

BEACONMEDAESTERMSAND CONDITIONS OF SERVICE

- 1. GENERAL:** As used herein, "BeaconMedaes" means BeaconMedaes LLC. "Purchaser" means the entity purchasing the Products or Services from BeaconMedaes. "Products" as used herein includes any equipment, machine, part, accessory, system, item and/or service sold by BeaconMedaes to Purchaser. "Services" as used herein includes any and all repairs, installations, start up, preventive maintenance, performance verification, calibration, training and/or other service performed offered or performed by BeaconMedaes for Purchaser. All bids, quotations, acknowledgements, offers, and sales by Seller are subject to and expressly conditioned upon these Terms and Conditions of Sale. BeaconMedaes' sale of any Products or Services is expressly conditioned on Purchaser's assent to these Terms and Conditions of Sale. Any acceptance of BeaconMedaes' offer is expressly limited to acceptance of these Terms and Conditions of Sale. Any terms or conditions (previously, contemporaneously, or hereafter) provided by Purchaser which add to, vary from, or conflict with these Terms and Conditions of Sale are hereby expressly objected to and rejected. Where terms and conditions of sale between Purchaser and BeaconMedaes are conflicting or inconsistent, BeaconMedaes Terms and Conditions shall prevail.
- 2. HOURS OF OPERATION/RESPONSE TIME AND COVERAGE:** BeaconMedaes are generally available Monday through Friday from 8:00 a.m. to 5:00 p.m. The Purchaser will be provided with the telephone number of BeaconMedaes' assigned field engineer. Upon receiving a telephone request for service from the Purchaser, the field engineer will make reasonable efforts to respond to the Purchaser by telephone within 4 hours from the time the message was received. Requests for service will be assessed and ranked according to severity with the most severe problems receiving attention before less severe problems. BeaconMedaes will make reasonable efforts to have BeaconMedaes personnel arrive at the Purchaser's site within 12 hours from the time the determination is made by BeaconMedaes that an on-site visit is warranted. In the event of an emergency situation, BeaconMedaes' technical services are available outside of the normal business hours stated herein for an additional charge.
- 3. PURCHASER'S DUTY OF ROUTINE MAINTENANCE:** Scheduled maintenance services provided by BeaconMedaes are ancillary to, and not a substitute for, the Purchaser's full compliance with the routine maintenance instructions, equipment, and operations manuals, accompanying labels, inserts, and other documentation provided for each item of equipment by equipment manufacturers, including BeaconMedaes. The Purchaser's personnel should be completely familiar with the instructions and contents of routine maintenance instructions, equipment and operations manuals, accompanying labels, inserts, and other documentation and implement them accordingly.
- 4. EXCLUSION:** BeaconMedaes will not be obligated to provide the following services or products:
A) Services or repairs required as a result of modification or repair by anyone other than authorized BeaconMedaes' personnel
B) Repair of damages caused by external factors, including, but not limited to: loss or damage resulting from the element, misuse, abuse, or the operation of the Equipment in improper environments, including, but not limited to, locations having defective or inadequate power sources, static electricity, or excessive interference caused by external sources
C) Service necessitated to comply with changes in the regulations of any governmental body or agency
D) Consumable items such as medical gases, batteries, lubricants and oils (unless listed within BeaconMedaes' quotation).
- 5. PRICES AND TAXES:** All prices shown are F.O.B. BeaconMedaes' plant. Unless Purchaser instructs BeaconMedaes otherwise, BeaconMedaes will select a carrier and arrange shipment, and appropriate freight, packing and related charges will be added to the invoice. Except as expressly set forth on the face hereof, prices do not include customs duties or sales, use, excise or other taxes. All such taxes and all personal property taxes assessable on the Products after delivery to carrier shall be paid by the Purchaser.
- 6. TERMS AND METHOD OF PAYMENT:** Payment is due by one of the following methods: (a) prepayment in advance of shipment (by wire transfer or means that will provide available funds prior to shipment); or (b) C.O.D. with payment in certified funds (C.O.D. terms are only available for shipments to points within the U. S.); or (c) by irrevocable letter of credit payable thirty (30) days after invoice date by a bank acceptable to BeaconMedaes (with all fees and charges to be paid by applicant). However, if open account credit is granted (which is subject to BeaconMedaes' continuing approval), then payment shall be due and payable in full forty-five (45) days after invoice date. Service charges of 1-1/2% per month or, if less, the maximum permitted by applicable law may be charged on past due amounts. BeaconMedaes hereby reserves a security interest in the Products sold hereunder and proceeds thereof to secure the purchase price of such Products.
- 7. DELIVERY, RISK OF LOSS, RETURNS:** Times between order and delivery of Products may vary. BeaconMedaes shall not be responsible for any loss or liability suffered by Purchaser as a result of failure or delay in the delivery of Products. If BeaconMedaes obtains insurance, BeaconMedaes shall in its sole discretion determine the insurance carrier and the packaging for the Products. Risk of loss of or damage to the Products shall pass to Purchaser on delivery by BeaconMedaes to a common carrier for shipment. Purchaser shall reimburse BeaconMedaes for any insurance obtained covering risks involved in transporting Products to Purchaser, but BeaconMedaes is not required to obtain such insurance. All parts are subject to restock fees, if applicable.
