

H&O EQUIPMENTS, INC.
Terms and Conditions

- Definitions; Agreement:** The term "Buyer" herein means the customer named on the invoice who is purchasing the equipment listed thereon (the "Equipment") as well as any party to whom the Buyer sells the Equipment, if any, i.e. the end user. In consideration of the sale of the Equipment, Buyer agrees that its order for, purchase, sale and use of the Equipment is subject to these Terms and Conditions, along with the accompanying invoice and Limited Warranty Schedule (collectively, the "Sales Order"), and these represent the sole governing documents for the purchase of the Equipment and supersede all previous terms and conditions, representations, warranties or agreements between the parties. In the event of a conflict among the provisions in the documents comprising the Sales Order, the provisions of these Terms and Conditions shall control. Buyer agrees to transmit these Terms and Conditions and Limited Warranty Schedule to the subsequent purchaser of the Equipment, if any. In the event Buyer makes subsequent purchases of equipment from H&O Equipments, Inc., these Terms and Conditions shall apply and govern such subsequent purchases without objection or modification by Buyer. In the event these Terms and Conditions are amended or otherwise modified in the future by H&O Equipments, Inc., it shall provide such amended Terms and Conditions to Buyer, and Buyer agrees that such amended Terms and Conditions shall govern all subsequent orders from H&O Equipments, Inc. upon receipt. **The terms hereof are contractual in nature and not a mere recital.**
- Orders; Payment; Pricing:** All orders must be in writing and are subject to approval and acceptance by an authorized representative of H&O Equipments, Inc. Unless otherwise agreed in writing, terms of payment shall be net 30 days from date of invoice. H&O Equipments, Inc. may withhold delivery of the ordered Equipment pending credit approval or advance payment, as may be required. In the event Buyer fails to make payment in accordance with these terms, the account shall be deemed to be delinquent and subject to a late charge equal to the lesser of one and one-half percent (1 ½%) per month (or eighteen percent (18%) per annum) or the maximum amount allowed by applicable law, charged weekly, plus the past due amount. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys' fees and costs, incurred by H&O Equipments, Inc. in collecting or attempting to collect such account. Payment of the invoice by the Buyer shall be a condition precedent to Buyer's right to assert any claim against H&O Equipments, Inc., and payment shall be made without regard to abatement, set-off, reduction, defense or counterclaim. All published prices and Equipment specifications of H&O Equipments, Inc. are subject to change without notice. Prices quoted by H&O Equipments, Inc. are for the Equipment only and do not include any other charges, unless specifically listed on the face of the invoice. H&O Equipments, Inc. reserves the right to make product and design changes to the Equipment which will not adversely affect form, fit or function requirements. Special orders by Buyer shall be subject to the written approval of H&O Equipments, Inc. and to reasonable changes in delivery requirements and pricing. Subject to the terms hereof, all sales are final.
- Delivery, Title and Transportation:** H&O Equipments, Inc. will notify Buyer of approximate delivery date(s) of the Equipment, but H&O Equipments, Inc. does not guarantee a particular date of delivery. Delivery shall be F.O.B. common carrier, H&O Equipments, Inc.'s designated shipping point. Buyer shall pay all the freight and insurance charges for shipment of the Equipment. H&O Equipments, Inc. reserves the right to designate origin and intermediate carriers and to make partial shipments. Title to the Equipment and liability for loss and damage thereto in transit shall pass to the Buyer upon H&O Equipments, Inc.'s delivery of the Equipment to a common carrier at H&O Equipments, Inc.'s designated shipping point for shipment to the Buyer. H&O Equipments, Inc. shall not be liable for any failure or delay in manufacture, shipping or delivery of the Equipment resulting from any cause beyond its control, including without limitation, provisions of law or governmental regulations, accidents, explosions, fire, windstorm, flood or other casualty, or acts of God or the Buyer, strike, lockout or other labor difficulty, riot, war, terrorism, insurrection, shortage or inability to secure labor, raw materials, production or transportation facilities or technical failure. In the event of delay, the date of delivery will be extended for a length of time consistent with the cause of delay. Any Buyer-requested deferred shipping date shall be subject to H&O Equipments, Inc.'s written approval. On any approved deferred shipping request, H&O Equipments, Inc. shall have the right to render an invoice for the complete portion of the order and to warehouse all complete products at Buyer's expense and risk of loss. H&O Equipments, Inc. reserves the right to revise prices and delivery schedules on the uncompleted portion to reflect increased costs, delay and expenses.
