

## **TERMS AND CONDITIONS OF PURCHASE**

1. **AGREEMENT TO TERMS.** Acceptance of the offer represented by this order is expressly limited to the terms of this purchase order. Any terms and conditions of Seller's acknowledgement or other document which are in any way inconsistent with or in addition to these terms shall not be binding on Telfusion. Reference to Seller's bids or proposals if noted on Seller's acknowledgement of a Purchase Order or otherwise, shall not affect the terms and conditions hereof. Any of the following acts of Seller shall constitute acceptance of this order and all of its terms and conditions: signing and returning a copy of this order; delivery of any of the items ordered; informing Telfusion in any manner of commencement of performance; or returning Seller's own form of acknowledgement. This Agreement supersedes any proposal, prior or contemporaneous agreement, oral or written, and other communications between Telfusion and Seller relating to the subject matter of this Agreement. This agreement (including these terms and conditions) shall not be modified, amended or in any way altered except by an instrument in writing signed by an authorized representative of Telfusion.

2. **PRICES, DELIVERY AND PAYMENT TERMS.** Seller shall furnish the Products ordered in accordance with terms specified in a Purchase Order submitted in accordance with the terms of the Agreement. Except as may be otherwise provided in a Purchase Order, prices include all applicable national, state and local taxes. Seller agrees to pay any taxes imposed by law upon or on account of the Products ordered hereunder. The payment terms stated on the Purchase Order shall be calculated from the date of Telfusion's receipt of Products conforming to the Purchase Order or the date of a correct invoice, whichever occurs later.

3. **PACKING AND SHIPPING.** Seller will comply with Telfusion's routing and shipping instructions specified in a Purchase Order. No charges for packing, crating, or insurance will be paid by Telfusion unless such charges are separately stated in a Purchase Order. Each container or package must be marked with the Purchase Order number and must contain an itemized packing list also showing the Purchase Order number.

4. **DELIVERY, TIME AND RATE OF DELIVERIES ARE OF THE ESSENCE OF THIS ORDER.** Delivery shall not be deemed complete until the Products are received and subsequently accepted by Telfusion, notwithstanding any agreement to pay freight or other transportation charges. The risk of loss of or damage to the products in the course of delivery shall be upon Seller. Whenever any delay (or any threatened delay) in delivery is foreseeable, Seller shall immediately notify Telfusion of such delay, but no such notice shall adversely affect the rights of Telfusion hereunder. If Seller shall be unable to deliver Products in accordance with the requested delivery date for such Products, Telfusion, without limiting its other remedies, may direct expedited routing and any excess delivery costs incurred thereby shall be the liability and obligation of Seller. Seller shall not make material commitments or production arrangements in anticipation of Telfusion's requirements except at Seller's own risk. Products which are delivered in advance of their requested delivery date schedule may, at Telfusion's option, either (i) be returned at Seller's expense for proper delivery; (ii) have payment therefor delayed by Telfusion until

the date that Products are actually scheduled for delivery; or (iii) be held for Seller's account until the delivery date specified in the applicable Purchase Order.

5. DEFAULT. If (i) Seller fails to make any Product delivery or perform any services in accordance with the delivery date(s) specified in a Purchase Order, or if Seller otherwise fails to comply with a Purchase Order and does not remedy such failure within ten (10) days after Seller's receipt of written notice thereof, (ii) Seller breaches any term or condition of the Agreement or of these Terms and Conditions and such breach is not cured within five (5) calendar days after Seller's receipt of written notice thereof, or (iii) any proceeding is filed by or against Seller in bankruptcy, or for appointment of a receiver or trustee, Seller becomes insolvent or admits its inability to pay its debts as they become due, then Telfusion may, without any liability to Seller, cancel all or any part of such Order by written notice to Seller and may purchase substitute items elsewhere and Seller shall be liable to Telfusion for any excess cost occasioned Telfusion thereby. The foregoing rights and remedies of Telfusion shall not be exclusive and are in addition to any other rights and remedies Telfusion may have in law or equity.

6. CHANGES, ADDITIONS, DELETIONS. Telfusion shall have the right by written notice to make changes to a Purchase Order as to packing, packaging, testing, specifications, quantities, designs, delivery schedules, place of delivery or any other phase of the work to be performed. If any such changes cause an increase or decrease in Seller's material costs or in the time required for performance of Seller's obligations under a Purchase Order, an equitable adjustment to the purchase price and/or costs appearing on an invoice may be made; provided, however, that Seller must advise Telfusion in writing of any proposed adjustment within five (5) calendar days from the date Seller receives notice of the change(s) and said adjustment shall be subject to the prior approval of Telfusion in writing. Seller shall not be obligated to make any changes to a Purchase Order requested by Telfusion unless Telfusion approves any corresponding adjustment to the purchase price and/or costs. Seller shall not substitute other materials or revise specifications for those specified in a Purchase Order without the prior written consent of Telfusion. Changes made by Seller without Telfusion's authorized written consent shall be made at the sole risk of Seller with no right of financial or other recourse against Telfusion.

