# General Terms and Conditions of Sale ("Terms")
# of
# Optores GmbH

## 1. Acceptance of Terms

Any quotation provided by Optores GmbH ("Optores") for sale of any Optores product ("Product") and these Terms and Conditions of Sale (collectively the "Agreement"), shall prevail over terms and conditions contained in any purchase order, confirmation or other writing submitted by Buyer ("Buyer") to Optores. THESE TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN OPTORES AND BUYER.

## 2. Prices and Payment

**2.1.** All price quotations are subject to confirmation and are non-binding. Unless otherwise agreed to by Optores in writing, all prices for the sale of Product are to be paid in Euros. All payments are due and payable in thirty (30) days from date of invoice. Optores reserves the right to require alternative payment terms, including without limitation, letter of credit or payment in advance.

**2.2.** All prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes or duties, tariffs, fees or charges ("Tax(es)") now in force or enacted in the future. All federal, state, municipal or other government excise, sales, use, occupational or like Taxes, duties, tariffs, and related fees or charges shall be payable by Buyer.

## 3. Deliveries/Delay in Delivery

**3.1.** Shipments of Products are subject to Optores availability. Optores shall use reasonable efforts to meet any scheduled delivery date(s), but will not be liable for failure to meet such dates and reserves the right to make partial deliveries. Optores shall invoice such partial deliveries separately and Buyer shall pay such invoices when due (within thirty (30) days after shipment), without regard to later deliveries.

**3.2.** Shipping terms are EXW Optores to Buyer's location unless otherwise agreed to in writing by Optores.

## 4. Limited Warranty

**4.1.** Subject to Buyer's compliance with the Product Return/Repair Policy set forth below, Optores warrants with respect to all Products delivered hereunder that, for a period of twelve (12) months after the date of delivery, the Products shall conform to Optores Specifications for such Product. If Optores receives prompt notice from Buyer in writing of defects in the Products during the warranty period, Optores shall, at its option repair or replace the Product. Warranty service shall be at an Optores location. On-site repair is excluded from the Limited Warranty.

**4.2.** Optores shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to Products which are (a) items repaired, modified, or altered by any party other than Optores; (b) items subjected to unusual physical, thermal, or electrical stress; (c) items damaged due to accident or negligence in use, storage, transportation or handling.

**4.3.** To the extent the Product is incorporated into any other instrument or device, Optores makes no representation with respect to the safety, efficacy, accuracy, reliability, use or fitness for intended purpose of such integrated product. To the extent so incorporated into any other instrument or device, Buyer hereby agrees to indemnify and hold Optores harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs

arising from or relating to any defects in and/or the use of such integrated product and/or the failure of such integrated product to comply with any applicable laws or regulations.

**4.4.** Subject to Buyer's compliance with the procedures set forth in paragraph entitled "Product Return/Repair Policy" below, Optores' sole obligation, and Buyer's exclusive remedy for any defective Product, shall be limited, at Optores' option to either repairing or replacing, free of charge for materials or labor, any Product which is proved not in compliance with the Limited Warranty during the Warranty Period.

**4.5.** EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH ABOVE, OPTORES MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

# 5. Product Return / Repair Policy

**5.1.** Buyer will notify Optores about the occurrence of defective or non-operational Product and request a "Return Authorization Number" (hereinafter referred to as "RMA#") from Optores for the item(s) Buyer would like to return for repair. This RMA# is to be used for all correspondence and shipping documents that relate to the Product. Instructions for packaging and shipping will be provided by Optores. Buyer is responsible for shipping cost to Optores unless Product is under Warranty. Optores is responsible for shipping cost to return Product to Buyer's location. The Buyer is responsible for any taxes, duties and related fees or charges for the return shipment to Buyer's location unless Product is under Warranty.

# 6. Limitation on Liability

**6.1.** IN NO CASE SHALL OPTORES BE LIABLE TO ANYONE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR BREACH OF THIS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR UPON ANYOTHER BASIS OF LIABILITY WHATSOEVER, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY OPTORES' OWN NEGLIGENCE OR FAULT.

**6.2.** CONSEQUENTLY, OPTORES SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. HOWEVER, IF OPTORES IS HELD LIABLE, WHETHER DIRECTLY OR INDIRECTLY, FOR ANY LOSS OR DAMAGE ARISING UNDER LIMITED WARRANTY OR OTHERWISE, REGARDLESS OF CAUSE OR ORIGIN, OPTORES' MAXIMUM LIABILITY SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT WHICH SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST OPTORES.

# 7. Intellectual Property Rights

**7.1.** Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress, trade secrets and all applications and registrations of all of the foregoing resulting from the performance of these Terms and Conditions of Sale that is conceived developed, discovered or reduced to practice by Optores, shall be the exclusive property of Optores. Specifically, Optores shall exclusively own all rights, title and interest (including, without limitation, all intellectual property rights throughout the world) in and to the Products and any and all inventions works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Optores in the course of the performance of these Terms and Conditions of Sale.

# 8. Miscellaneous

**8.1. Assignment**. These Terms and Conditions of Sale and the rights of Buyer hereunder may not be assigned in whole or in part without the prior written consent of Optores.

**8.2. Export Control Laws**. Buyer shall comply with all applicable laws, regulations and treaties relating to the sale and destination of the Products, including without limitation, U.S. and European export control regulations. Buyer will defend, indemnify and hold Optores harmless for any damages or costs to Optores arising from Buyer's failure to comply with these terms.

**8.3. Invalidity**. If any provision of these Terms and Conditions of Sale is held invalid by any governing law or regulation or by any courts having valid jurisdiction, such invalidity will not affect the enforceability of other provisions.