- Taxes:** Buyer will indemnify, defend, protect, relieve and save harmless H&O Equipments, Inc. from liability for collection and payment of all taxes, duties and import fees due on the Equipment. Buyer certifies that he/she timely will pay directly to all such applicable taxing authorities the full amount of all taxes due on the Equipment and as a result of the sale of the Equipment, including without limitation all applicable sales, use, excise and personal property taxes.
- Conformity of Equipment:** Buyer agrees to inspect the Equipment upon receipt. Buyer may rightfully reject any Equipment ordered and delivered herein only if (a) the Equipment fails to conform to the specifications set forth in this Sales Order; (b) written notice of the specific nonconformity is received by H&O Equipments, Inc. within ten (10) days of delivery of the Equipment, and (c) H&O Equipments, Inc. fails to cure such nonconformity within a reasonable period after receipt of written notice. In such case, H&O Equipments, Inc. will, in its sole discretion, repair or replace the rejected Equipment with new or reconditioned parts.
- Returns:** Except for Equipment rejected in accordance with paragraph 5 above, Buyer may return Equipment to H&O Equipments, Inc. only if such return is authorized in writing by H&O Equipments, Inc. Any such return shall be subjected to a restocking charge to Buyer equal to twenty percent (20%) of the purchase price. No Equipment or part thereof will be returnable after sixty (60) days from the date of shipment.
- Cancellation:** Buyer may cancel Equipment ordered but yet not delivered to a common carrier only if such cancellation is requested in writing by Buyer and is authorized by H&O Equipments, Inc. in writing. H&O Equipments, Inc. may cancel or suspend an order if (a) Buyer's payments are in default on this or any other order or Buyer breaches any other material provision hereunder; (b) substantial events or changes occur which affect the availability or shipment of the Equipment beyond the control of H&O Equipments, Inc.; (c) Buyer becomes insolvent or is the subject of the filing of a bankruptcy petition, makes an assignment for the benefit of creditors, or fails to pay its debts as they become due; or (d) H&O Equipments, Inc. has a reasonable belief that the Buyer is insolvent or will not be able to pay in accordance with the terms herein, in which case H&O Equipments, Inc. may demand adequate assurances and security.
- Limited Warranty:** H&O EQUIPMENTS, INC. MAKES ONLY THE LIMITED WARRANTY SPECIFICALLY CONTAINED IN THE LIMITED WARRANTY SCHEDULE INCLUDED HERewith AND INCORPORATED HEREIN. TO THE MAXIMUM EXTENT PERMITTED BY LAW, H&O EQUIPMENTS, INC. SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY AS TO TITLE AND INFRINGEMENT. H&O EQUIPMENTS, INC. SHALL HAVE NO FURTHER OBLIGATION OR LIABILITY WITH RESPECT TO THE EQUIPMENT AND ITS SALE, OPERATION AND USE, AND H&O EQUIPMENTS, INC. NEITHER ASSUMES NOR AUTHORIZES THE ASSUMPTION OF ANY OBLIGATION OR LIABILITY IN CONNECTION WITH SUCH EQUIPMENT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND IN THE LIMITED WARRANTY SCHEDULE INCLUDED HERewith.
- Remedies:** The rights and remedies provided to Buyer in this Sales Order shall be the sole and exclusive rights and remedies of the Buyer with respect to the breach of warranty or other provision of this Sales Order by H&O Equipments, Inc., and to the maximum extent permitted by law, Buyer hereby waives and remises all other rights and remedies provided by applicable law, including without limitation, incidental, consequential, liquidated, special, punitive or any other money damages, including those for lost profits, or any other claim or demands brought by or against Buyer, however caused and under any theory of liability, even if H&O Equipments, Inc. was advised of the possibility of such damages. In no event shall H&O Equipments, Inc.'s aggregate liability to Buyer arising out of, related to or in connection with the sale or use of any Equipment under this Sales Order exceed the purchase price paid to H&O Equipments, Inc. by Buyer for such Equipment. Any action hereunder must be brought within eighteen (18) months after the cause of the action accrues.
