or on behalf of Medartis Inc. ("Medartis") to any of its customers ("Customer").

No other terms or conditions shall be of any force or effect unless otherwise specifically agreed upon by Medartis in a writing duly executed by Medartis. Any additional or different terms or conditions contained in Customer's Order (as defined below) or response to Medartis' confirmation shall be deemed objected to by Medartis and shall not be binding on Medartis. No general terms and conditions of Customer shall at any time form a part of any agreement between the Customer and Medartis, even if such terms and conditions are not expressly rejected by Medartis.

These Terms supersede any and all prior oral quotations, communications, agreements or understandings of the parties in respect of the sale and delivery of the Products and shall supersede any and all other terms and conditions contained in any Order (as defined below) placed by Customer or otherwise communicated by Customer.

Medartis' failure to object to terms and conditions communicated by Customer shall in no event be construed as an acceptance of any other terms and conditions. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by Medartis, as well as acceptance in whole or in part by Customer of any delivery of Products from Medartis, shall be construed as Customer's acceptance of these Terms.

If Customer finds any provision in these Terms not acceptable, Customer must so notify Medartis immediately and must reject the Products delivered under these Terms. Deviations from these Terms require Medartis' prior written approval.

### 2. Normal Business Hours (EST)

8:30 A.M. to 7:00 P.M.  
Monday thru Friday

### 3. Holiday Hours (EST)

8:30 A.M. to 7:00 P.M.  
Presidents Day (Washington's Birthday)  
Martin Luther King, Jr. Birthday  
Columbus Day  
Veterans Day

#### 4. Closed Weekends and Holidays

New Year's Day  
Good Friday  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day after Thanksgiving  
Christmas\*

\*And Either Day Before or the Day After, depending on the calendar.

#### 5. Customer Service / Order Processing

All offers made by Medartis are revocable at any time and subject to change without prior notice to Customer. Medartis may refuse an order, agreement, term sheet or any combination thereof received from a Customer for any or no reason. No order, agreement, term sheet, quotation, offer or combination thereof for the sale of the Products (an "Order") is binding upon Medartis until the earlier to occur of Medartis' acceptance of the Order in writing or the delivery of the Products to the Customer (a "Confirmed Purchase Order").

Notwithstanding any prior confirmation of an Order by Medartis, Medartis shall have no obligation to deliver Products to Customer or otherwise perform any of its obligations set forth in a Confirmed Purchase Order or herein if Customer is in breach of any of its obligations hereunder or such Confirmed Purchase Order.

In the event Customer cancels or modifies any Confirmed Purchase Order, Customer shall bear all of Medartis' costs and expenses associated with such cancellation or modification, including but not limited to cost of raw materials for such Confirmed Purchase Order, labor costs and storage expenses, and, in the event of a modification of a Confirmed Purchase Order by Customer, Medartis shall be free to accept or reject such modification without any further obligation to Customer whatsoever.

Each Confirmed Purchase Order shall be considered a separate agreement between the parties to purchase and sell Products, and any failure to deliver Products under any Confirmed Purchase Order shall have no consequences for other deliveries.

Telephone Orders, call Medartis Customer Service toll free: **1-877-406-BONE(2663)**  
Fax Orders: 610-961-6108

All orders are subject to written acceptance by: Medartis Inc.  
224 Valley Creek Blvd, Suite 100  
Exton, PA 19341

All shipments will be deemed received by the Customer as invoiced, unless the Customer makes written demand on Medartis for proof of delivery within 20 days from date of shipment.

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## 6. Loaned Instruments and Implants

Upon the Customer's written request, Medartis may, in its sole discretion, make available certain instruments (the "Loaned Instruments") and implantable medical devices (the "Implants") in cleaned condition for use by Customer. At Medartis' request, the Customer shall, at its sole expense, properly pack and return to Medartis the Loaned Instruments and unused Implants in sterilized condition. The Customer shall set forth in a Purchase Order any and all Implants used by the Customer and purchase such Implants in accordance with these Terms and Conditions. The Customer shall return the Loaned Instruments to Medartis in good working order and condition except for ordinary wear and tear.