- 8. WARRANTY:** Subject to the terms below, services provided by BeaconMedaes are warranted to be free from material defects in workmanship for ninety (90) days from the date services are provided. In the event of a valid warranty claim, BeaconMedaes will attempt to restore the equipment previously serviced by BeaconMedaes to good working order during normal business hours. All replacement parts, components, modules, or units (collectively, "Parts") supplied under any Agreement are warranted against defects in workmanship and material for six (6) months from the date provided. BeaconMedaes' sole responsibility under this warranty will be to repair or replace any defective parts. Analytical testing does not include any warranty except as to the material accuracy of the results of the testing at the times and locations recorded. Analytical testing should not be confused with, or considered a replacement for, equipment maintenance recommended by the equipment manufacturer. This warranty does not cover repairs or other service made necessary by abuse, misuse, negligence, accident, catastrophe, act of God or any malfunction resulting from maintenance, improper repair, damage and/or alteration by anyone other than BeaconMedaes.
- THE REMEDY SET FORTH ABOVE SHALL BE THE PURCHASER'S EXCLUSIVE REMEDY. IN NO EVENT SHALL BEACONMEDAES' LIABILITY ON ANY CLAIM FOR ANY SERVICE OR PRODUCT FURNISHED, EXCEED THE DOLLAR AMOUNT WHICH BEACONMEDAES WAS PAID FOR THE SPECIFIC SERVICE OR PRODUCT WHICH ALLEGEDLY GAVE RISE TO THE CLAIM. NO OTHER WARRANTY IS EXPRESSED OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR APARTICULAR PURPOSE OR ANY WARRANTY BASED ON COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE). THERE IS NO EXPRESS OR IMPLIED WARRANTY BY BEACONMEDAES OTHER THAN THAT DESCRIBED HEREIN. IN NO EVENT SHALL BEACONMEDAES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.
- 9. LIMITATION OF LIABILITY:** IN NO EVENT SHALL BEACONMEDAES BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR REPROCUREMENT COSTS, LOST PROFITS, LOSS OF USE, OR INCIDENTAL SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF BEACONMEDAES HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, INSTALLATION, USE LOSS OF USE, REPAIR OR PERFORMANCE OF THE PRODUCTS, INCLUDING ALL ADDITIONS TO AND REPLACEMENTS OF THE PRODUCTS, OR ANY FAILURE OR DELAY IN CONNECTION WITH ANY OF THE FOREGOING. IN NO EVENT SHALL BEACONMEDAES' LIABILITY ARISING IN CONNECTION WITH ANY PRODUCT(S) OR SERVICE(S) SOLD OR TO BE SOLD HEREUNDER (WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON CONTRACT, WARRANTY, TORT, OTHERWISE) EXCEED THE ACTUAL AMOUNT PAID BY PURCHASER TO BEACONMEDAES FOR THE PRODUCTS OR SERVICES INVOLVED IN SUCH CLAIM. THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT LEGALLY BE PRECLUDED BY CONTRACT.
- 10. PATENT INDEMNITY:** BeaconMedaes shall defend or settle, at its own expense, any suit or proceeding against Purchaser in a United States court for direct infringement by the Products of any duly issued U.S. patent. BeaconMedaes shall pay all damages and costs, not exceeding the total purchase price of such Products, finally awarded against Purchaser in any such suit or proceeding because of direct infringement. BeaconMedaes' obligations under this section are conditioned on BeaconMedaes receiving (a) prompt notice from Purchaser of commencement of any suit or proceeding or any claim of infringement, (b) copies of all written communications relating to such suit or proceeding or claim of infringement and (c) full assistance, information, cooperation and authority from Purchaser with respect to the defense or settlement of same. BeaconMedaes shall not be bound by any settlement made without BeaconMedaes' prior written consent.
- BeaconMedaes shall have no obligations or liability pursuant to this section or otherwise in connection with any actual or alleged patent infringement based on (i) use of any Products in combination with any product, part or accessory not manufactured by BeaconMedaes, (ii) use of any Product in a manner not recommended by BeaconMedaes or for which it was not designed, (iii) any Product that has been altered or modified in any way by anyone other than an employee or agent of BeaconMedaes, or (iv) any Product manufactured in accordance with specifications supplied by Purchaser or any party other than BeaconMedaes. This section states BeaconMedaes' sole and exclusive liability for any claim of any third party by way of infringement or the like.
- 11. PRODUCT MARKINGS:** Purchaser shall not remove or alter any tags, labels or identifying markings placed by BeaconMedaes on any Products or their packaging.
- 12. EXCUSABLE DELAYS:** If the performance of any obligation, except for payment of monies due, is prevented, restricted or interfered with by reason of any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the party to whom performance is due, shall be excused from such performance to the extent of such prevention, restriction, or interference.
- 13. CANCELLATION/CHANGES:** Any changes, deviations or request for cancellation required by the Purchaser as to any Products after BeaconMedaes' acceptance Purchaser's order must be approved in writing by BeaconMedaes. If BeaconMedaes approves such changes, deviations or cancellation, all expenses incurred up to the time of the approved change, deviation or cancellation will be paid by Purchaser.
- 14. MISCELLANEOUS:** Purchaser's purchase orders and these Terms and Conditions of Sale shall be governed by the laws of the State of South Carolina (excluding laws governing choice of law). With respect to these Terms and Conditions of Sale, no representation, promise, waiver, amendment or modification shall be binding on either Purchaser or BeaconMedaes, a warranty or otherwise, unless it is in writing and signed on behalf of such party by a duly authorized representative.