

MERIT OEM TERMS AND CONDITIONS OF SALE - CHAMFR

TERMS. These Merit OEM Terms and Conditions of Sale - Chamfr (“Terms and Conditions”) apply to all sales of Merit Medical Systems, Inc. (“Merit”) products by Chamfr, Inc. or through the chamfr.com web site or their successors (collectively, “Chamfr”), and they constitute a contract (the “Contract”) by and between Merit and the entity purchasing such products (“Products”) through Chamfr (the “Customer”). These Terms and Conditions apply in addition to, and do not replace, the Chamfr Terms of Service. Merit accepts no different or additional terms and conditions, whether set forth in Customer’s purchase order or otherwise. This Contract may not be modified or amended except by an agreement duly executed by Merit and Customer that specifically states that it is a modification of the terms and conditions in the Contract.

DELIVERY. Products will be shipped FOB Origin via the carrier and method selected by Customer on the Chamfr web site. Customer is responsible for all shipping and handling charges. Merit will use commercially reasonable efforts to fill customer’s orders in a timely manner. Delay in delivery of any shipment shall not relieve Customer of its obligation to accept such shipment. Merit assumes no liability in connection with shipment, nor shall any carrier be construed to be an agent of Merit. Title to and risk of loss or damage to the Products will pass to Customer upon delivery to the carrier at Merit’s warehouse. Merit will not be responsible for any Product damage or loss that occurs during shipment. It is Customer’s sole responsibility to file any appropriate claims with the carrier and/or insurer for reimbursement or redress.

PRODUCT RETURNS. Products are not returnable unless Customer’s order was not fulfilled properly (for example, Customer received the wrong item) or the product violates the product warranty (set forth below in the paragraph entitled “LIMITED WARRANTY AND DISCLAIMER”), subject to the limitations, conditions, and specified remedies of such warranty. Merit will not accept the return of any Products that have been modified or refurbished. If Merit accepts the return of Products, Customer must obtain a return goods authorization (“RGA”) from Merit in advance, and the Products must be accompanied by the original packing slips and must include the RGA number on the outside of the box. Customer shall package the Products in their original packaging, if possible, and in any event so as to prevent damage in shipping and shall insure against damage and loss. Customer may not return any Product without an RGA. If Merit determines that the Products violate the limited warranty set forth in this Contract, below, then Merit will repair, replace, or issue a credit, according to the remedies set forth below for such a violation. To request an RGA, please contact Merit’s OEM Customer Service Department at oemorder@merit.com or +1 (800) 637-4839 with return information including the part number and lot number, and the reason for the return. Additional information may be required.

LIMITED WARRANTY AND DISCLAIMER. Merit warrants that the Products will materially conform to Merit’s specifications (“Product Specifications”) at the time of delivery to Customer and will remain materially free from defects in workmanship and material for the shelf life of the Product, if applicable (as specified on the Product label (for finished devices) or the period specified in the Product Specifications (for components)). Merit’s sole obligation and liability for, and Customer’s exclusive remedy with respect to any Product which, in Merit’s judgment, fails to meet such warranty shall be to, at Merit’s option, either repair or replace such Product at no charge to Customer or to issue Customer a credit for any such Product in the amount of the original price. Such obligation shall be conditioned upon receipt by Merit of written notice from Customer of any alleged breach of this warranty within 45 days after Customer receives the Product. Claims must be made promptly within such period, and Merit must be given a reasonable opportunity to investigate and cure such nonconformance or defects. Products that Merit directs in writing to be returned shall be returned to Merit’s warehouse or other destination directed by Merit in accordance with Merit’s standard return policies, FOB Customer’s facility. The foregoing warranty shall not apply to Products that have (a) been repaired, refurbished or reprocessed, other than with Merit’s written authorization and by Merit’s approved procedures; (b) been altered, changed or modified other than by Merit, (c) been subjected to misuse, abuse, tampering, neglect, improper maintenance, negligence or accident, (d) been damaged by excessive physical, environmental or electrical stress, (e) had a serial number or any part thereof altered, defaced, or removed, (f) been used (i) outside any approved indications for use, as cleared by the relevant governmental or competent authority, (ii) contrary to use in the Product Specifications, or (iii) in an application or environment for which such Product was not designed or contemplated. Customer agrees that any technical product advice furnished by Merit with reference to the use of the Products is provided without warranty, duty or compensation of any kind and Merit assumes no obligation or liability therefor, all such advice being given and accepted strictly “AS IS” and at Customer’s sole risk. THE FOREGOING WARRANTIES ARE EXCLUSIVE, AND MERIT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER TO CUSTOMER, ITS END-USERS OR ANY THIRD PARTIES WITH RESPECT TO THE PRODUCTS AND SERVICES, AND MERIT HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF MERIT IS AWARE OF SUCH PURPOSE.

LIMITATION OF LIABILITY. MERIT’S MAXIMUM LIABILITY FOR ANY BREACH OF THIS CONTRACT OR ANY OTHER CLAIMS RELATING TO THE PRODUCTS SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCTS OR SERVICES INVOLVED IN THE BREACH. UNDER NO CIRCUMSTANCES, REGARDLESS OF THE FORM OF ACTION, SHALL A PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, WORK STOPPAGE, PRODUCT FAILURE, IMPAIRMENT OF OTHER PRODUCTS OR OTHERWISE AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE.

EXPORT/ IMPORT CONTROLS. Customer will comply with all applicable export/import laws, including obtaining licenses and other import certifications. Customer will not assist or engage in the diversion of Products to any country to which the U.S. has embargoed or restricted the export of goods or services. Customer agrees not to export, directly or indirectly, U.S.-origin products to any person or entity that has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Customer warrants and represents that neither the U.S. Bureau of Export Administration nor any other U.S. federal agency has suspended, revoked, or denied its export privileges.

LEGAL AND REGULATORY COMPLIANCE. Merit and Customer will each comply with those laws, regulations, rules, requirements and ordinances of all governmental authorities, including but not limited to U.S. Foreign Corrupt Practices Act and other applicable anti-corruption laws, regulations of the U.S. Food and Drug Administration and other governmental or regulatory authorities that apply to the use, re-use, manufacture, sale, distribution, transportation, exportation or importation of Products for its particular roles and responsibilities hereunder. Customer represents and warrants that it is purchasing the Products for evaluation only. Customer agrees to not use, sell, or otherwise transfer the Products for use, in the treatment of humans.

MISCELLANEOUS. All notices shall be in writing. No failure by a party to enforce at any time any provision of this Contract shall be construed as a waiver of the party’s right thereafter to enforce such provision. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms and conditions set forth herein. This Contract shall be governed by the laws of the State of Utah and any action arising out of or related to this Contract shall be brought and maintained exclusively in the state and federal courts situated in Salt Lake County, Utah, United States of America. If any provision of this Contract shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of this Contract.