In the event the Customer fails to return the Loaned Instruments and unused Implants as set forth in this Section 6, the Customer shall pay to Medartis the full purchase price of any missing, or damaged Loaned Instrument and Implant.

Medartis shall at all times retain title to and ownership of the Loaned Instruments and Implants. The Customer assumes the risk of loss, theft or damage to the Loaned Instruments and Implants upon delivery of the Loaned Instruments and Implants to the Customer. The Customer shall pay to Medartis the full purchase price of any Loaned Instrument and Implant that is lost, stolen or damaged after such Loaned Instrument and Implant is delivered to Customer.

## 7. Shipping Terms

All orders are shipped via FedEx (2-3 business days), unless otherwise agreed to by Medartis.

## 8. Pricing

Unless otherwise agreed by Medartis in writing, all prices of the Products are subject to change without prior notice to Customer.

The price of Products shall not include packaging, sales or use tax or any other similar applicable federal, state or foreign taxes, duties, levies or charges in any jurisdiction in connection with the sale or delivery of the Products ("Taxes"). Such Taxes shall be payable by Customer and, if Medartis is responsible for the collection thereof, such Taxes shall either be added to the price invoiced or be separately invoiced by Medartis to Customer. Should any unforeseeable increases in Medartis' cost of materials or labor occur after the date of any Confirmed Purchase Order, Medartis shall, in its sole discretion, be entitled to increase the agreed prices accordingly.

## 9. Payment Terms

Unless otherwise agreed in writing by Medartis, the purchase price for the Products to be delivered under a Confirmed Purchase Order and all other amounts due in connection therewith shall be due and payable in US dollars within thirty (30) days following the date of Medartis' invoice without any discount, deduction or offset whatsoever. In no event shall any loss, damage, injury or destruction, force majeure events or any other event beyond Medartis' control release Customer from its obligation to make the payments required herein. Payment of all amounts due hereunder shall be

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made by check or wire transfer or Automated Clearing House (ACH) or credit card in the manner set forth on Medartis' invoice.

Time is of the essence for the payment of all amounts due to Medartis under any Confirmed Purchase Order. If Customer fails to make payment of any amount when due, Customer shall pay interest to Medartis at the rate of one and one-half percent (1.5%) per month or such lesser amount as may be permitted by applicable law starting from the due date until payment of such amount in full. If Customer fails to comply with these Terms or the terms of any agreement between Medartis and Customer, or if Customer becomes insolvent, all balances then due and owing to Medartis shall become due immediately, notwithstanding any agreed-upon payment periods. All costs and expenses incurred by Medartis with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, and other expenses of litigation) shall be borne by Customer. Every payment by Customer shall first be applied to pay for Medartis' cost of collection, then interest owed by Customer, and then to the oldest outstanding claim.

Customer's failure to accept delivery of any Products pursuant to a Confirmed Purchase Order shall not release or excuse Customer from its obligation to timely pay all amounts due in connection with such Confirmed Purchase Order. If Customer rejects or revokes acceptance of Products or fails to pay any amounts when due, Medartis, in its sole and absolute discretion, may extend the period of delivery by such period as Medartis may deem reasonable, or withhold or cancel delivery of any Products, or cancel any or all Confirmed Purchase Orders without any further obligations to Customer whatsoever. In such event Customer shall be responsible for any and all costs and expenses incurred or damages or losses suffered by Medartis in connection with any such delay notwithstanding any action or inaction by Medartis with regard to such delay.

For further information, please contact Medartis at: Medartis Inc., 224 Valley Creek Blvd, Suite 100, Exton, PA 19341.

