



## **LAVA® Liquid Embolic System (LES) Terms and Conditions of Sale (North America)**

(Applicable to orders originating and shipping from North America)

### **1. Intent and Application**

These are the terms and conditions (“Terms”) are applicable to the sale of LAVA® Liquid Embolic System (LES) products and related materials (collectively, “Products”) as sold by Sirtex Medical, Inc. or its corporate affiliates (collectively, “Seller”) to the customer entity purchasing such Products (“Buyer”).

These Terms set forth the only terms and conditions under which Seller will sell Products to Buyer notwithstanding any conflicting term or condition contained in any purchase order (PO), request for proposal, purchase agreement, or any other form submitted by Buyer (collectively, “Order”). If, however, a written contract executed by Seller and Buyer is already in existence covering the purchase of Products, the terms of such contract shall prevail to the extent that it is inconsistent with these terms.

Seller hereby objects to and rejects any and all additional or contrary terms and conditions in Buyer’s purchase order and in any other document issued by Buyer, none of which shall be part of any contract between Seller and Buyer or otherwise binding on Seller.

### **2. Products and Rates**

Buyer shall purchase from Seller, and Seller shall supply to Buyer, such quantities of Products as may be from time to time ordered by Customer in accordance with the Terms at the pricing defined and communicated by Seller. Pricing is subject to change. Seller may cancel order(s) prior to shipment, in which case a restocking fee may be applied at Buyer’s discretion.

Buyer and Seller each acknowledge that it is their intent to establish a business relationship in which any rebates, discounts, payments, and credits provided to Buyer by Seller (“Discounts”) comply with the exceptions to the U.S. Anti-Kickback Statute set forth at 42 U.S.C. 1320a-7b(b)(3) and the “Safe Harbor” regulations regarding discounts set forth in 42 C.F.R. 1001.952(b); and the parties believe that the relationship contemplated by this Agreement is in compliance with those requirements. Buyer is responsible for any applicable reporting requirements related to pricing and/or discounts, and specifically agrees to report all discounts to its payors as may be applicable in accordance with the requirements of the Anti-Kickback Statute and any other applicable laws or regulations.

### **3. Delivery, Inspection and Acceptance**

Products ordered by Buyer will be delivered, subject to availability, to a Buyer-designated destination that is appropriately licensed as may be applicable and capable of receiving and processing the Products. Successful delivery of Products to the designated destination will perfect Seller’s claim for payment for such Products in full. Buyer is solely responsible for payment for all successfully delivered Products and Seller shall not be required to seek payment from any Buyer representative or other third party.

Products are subject to Buyer’s reasonable inspection at Buyer’s destination at the time of delivery, and Buyer shall be deemed to have accepted the Products at the time of delivery. Within ten (10) business

days of the date of delivery, Buyer has the right to return nonconforming Products for credit. After ten (10) business days of the date of delivery, issuance of credit for returned Products shall be at Seller's sole discretion. Prior authorization for all returned Products is required.

#### **4. Payment**

Buyer shall make payment to Seller with respect to all Products within thirty (30) days following delivery in accordance with Section 3. Buyer shall make such payments in US Dollars by electronic transfer to the bank account designated by Seller. All amounts which are not paid by Buyer as required by these Terms shall be subject to a late charge equal to twelve percent (12 %) per annum or the highest rate permitted by law, whichever is lower. If any payment due hereunder is overdue by more than thirty (30) days, Seller reserves the right to require payment prior to delivery for additional Products until such delinquency is corrected.

#### **5. Shipping Terms**

Buyer is responsible for all applicable shipping costs in accordance with Seller's policies in-effect at time of purchase.

Unless otherwise agreed in writing, all Products shipped by Seller are delivered FOB Destination (Incoterms 2020) to Buyer's specified destination, with title and risk of loss passing to Buyer upon receipt by Buyer at Buyer's location.

