

## TERMS & CONDITIONS OF SALE

### For Sales within the U.S. Only

These Terms & Conditions apply to the sales of CoolSystems, Inc.'s ("Seller") Game Ready control units and all peripheral equipment and supplies (the "Products") ordered by Buyer.

**1. DELIVERABLES.** Seller agrees to provide to Buyer ("Buyer") the services ("Services") and/or Products ("Products"), described in any purchase order, in accordance with these Terms & Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Products or commencement of a Service, Buyer and Seller shall be bound by the provisions of this Agreement, unless Buyer objects to such terms in writing prior to submission of the order for Products or Services.

**2. DELIVERY.** All Products delivered pursuant to this Agreement shall be suitably packed for shipment in Seller's standard shipping cartons, marked for shipment, and delivered to the carrier for shipment to Buyer, or by prior agreement, to Buyer's Customers (FOB origin), at which time title to the Products and risk of loss and damage shall pass to Buyer and such Products shall be deemed delivered hereunder. Unless otherwise instructed in writing by Buyer, Seller shall select the carrier. All freight, insurance and other shipping expenses, as well as any special packing expense, shall be paid by Buyer. Buyer shall also bear all applicable taxes, duties and similar charges that may be assessed against the Products after delivery to the carrier at Seller's facilities. Notwithstanding the passage of title under this Section 2 Seller retains and Buyer grants a purchase-money security interest in each of the Products, and in any proceeds from Buyer's resale (if any---see Section 4, below) of the Products, until the full invoice amount for such Product has been paid in full to Seller.

**3. PAYMENT.** As full consideration for the performance of the Services, delivery of the Products and the assignment of rights to Buyer as provided herein, Buyer shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller's quoted price on date of shipment (for Products), or the date Services were started (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts, and government imposed surcharges will be stated separately on Seller's invoice. Payment is made when Buyer's check is received. Seller shall invoice Buyer for all Products delivered and all Services actually performed Terms are net 30 days from date of invoice. A monthly service charge of 1.5% will be added to all past due balances.

**4. NO RESALE, NO EXPORT.** Absent a prior written agreement with Seller, Buyer agrees that it is neither authorized nor permitted to resell the Products to any third-party customers including, but not limited to, end-user patients, sub-distributors, DME providers, or health care providers. Buyer further agrees that it shall not export any Products to Customers outside the borders of the United States for any purpose whatsoever

### 5. WARRANTIES.

**5.1 Services:** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is commercially reasonable within the applicable industry standards.

#### 5.2 Products:

**5.2.1 Limited Product Warranty.** Seller warrants to Buyer that the Game Ready Control Unit and Heat Exchangers shall be free from material defects in workmanship and material for a period of twelve (12) months from the date of delivery to Buyer or, as per the Manufacturers Warranty included in the Product User's Manual, ("Warranty Period"), whichever is longer. Some accessory Products (sleeve, battery pack) will have shorter warranties which may be changed from time to time at Seller's sole option. Such warranties will transfer to the final end-user of the Products to the extent permitted under Section 4.

5.2.2 Exclusive Remedy. Seller's sole liability and Buyer's exclusive remedy for a breach of the limited warranty set forth in Section 5.2.1 shall be limited to repair or replacement of the non-conforming Product at Seller's sole discretion. Product returned to Seller for non-compliance with the limited warranty shall be returned in accordance with Section 6, below. Repaired or replacement Products supplied under this warranty shall carry only the unexpired portion of the original Warranty Period.

5.2.3 Warranty Limitations. The warranties in Section 5.2.1 shall not apply to Products that have been modified or altered in any manner by anyone other than Seller, or to defects caused (i) through no fault of Seller during shipment to or from Buyer; (ii) by the use or operation in an application or environment other than that intended or recommended by Seller; (iii) by service by anyone other than employees of, or persons approved in writing by, Seller; (iv) by accident, negligence, misuse, other than normal electrical stress or other causes other than normal use; or (v) by storage, usage or handling in any manner inconsistent with the Product label or instructions. Seller shall not be liable for misbranding with respect to any Product labeling or package insert text provided or used by Buyer, or any translation thereof and Seller shall not be liable for any adulteration or failure to meet the Product specifications due to handling or packaging of the Products by Buyer, its Sub-Buyers or agents.