10. In the event Medartis extends credit to the Customer for the purchase of any Products or any other amounts due to Medartis, and/or makes Loaned Instruments and Products available to the Customer, the Customer hereby grants to Medartis as security for the timely payment and performance of all of Customer's obligations to Medartis, a first priority security interest (the "Security Interest") in all Products heretofore or in the future delivered to the Customer for as long as such Products shall not have been sold by the Customer in the ordinary course of business (the "Collateral"). Medartis shall be entitled to file any and all financing, continuation or similar statements under applicable law in any jurisdiction and take any and all other action necessary or desirable, in Medartis' sole and absolute discretion, to perfect its security interest in the Collateral and to establish, continue, preserve and protect Medartis' security interest in the Collateral. The Customer agrees to take any and all actions and provide Medartis with all information necessary to enable Medartis to perfect and enforce this security interest in all jurisdictions and vis-à-vis any of the Customer's creditors. This security interest shall remain in force until payment in full of the entire purchase price for such Products and any other amounts due to Medartis by the Customer. Medartis may, without notice, change or withdraw extensions of credit at any time.

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## 11. Return Instructions for Purchased Products

Prior written return authorization (RMA) from Medartis is required before returning any purchased Product to Medartis. Such returns shall be at the sole risk of the Customer. For a Return Authorization Number, Customer shall call Medartis Customer Service: 1-877-406 BONE(2663) and mark the Return Authorization Number on the outside of the package and ship to:

Medartis Inc.  
Attn: Returns Department  
224 Valley Creek Blvd, Suite 100  
Exton, PA 19341

## 12. Return Products Policy for Purchased Products

No Product purchased by the Customer can be returned for credit once the Product has been removed from the original packaging. In no event, may the Product be returned after 90 days from the invoice date.

Instruments and implants which are made on special request, even if unopened, may not be returned to Medartis under any circumstances.

A Return Authorization Number and a copy of the invoice or packing slip must accompany all returns. All returns after 30 days from the date of invoice are subject to a minimum stocking fee of 15% of the purchase price of such Product. Credit for returned Products will only be issued upon Medartis' determination of acceptable condition.

## 13. Delivery, Passing of Risk, and Shipment

13.1 Any delivery times or dates communicated by or on behalf of Medartis are estimates and shall not be binding on Medartis.

13.2 Partial deliveries shall be permissible. Such partial deliveries will be invoiced to Customer separately. In no event shall Medartis be liable for any delay in delivery, and no delay in delivery of any Products shall relieve Customer of its obligation to accept delivery thereof and make payment of any amounts due in accordance with these Terms.

Subject to paragraph 13.3, or unless otherwise agreed in writing by Medartis, all deliveries of Products shall be made FOB: Exton, PA Medartis' warehouse at 224 Valley Creek Blvd, Suite 100, Exton, PA 19341 (per Incoterms 2010). The title and risk of loss with regard to the Products shall pass to the Customer with the handing over of the Products to the forwarding agent or carrier or, at the time the Products leave Medartis' premises, whichever is earlier. This shall also apply if delivery with freight paid has been agreed upon. In no event shall Medartis be responsible for any acts or omissions of any such forwarding agent or carrier.

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13.3 In the event of a delay in shipment due to circumstances for which the Customer is responsible, the risk passes to the Customer as of the day on which the Products are ready for dispatch. At the request of the Customer, Medartis may insure the consignment at the Customer's cost against theft, breakage, damage through transportation, damage by fire and water, as well as against other insurable risk in the name of and on the behalf of the Customer, provided that the Customer shall have advanced to Medartis sufficient funds to cover all applicable insurance premiums. In no event shall Medartis be responsible for any such insurance premiums or for any failure by any insurer to honor its obligation under any insurance contract or policy.

## **14. Limited Warranties and Liability**

14.1 Medartis warrants for twelve (12) months that the Products, at the date of delivery to Customer will be free from defects in design, manufacture, materials, and workmanship, provided the Products are used for the purpose intended and are maintained, handled (including without limitation sterilized), operated and implanted in accordance with MEDARTIS' instructions, manuals and recommendations.