For each order that Seller accepts, Seller shall acknowledge and confirm each order's delivery dates. Buyer agrees that Seller shall not be responsible for any delays, cancellations, or shortages arising, directly or indirectly, from acts of God or the public enemy, governmental restrictions, decrees or orders, floods, fire, collapse, delay or defaults of common carriers, failure or curtailment of Seller's usual source of supply, earthquakes, explosion, epidemic, war, invasions, terrorist acts, civil unrest, riots, strike, labor difficulties, embargoes, or, without limiting the foregoing, any other delay beyond Seller's reasonable control; provided, however, that Seller shall use reasonable efforts to notify Buyer of anticipated delays and to fill such orders as soon as reasonably practicable. If any order for stock Products is not shipped within thirty (30) calendar days from the date Seller received such order, or Seller notifies Buyer that any order will not be shipped within thirty (30) calendar days from the date Seller received such order, then upon written notice to Seller prior to shipment of any delayed order, Buyer may cancel such order in whole or in part.

#### **6. Limited Non-Transferable Warranty**

Seller warrants only that, at the time of manufacture, Products (i) are manufactured in accordance with good manufacturing practices, as required by the United States Food and Drug Administration; (ii) conform to manufacturer's specifications; (iii) are free from defects in materials and workmanship; and (iv) are not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act as amended. Seller also warrants that it has clear title to Products and that Products shall be delivered free of liens and encumbrances. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF AND SHALL SUPERSEDE ALL OTHER WARRANTIES OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, OR IMPLIED. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PRODUCTS ARE NOT INTENDED FOR RESALE AND ANY RESALE OF PRODUCTS BY BUYER VOIDS ALL PRODUCT WARRANTIES, BOTH EXPRESS AND IMPLIED. No representative of Seller may change any of the foregoing and Buyer accepts Products subject to all terms hereof. Buyer acknowledges that the Products are medical devices that have risks, including those described in the Instruction for Use for the Products. Accordingly, Seller expressly makes no warranties that the Products will be safe and effective when used, including in each application, in each patient or under any and all circumstances.

## 7. Limitation of Remedies and Damages

Buyer's sole and exclusive remedy for any claim arising by reason of or in connection with the sale, purchase, delivery, or use of Products, regardless of whether such claim is based on tort law, breach of contract, breach of warranty, or any other legal theory ("Claim") shall be the repair or replacement of any nonconforming Products at Seller's sole option. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR LOSS OF USE, LOST PROFITS, OR ANY OTHER COLLATERAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, LOSSES, OR EXPENSES IN CONNECTION WITH OR BY REASON OF ANY CLAIM OR BREACH, WHETHER SUCH CLAIM OR BREACH IS FOUNDED IN TORT OR CONTRACT. The foregoing constitutes the sole and exclusive remedies of Buyer and the exclusive liability of Seller.

No right, duty, or obligation of Seller arising hereunder or relating to the Products, including, but not limited to, actions for breach of warranty, breach of contract, or negligence, is assignable by the Buyer or by operation of law.

## 8. Miscellaneous Terms

- a) **Waiver.** No waiver by any party of any breach on the part of the other party will be a waiver of any subsequent breach.
- b) **Independent Contractor.** Each party is an independent contractor and not the agent, partner, or employee of the other party.
- c) **No Third-Party Rights.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- d) **Governing Law and Venue.** This Agreement and these Terms are being delivered and executed in the Commonwealth of Massachusetts. Any action brought regarding the validity, construction, performance, breach, termination, or enforcement of this Agreement or these Terms shall be governed in all respects by the internal laws of the Commonwealth of Massachusetts, without regard to the principles of conflicts of laws and shall in no way be subject to the United Nations Convention on Contracts for the International Sale of Goods. Jurisdiction and Venue for any action or proceeding brought regarding the validity, construction, performance, breach, termination, or enforcement of this Agreement or these Terms shall be exclusively the courts of the Commonwealth of Massachusetts, and the parties expressly agree and consent to the personal jurisdiction of the courts of the Commonwealth of Massachusetts, and further consent to service of process issued by such Court.