5.2.4 Buyer Warranties. Buyer warrants that its entry into this Agreement is lawful and does not violate any other Agreement to which it is a party, and its conduct in performing its obligations under this Agreement shall conform to all Applicable Laws, general and local industry and medical standards and good commercial practices.

5.2.5 No Warranties. Buyer shall make no representations or warranties with respect to the Products other than those specifically authorized in writing by Seller. Any other representation or warranty made by Buyer to its Sub-Buyers or Customers or end-user patients with respect to the Products shall not obligate Seller in any way, and Seller shall not be liable for misbranding with respect to any Product labeling or package insert text provided or used by Buyer, or any translation thereof or for any adulteration or failure to meet the Product specifications due to handling or packaging of the Products by Buyer or its agents. Buyer shall not modify or replace any components or otherwise attempt to fix any Products unless expressly authorized by Seller. Buyer shall indemnify, defend, and hold harmless Seller, its directors, officers, agents, and affiliates against any liability, loss, costs, or damages arising out of or related to Buyer's warranties or representations of the Products other than those warranties expressly authorized in writing by Seller.

5.2.6 Disclaimer. SUBJECT TO SELLER'S WARRANTIES TO BUYER AS DESCRIBED IN THIS SECTION 5, THE PRODUCTS ARE PROVIDED TO BUYER ON AN "AS IS" BASIS AND WITHOUT WARRANTY OF ANY KIND. SELLER DOES NOT MAKE ANY WARRANTY TO BUYER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO PRODUCTS, SPECIFICATIONS, SUPPORT, SERVICE OR ANY OTHER MATERIALS AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

5.2.7 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF SELLER TO ANY PERSON WITH RESPECT TO THE PRODUCTS AND/OR THE RELATIONSHIP DESCRIBED IN THIS AGREEMENT, WHETHER BASED ON CONTRACT, INCLUDING BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT THEORY, SHALL IN NO EVENT EXCEED THE AMOUNT OF MONEY PAID TO SELLER PURSUANT TO THIS AGREEMENT (WITH RESPECT TO THE UNIT OR UNITS OF PRODUCT INVOLVED IN THE INCIDENT GIVING RISE TO LIABILITY) PRIOR TO THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY AND IN THE CASE OF LIABILITY RELATING TO ANY ALLEGEDLY DEFECTIVE OR INFRINGING UNIT OF PRODUCTS, SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE FURTHER LIMITED TO REPAIR OR REPLACEMENT OF THE UNIT, OR IF IMPRACTICAL, RETURN OF THE PRICE PAID BY BUYER FOR SUCH UNIT. SELLER SHALL IN NO EVENT BE LIABLE TO ANY PERSON FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST

PROFITS, OR LOST DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR ANY INDIRECT DAMAGES EVEN IF SELLER HAS BEEN INFORMED OF THE POSSIBILITY THEREOF AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

**6. ACCEPTANCE, SUSPENSION, AND CANCELLATION.** No Orders are binding upon Seller unless accepted by Seller in writing, which acceptance Seller may grant or withhold in its discretion. Once accepted by Seller, Buyer may cancel or reschedule Orders for Products only with Seller's prior written approval. In addition, Seller may suspend or cancel any Order previously accepted in writing if Seller determines, in its sole discretion, that the Order is unlikely to be paid for in accordance with the terms and conditions set forth in this Agreement and the Order. Upon a determination that Seller intends to suspend or cancel a previously accepted Order, Seller shall give Buyer prompt written notice of the suspension or cancellation and Seller shall be under no further obligation to deliver Products under that Order.