14.2 If a warranty defect arises, Medartis will, at its option, replace the defective Product or refund the purchase price thereof. Such replacement or refund shall be the sole liability of Medartis and the sole remedy of Customer with respect to the defective Product. Medartis shall have no responsibility to replace or issue refunds for Products damaged as a result of

- (i) inadequate implantation, handling, operation or maintenance of the Products, (including without limitation, the implantation, handling, operation, maintenance or sterilization of Products contrary to the instructions and/or recommendations of Medartis), use of inappropriate operating or substitute materials, deficient implantation measures, or chemical, electro-chemical or electrical influence, to the extent that such circumstances are not due to any fault on the part of Medartis, or
- (ii) acts of Customer or third parties, acts of God or nature, modification, misapplication, abuse or other similar events. Unless expressly agreed otherwise, such replacement or refund shall be the sole remedy of the Customer with regard to such defect.

14.3 The Customer shall duly examine the Products as soon as practicable after having received them and taken possession thereof and shall inform Medartis of any defects without delay. In any event, defects must be reported to Medartis within 10 calendar days after the Customer has become aware thereof upon receipt of the Products. If Customer fails to timely notify Medartis of any defects or other non-compliance of any Products delivered or Customer uses, destroys or modifies any Products that Customer knows or should have known to be defective or non-compliant without Medartis' prior written consent, Customer shall be deemed to have unconditionally accepted such Products and waived all of its claims for breach of warranty or otherwise in respect of such Products.

14.4 The Customer's remedy under Section 14.2. shall only apply if the Customer is not in default with any payment due to Medartis.

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- 14.5 The Customer shall be obligated, upon consultation with Medartis to give Medartis reasonable time and opportunity to make all replacement deliveries deemed necessary by Medartis. Otherwise, Medartis shall be released from liability for the consequences of any defect which occurs because the Customer has not given to Medartis the necessary time and opportunity to perform replacement deliveries.
- 14.6 THE WARRANTY SET FORTH IN SECTION 14.1 IS THE ONLY WARRANTY PROVIDED BY MEDARTIS WITH RESPECT TO THE PRODUCTS, AND SUCH WARRANTY IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES; AND MEDARTIS SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No person shall have any authority to modify the scope of this warranty or make any other representation, promise or warranty with respect to the Products. This warranty extends only to Customer and not to any subsequent user, other customers or transferee.**
- 14.7 UNDER NO CIRCUMSTANCES SHALL MEDARTIS HAVE ANY LIABILITY, WHETHER DIRECTLY OR BY WAY OF INDEMNITY, FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY OR LOSS OF PROFITS OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, STRICT OR PRODUCTS LIABILITY, INFRINGEMENT OF PATENTS, TRADE SECRETS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS OR ANY OTHER LEGAL THEORY IN CONNECTION WITH ANY PRODUCTS SOLD HEREUNDER.**
- 14.8 Notwithstanding any of the terms contained herein, (a) Medartis' liability for any claim – whether based upon contract, tort, equity, negligence or any other legal concept – shall in no event exceed the purchase price paid by the Customer for the Products giving rise to such claim and (b) Medartis shall not be liable to the Customer for any claims in excess of its liability hereunder. Customer hereby acknowledges and agrees that the provisions of these Terms fairly allocate the risks between Medartis and Customer, that Medartis' pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Medartis would not have entered into an agreement with Customer to sell Products to Customer.
- 14.9 In jurisdictions that limit the or preclude limitations or exclusion of remedies, damages, or liability, such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth in these Terms are intended to apply to the maximum extent permitted by applicable law, and these Terms shall be deemed amended to comply with such limitations or exclusions. Customer may also have other rights that vary by state, country or other jurisdiction.