- Use of the Equipment:** Buyer's use of the Equipment shall be restricted to that originally intended by H&O Equipments, Inc. and consistent with the design and specifications of the Equipment and instructions published by H&O Equipments, Inc. Buyer represents and warrants that the Equipment is being purchased for sale and use within the United States and not for export to other countries. Buyer agrees not to disassemble, alter, modify or reverse engineer, or attempt such actions with respect to, the Equipment, except as specifically provided in the instructions accompanying the Equipment. Buyer agrees to sell and/or use the Equipment solely in conformance with all applicable local, state and federal laws, rules and regulations.
- Indemnity:** Buyer shall and does hereby agree to indemnify, defend, protect and save H&O Equipments, Inc., its officers, directors, employees, agents, affiliates and parent entity, successors and assigns and each of them harmless of and from any and all liability, loss, cost, injury, investigation, penalty, judgment, damage, demand, suit, cause of action and expense (including, without limitation, reasonable attorney's fees and related cost[s]) of any nature whatsoever arising directly or indirectly out of, on account of or in connection with any claim, loss, property damage, death or injury from (1) any use or misuse of the Equipment including, without limitation, use contrary to or different from that prescribed in any instructions accompanying the Equipment; (2) failure to satisfy Buyer's delivery requirements to end users; (3) operation of the Equipment by any person other than a qualified physician/person; (4) a violation or breach of these Terms and Conditions by Buyer; and (5) sale or use of unauthorized parts in the Equipment and sale or use of the Equipment in an altered condition. This indemnity shall survive the termination of the Sales Order.
- Non-Waiver:** Failure by H&O Equipments, Inc. to insist upon strict compliance with any of the terms or conditions of this Sales Order shall not be deemed a waiver of such terms and conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times.
- Assignment:** H&O Equipments, Inc. may assign any or all of its rights and/or obligations under this Sales Order. Buyer may not assign its rights or delegate its duties under this Sales Order without prior written consent of H&O Equipments, Inc.
- Governing Law; Venue; JURY WAIVER:** The laws of the State of South Carolina shall govern this Sales Order in all aspects, including execution, interpretation, performance and enforcement, without regard to its principles of conflicts of law. The parties agree that all actions and proceedings brought by either party relating to or arising from, directly or indirectly, the Sales Order or the Equipment, shall be brought in the State or Federal Courts in and for the County of Charleston, State of South Carolina, United States of America. The parties hereby knowingly and voluntarily submit to the exclusive personal jurisdiction of such courts. **EACH PARTY HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, DISCHARGES, RELEASES AND REMISES ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SET-OFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATED, DIRECTLY OR INDIRECTLY, TO THE SALES ORDER OR THE EQUIPMENT WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**
- Severability; No Modification of Agreement; Conflict of Terms:** If any provision of the Sales Order shall be determined by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and incapable of modification to preserve the effect thereof, such provision shall be deemed severed and the remainder of the Sales Order shall remain in full force and effect. Other than as noted on the face hereof, no terms and conditions in any way altering or modifying the provisions hereof shall be binding upon H&O Equipments, Inc. unless in writing and signed by an authorized representative of H&O Equipments, Inc. No modification or alteration of any provision hereof shall result from H&O Equipments, Inc.'s acceptance or acknowledgement of Buyer's order form, shipment of Equipment, or other affirmative action by H&O Equipments, Inc. toward performance hereunder following receipt of Buyer's order form, shipping order or other forms containing provisions, terms or conditions in addition to or in conflict or inconsistent with the provisions hereof. Any terms or conditions contained in any document which has been or may in the future be supplied by Buyer to H&O Equipments, Inc. which are in addition to, different from, inconsistent with or attempt to vary any of the terms of the Sales Order, unless otherwise accepted in writing by an authorized representative of H&O Equipments, Inc., are hereby rejected. The section headings hereof are for reference and convenience only.