**7. INSPECTION AND REJECTION.** Should Customer return to Buyer any Products within five (5) day of delivery to Customer, Buyer shall visually inspect the packaging of all Products delivered hereunder promptly upon receipt, and subject to Buyer's assumption of risk of loss and damage during shipment under Section 2 may reject any Products that are visibly damaged by written notice to Seller. If Buyer does not reject a shipment of Products within five (5) days of receipt, such shipment shall be deemed to have been accepted and the sale deemed final. Rejected Products should be returned freight prepaid to Seller within ten (10) days of rejection but only after receipt from Seller of a Return Materials Authorization ("RMA"), which Buyer may obtain from Seller by mail, e-mail, or telefax upon proper explanation of the rejection. As promptly as practicable upon verification of any claim of damage, but not later than sixty (60) days after receipt by Seller of properly rejected Products, Seller shall, at its option and expense, either repair or replace such Products. The Party shipping Products pursuant to this Section 7 shall bear the entire risk of loss for Products during shipment. Any insurance proceeds payable in respect to any loss for such Products to the extent of any loss incurred during shipment shall be paid to the Party bearing the risk of loss for such Products to the extent of the loss incurred. Seller shall prepay transportation charges back to Buyer and shall reimburse Buyer for any costs of transportation incurred by Buyer in connection with the return to Seller of properly rejected Products. In the case of improperly rejected or returned Products, Buyer shall pay transportation charges in both directions. Except as provided in this Section 7, all Products delivered under this Agreement are non-returnable. The foregoing provisions of this Section 7 state Buyer's sole remedy and Seller's sole obligation with respect to such damaged Products.

**8. INDEPENDENT CONTRACTOR.** The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint venture or common undertaking, or (iii) allow Buyer to create or assume any obligation on behalf of Seller for any purpose whatsoever. All financial and other obligations associated with Buyer's business are the sole responsibility of Buyer. Buyer shall be solely responsible for, and shall indemnify and hold Seller free and harmless from, any and all claims, damages or lawsuits (including Seller's attorneys' fees) arising out of the acts of Buyer, its employees or its agents.

**9. INDEMNITY.** Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against any claim by a third party against Buyer alleging that the Products or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret, or other proprietary right of a third party, whether such are provided alone or in combination with other products, software, or processes.

**10. TERMINATION.** Seller may terminate this Agreement upon written notice to Buyer if Buyer fails to pay Seller within sixty (60) days after Seller notifies Buyer in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration.

**11. FORCE MAJEURE.** Neither party shall be liable to the other for any failure to perform caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment, or transportation.

**12. ATTORNEYS' FEES and COLLECTION AGENCY FEES.** In any action to enforce this Agreement, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys' fees, in addition to any other relief to which it may be entitled. In the event an invoice is past due and is sent to a collection agency there will be a 20 percent fee added to the outstanding balance.

**13. SEVERABILITY.** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**14. ASSIGNMENT; WAIVER.** Buyer may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Seller. Any assignment or transfer without such written consent shall be null and void. A waiver of any defaults hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

**15. NOTICES.** Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized Buyer representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, or email, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

**16. SURVIVAL OF OBLIGATIONS.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

**17. GOVERNING LAW.** This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of California, excluding its conflict of law rules. Jurisdiction and venue over all controversies arising out of, or relating to, this Agreement shall be in the County of Alameda, State of California or the U.S. District Court for the Northern District of California.

**18. ENTIRE AGREEMENT; MODIFICATION.** This Agreement is the complete, final, and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Buyer, including its purchase orders. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related purchase orders.

**19. COMPLIANCE WITH LAWS.** Seller shall comply fully with all applicable federal, state, and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control, and environmental laws.

**20. INJUNCTIVE RELIEF.** Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to Seller for which there will be no adequate remedy at law and, in the event of such breach, Seller will be entitled to seek injunctive relief, or a decree of specific performance.