7. TERMINATION FOR CONVENIENCE. Telfusion may cancel at any time for its convenience all or any part of a Purchase Order by written notice to Seller. If Seller receives notice of such cancellation at least 10 days prior to the scheduled delivery date, then Telfusion shall not be liable for any cancellation fee or other penalty. If Telfusion cancels all or part of a Purchase Order written 10 days prior to the requested delivery date, Telfusion shall be liable for reasonable cancellation charges based on direct damages suffered by Seller thereby with respect to work in process at time of notification. Seller must notify Telfusion in writing of the amount and basis of such damages within five (5) days after notice and offer Telfusion reasonable opportunity to verify such calculations. No cancellation charges or other damages will be payable for Purchase Orders canceled hereunder which are past due delivery, unless Telfusion has agreed in writing to accept late delivery, or for work in process which exceeds quantities necessary

to effect delivery within normal lead times for such goods. Seller shall take all reasonable steps to mitigate its damages. In no event will Telfusion be liable for special, indirect, incidental or consequential damages or lost profits on account of a cancellation of all or any part of a Purchase Order nor for any damages in excess of the purchase price for the Products canceled. Seller agrees that the foregoing shall be its exclusive remedy for a cancellation of a Purchase Order under this section 7.

8. INSPECTION. All Products are subject to final inspection at the "ship to" point specified in a Purchase Order and will not be deemed accepted by Telfusion until so inspected (whether or not payment therefor has been made). Acceptance will be made at time of final inspection and will be conclusive except as with regard to latent defects, breach of any warranties, fraud or such other substantial mistakes. Telfusion may, at its sole discretion, deal with nonconforming Products as follows: return nonconforming Products to Seller at Seller's expense; hold nonconforming Products, at Seller's expense, subject to Seller's disposition instructions; or accept such nonconforming Products at an equitable reduction in price. Seller shall refund any payments made for Products not accepted immediately upon receipt of notice thereof. If nonconforming Products are rejected by Telfusion and Seller does not, or advises Telfusion that it cannot, replace such nonconforming Products with conforming Products in accordance with the delivery schedule specified in such Purchase Order, Telfusion may cancel such Purchase Order without any liability to Seller and Seller shall provide return authorization numbers to enable Telfusion to return the rejected Products.

9. WARRANTY. Seller warrants that hardware provided to Telfusion will be (i) free from defects in materials and workmanship, (ii) free from defects in design, except to the extent that such Products are manufactured in accordance with detailed designs furnished by Telfusion, and (iii) in conformity with all applicable drawings, specifications, samples or other requirements. All rights under this warranty shall survive acceptance and shall inure to the benefit of and be enforceable by Telfusion and/or its customers. Such warranties provided by Seller to Telfusion both covered in this agreement and otherwise in law or equity, shall endure for 180 days from Telfusion's acceptance. Upon a breach by Seller of any warranty hereunder, Seller shall, at the election of Telfusion, (i) refund the purchase price of the defective Products or services (in which case, Telfusion shall whenever feasible, request and follow reasonable instructions from Seller to dispose of same at Seller's expense) plus any transportation or other costs and expenses incurred by Telfusion as a result of the breach, (ii) replace or repair such defective Products and pay any transportation charges or other costs and expenses incurred by Telfusion as a result of the breach. The foregoing remedies shall be in addition to all other remedies that Telfusion may be entitled to in law or equity. Failure by Seller to repair or replace a defective Product within a reasonable time after request to do so by Telfusion shall be considered a default and Telfusion shall be entitled to purchase substitute items in which case Seller shall be liable for any excess cost occasioned Telfusion thereby.

10. PATENTS AND COPYRIGHTS. Seller warrants that the Products and any parts thereof furnished under a Purchase Order do not infringe any U.S. or foreign patent,

copyright, trade secrets and other intellectual property rights (collectively “intellectual property rights”) of any third party, and Seller agrees to defend at its own expense any claim or suit against Telfusion and to pay all awards or damages arising out of such suits or claims respecting infringement of any such intellectual property rights provided Telfusion notifies Seller of any claim or suit for such infringement and grants Seller sole control of the defense of such claim. Telfusion shall have the right to be represented in such action by its own counsel at its own expense. If any Product or part thereof is held to constitute an infringement and the use thereof enjoined, Seller shall, at its own expense, either procure for Telfusion the right to continue using the Product or any part thereof, modify the Product so that it becomes noninfringing without adversely affecting such Product’s functionality or performance, or refund to Telfusion the purchase price paid for the Product and accept its return.

11. LIABILITY FOR INJURY. Seller shall indemnify, defend and hold harmless Telfusion against all loss and liability for personal injury and property damage caused directly or indirectly by Products furnished or services performed by Seller pursuant to a Purchase Order, whether occurring on the premises of Seller or Telfusion or elsewhere. Seller shall carry and maintain insurance coverage satisfactory to Telfusion to cover the above and upon request shall furnish appropriate evidence of such insurance upon request by Telfusion.

12. COMPLIANCE WITH LAWS. Seller warrants that in connection with its performance of its work under the Agreement and all Purchase Orders issued pursuant thereto, it shall fully comply in all respects with all applicable Federal, state and local laws and all orders, rules and regulations thereunder.

13. FORCE MAJEURE. Neither party shall be liable for failure to perform its obligations under the Agreement or any Purchase Order issued thereunder to the extent such failure results from any act of God, war, fire, earthquake, labor dispute, accident, commotion, epidemic, act of government or any cause beyond such party’s reasonable control.

14. GENERAL PROVISIONS. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina, except its laws concerning conflicts-of-law. No waiver of any provision of the Agreement or these Terms and Conditions shall be effective unless made in writing and signed by an authorized representative of Telfusion. In the event that any provision hereof is found invalid or unenforceable pursuant to a judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The Agreement (including these Terms and Conditions) constitutes the entire agreement between Telfusion and Seller and supersedes all prior or contemporaneous agreements and understandings between Telfusion and Seller relating to the subject matter hereof, and no modification of the Agreement shall be binding on either of the parties unless it is in writing and signed by both parties.

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