Limited Warranty Schedule

Thank you for purchasing a CryoProbe product from an authorized H&O Equipments, Inc. distributor. We take great pride in the quality, value and performance of our products. We are pleased to offer this limited warranty on your new CryoProbe product. Your purchase, acceptance and use of the CryoProbe product signify your acceptance of the terms of this Limited Warranty Schedule and the Terms and Conditions accompanying this document.

1. Scope and Duration of the Limited Warranty

a. **Product limited warranty:** Subject to the terms and exclusions herein, H&O Equipments warrants the CryoProbe product to Customer against defects in material and workmanship only for the limited warranty period of one (1) year. H&O Equipments will, at its option, repair or replace the product with new or reconditioned parts or product if found to be defective during the limited warranty period. All replaced parts and product become the property of H&O Equipments and must be returned to your authorized dealer. This limited warranty shall not extend to anyone other than the original Customer of this product, is nontransferable and states your exclusive remedy.

b. **Limited warranty period:** The limited warranty period is limited in time to one (1) year, and the initial limited warranty period begins on the date that your authorized dealer delivers the CryoProbe to you. Replacement parts and product assume the remaining original limited warranty, or ninety (90) days, whichever is longer.

2. Limited Warranty Exclusions

This limited warranty applies to defects in material and workmanship of new CryoProbes only. The limited warranty shall not apply to the following:

- Parts prone to normal wear and tear including, without limitation, O-rings and closing pastilles;
- Damage or failure caused by abuse, misuse (including use by a non-qualified person), faulty installation, improper or inadequate maintenance (including failure to follow the maintenance schedule contained in the instructions for the product), failure to follow instructions, and any repair or guarantee on repairs NOT carried out by H&O Equipments or one of its authorized distributors;
- Damage caused by use of products, equipment, systems, utilities, services, parts, supplies, accessories and applications not supplied or authorized by H&O Equipments;
- Damage which occurs in shipment, delivery and/or installation;
- Damage caused by applications and uses for which the CryoProbe was not intended;
- Altered or tampered product or serial numbers;
- Cosmetic damage or exterior finish;
- Accidents, abuse, neglect, fire, water or lightning damage or other acts of nature;
- Intentional damage to a CryoProbe, and
- Accidental droppage of a CryoProbe.

3. Exclusive Limited Warranty Remedy

If Customer gives the local distributor prompt written notice of a limited warranty claim within the limited warranty period and requests a Return Material Authorization number ("RMA"), H&O Equipments will, at H&O Equipments' option, repair, adjust or replace (with new or reconditioned parts) the non-conforming CryoProbe or portion of the CryoProbe. Items returned for repairs hereunder shall be shipped freight pre-paid by the Customer and accompanied by the RMA, a copy of the invoice for the product and a copy of this limited warranty. Items received without such documentation shall not be accepted. H&O Equipments reserves the right to make design and equipment changes to its products without assuming any obligation to conform returned items to such design or equipment changes.

The time required for repair and/or replacement will vary, and no guarantee is given as to the return time of the product to the Customer. H&O Equipments may provide temporary substitute equipment to Customer, if requested and available. Such temporary substitute equipment may not be identical to Customer's equipment. Such substitute equipment will remain the property of H&O Equipments at all times and will be returned upon receipt of the repaired/replaced product or upon request.

THERE ARE NO WARRANTIES OTHER THAN THE LIMITED ONE SPECIFICALLY LISTED AND DESCRIBED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY AS TO TITLE OR INFRINGEMENT, ARE EXPRESSLY DISCLAIMED, AND NO OTHER WARRANTY OR GUARANTY GIVEN BY ANY PERSON, FIRM OR CORPORATION WITH RESPECT TO THIS PRODUCT SHALL BE BINDING ON H&O EQUIPMENTS.

4. Limitation of Remedies

In consideration of the sale of the CryoProbe to Customer, Customer agrees that:

To the maximum extent permitted by law, H&O Equipments shall not be liable for the loss of revenue or profits, failure to realize savings or other benefits, or any other special, punitive, incidental or consequential damages caused by the use, misuse or inability to use this product, regardless of the legal theory on which the claim is based, and even if H&O Equipments has been advised of the possibility of such damages. Recovery of any kind against H&O Equipments, if any, shall not be greater in amount than the purchase price of the product sold by H&O Equipments which causes the alleged damage.

Without limiting the foregoing, Customer assumes all risk and liability for loss, damage or injury to Customer and Customer's property and to others and their property arising out of the use, misuse or inability to use this product sold by H&O Equipments not caused directly by the negligence of H&O Equipments.

The terms and conditions hereof shall be governed by and construed in accordance with the laws of the State of South Carolina, without giving effect to its conflicts of law rules. Section headings hereof are for reference and convenience only.