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## 15. Regulatory Compliance

- 15.1 Customer shall cooperate with Medartis (including without limitation by permitting governmental inspections and providing access to Medartis) in all regulatory matters and shall comply with all requests and/or procedural requirements of Medartis that Medartis reasonably establishes hereafter in order to safeguard Medartis' compliance with the applicable federal, state, local laws, rules and regulations, including without limitation regulations of the U.S. Food and Drug Administration ("FDA") (collectively, the "Applicable Law"). Customer shall, upon reasonable request from Medartis, provide data and information to Medartis in connection with Product returns, recalls, complaints and inquiries by third party or governmental authority (including without limitation the FDA). Customer's reasonable costs for any assistance requested by Medartis in compliance with the Applicable Law shall be borne by Medartis.
- 15.2 In the event that Medartis establishes that any of the Products do not comply with the Applicable Law or in the event of Product returns, recalls, complaints or inquiries by any third party or governmental authority such as the FDA, Medartis will decide, at its sole discretion, which measures shall be taken in order to assure the compliance of the Products with such Applicable Law. If, in Medartis' sole discretion, Medartis' expected profit from the sale of such Products does not justify the expected expense for obtaining data or information from Customer, Medartis shall be entitled upon written notice to Customer to delete such Product from any Confirmed Purchase Order without any further liability to Customer in that regard.
- 15.3 Customer shall immediately report to Medartis risks and all incidents regarding the safety of the Products (the "Adverse Events") that it becomes aware of in order to allow Medartis to comply with any reporting requirements under the Applicable Law, in such form as may be requested by Medartis from time to time. Medartis may request Customer to provide all relevant information and data with respect to any such Adverse Event. Customer shall assist Medartis in maintaining proper protocols of third party complaints it becomes aware of, addresses and other materials, and establishing a traceability system, to enable Medartis to act timely and responsibly in the event of product liability occurrences, returns, complaints, inquiries by any third party or governmental authority and product recalls.

## 16. Miscellaneous

- 16.1 If any provision contained in these Terms or any Confirmed Purchase Order is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms or such Confirmed Purchase Order, and the remainder of these Terms or such Confirmed Purchase Order shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render such provision valid, legal and enforceable.

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- 16.2 Customer may not assign any Order or any Confirmed Purchase Order or any right or interest therein or any other obligation arising hereunder without Medartis' prior written consent.
- 16.3 Medartis' waiver of any breach or violation of these Terms or the provisions of any Confirmed Purchase Order by Customer shall not be construed as a waiver of any other present or future breach or breaches by Customer.
- 16.4 The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.
- 16.5 Notices by a party regarding the exercise of rights and obligations under a Confirmed Purchase Order must be signed by authorized representatives of such Party, and delivered via courier, mail or e-mail to the other Party's address indicated in the Confirmed Purchase Order, provided that a notice by e-mail shall only be validly given if receipt thereof is acknowledged in writing by the recipient.
- 16.6 These Terms, including the applicable Confirmed Purchase Order, constitute the entire and exclusive agreement of the parties regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. In the event of a conflict between the provisions of these Terms and the provisions of a Confirmed Purchase Order, the provisions of the Confirmed Purchase Order will govern and control. These Terms may only be modified or any rights under it waived by a written document executed by both parties.
- 16.7 These Terms and the Confirmed Purchase Orders shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would defer to or cause the application of the substantive laws of any jurisdiction other than Pennsylvania.
- 16.8 Any dispute, controversy or claim arising out of or relating to these Terms and any Confirmed Purchase Order, including but not limited to the execution, performance or termination thereof or to any issue of liability arising out of the performance of these Terms or any Confirmed Purchase Order, which the parties have not been able to settle amicably shall be submitted to the exclusive jurisdiction of the state or federal courts with jurisdiction in the Commonwealth of Pennsylvania, Chester County, unless otherwise agreed to by the parties thereto. Each party hereby waives any and all claims, pleas or defenses (including without limitation a plea for forum non conveniens) that would permit such party to seek the jurisdiction of any courts or arbitration tribunals other than those set forth in the preceding sentence.

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16.9 EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.

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