

Standard Terms and Conditions of Sale

These terms and conditions represent the "Agreement" under which Kuraray America, Inc., or its affiliate ("Seller") agrees to provide to the entity to which this Agreement is made available ("Buyer") the products or services ("Products") identified in the Buyer's Purchase Order or as otherwise requested by Buyer. This Agreement becomes binding upon the parties upon the earlier of (i) Buyer's acknowledgement of this Agreement, whether through action or in writing, or (ii) Seller's shipment of the Products. Seller's provision of the Products is conditioned on the Buyer's agreement that any terms different from or in addition to this Agreement, whether communicated orally or contained in any purchase order, request, confirmation, payment, or other written correspondence, irrespective of timing, shall not form a part of the Agreement, even if Buyer purports to condition its acceptance of any purchase order on Seller's agreement to such different or additional terms. Notwithstanding the foregoing, if the terms and conditions contained in this Agreement conflicts or is inconsistent with the terms and conditions contained in an authorized, signed Material Supply Agreement or other definitive sales agreement which is in place at the time of shipment of the Products the terms and conditions contained in the Material Supply Agreement or other definitive sales agreement shall prevail over any conflicting or inconsistent terms herein.

1. Seller warrants to Buyer only that any Products provided hereunder meet Seller's standard specifications for the same or such other specifications as may have been expressly agreed to herein. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY PRODUCTS OR INFORMATION PROVIDED TO BUYER INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY. Buyer assumes all risk and liability resulting from use of the Products or information delivered hereunder, whether used singly or in combination with other Products or information. In the event that any Products provided hereunder are claimed by Buyer to not conform to the above limited and exclusive warranty and Seller determines the Products do not conform to said warranty, Seller shall have the following options, at its sole discretion: (i) provide replacement Products to Buyer; (ii) make whatever repairs or modifications that Seller deems necessary or desirable to enable the Products to meet the description and specifications set forth on the order acknowledgement or quotation accompanying these terms and conditions; or (iii) credit Buyer's account for the price paid by Buyer regarding the non-conforming Products.

2. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER FOR ALL DAMAGES ARISING FROM ANY AND ALL CLAIMS RELATED TO THE BREACH OF THIS AGREEMENT, NONDELIVERY, OR THE PROVISION OF ANY PRODUCTS, SERVICE, OR INFORMATION COVERED BY THIS AGREEMENT, REGARDLESS OF WHETHER THE FORM OF ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. NO CLAIM SHALL BE ALLOWED FOR PRODUCTS THAT HAVE BEEN PROCESSED IN ANY MANNER. FAILURE TO GIVE NOTICE OF A CLAIM WITHIN NINETY (90) DAYS FROM DATE OF DELIVERY, OR THE DATE FIXED FOR DELIVERY (IN CASE OF NONDELIVERY) SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS IN RESPECT OF SUCH PRODUCTS. PRODUCTS SHALL NOT BE RETURNED TO SELLER WITHOUT SELLER'S PRIOR WRITTEN PERMISSION. NO CHARGE OR EXPENSE INCIDENT TO ANY CLAIMS WILL BE ALLOWED UNLESS APPROVED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. IN ADDITION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES WAIVE AND AGREE NOT TO ASSERT NON-CONTRACTUAL CLAIMS ARISING UNDER STATE LAW RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCTS COVERED BY THIS AGREEMENT, AND THIS AGREEMENT SHALL BE DEEMED TO INCLUDE SUCH LANGUAGE AS MAY BE REQUIRED TO EFFECT SUCH WAIVER. WAIVER BY EITHER PARTY OF ANY DEFAULT BY THE OTHER HEREUNDER SHALL NOT BE DEEMED A WAIVER BY SUCH PARTY OF ANY DEFAULT BY THE OTHER WHICH MAY THEREAFTER OCCUR.

3. No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, act of God, fire, explosion, flood, war, act of or authorized by any Government, labor trouble or shortage, pandemic, inability to obtain material, equipment or transportation, failure to obtain or hardship in obtaining reasonably priced supplies of materials, or failure of usual transportation mode. Quantities so affected may be eliminated from this Agreement without liability, but this Agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the Products specified herein to enable it to perform this Agreement.

4. If for any reason including but not limited to force majeure Seller is unable to supply the total demand for Products specified herein, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

5. Seller may furnish such technical assistance and information as it has available with respect to the use of the Products covered by this Agreement. Unless otherwise agreed in writing, all such information will be provided gratis. Buyer agrees to evaluate such information, to make an independent decision regarding the suitability of such information and Products for Buyer's application, and only use such Products and information pursuant to the then current good product stewardship principles and all regulatory requirements applicable to Buyer's business.

6. Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning the Products and its properties. Buyer will forward such information to its employees, contractors and customers who may distribute, handle, process, sell or use such Products, and advise such parties to familiarize themselves with such information. Buyer agrees that Products sold hereunder will not knowingly be resold or given in sample form to persons using or proposing to use the Products for purposes contrary to recommendations given by Seller or prohibited by law, but will be sold or given as samples only to persons who can handle, use and dispose of the Products safely. Unless agreed to by Seller in a written agreement covering such use, in no event shall Buyer use Products or resell Products for use in the manufacture of any implanted medical device. Buyer agrees to comply with all applicable laws, regulations and ordinances including all applicable export and import laws. To the extent Seller exports the Products the following Destination Control Statement applies: *"These items are controlled by the U.S.*

Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations."

7. a. Seller and Buyer hereby acknowledge that this Agreement and all information disclosed to the other pursuant to this Agreement, either orally, in writing, or by observation, including without limitation information relating to the specifications and performance of the Products, secret processes, Products compositions, machinery, apparatus, or trade secrets of Seller or Buyer ("Confidential Information") shall at all times, both during and after the term of this Agreement, remain the exclusive property of the party making the disclosure and that, the party receiving the Confidential Information may disclose such Confidential Information to its respective officers, directors, employees, and agents who need to know such Confidential Information only in furtherance of the party's obligations under this Agreement, and shall not disclose or use the Confidential Information in any way, commercial or otherwise, other than in furtherance of its obligations under this Agreement. Seller and Buyer shall each take all reasonable precautions to prevent its officers, directors, employees and agents, including subcontractors, from disclosing or using any such Confidential Information, other than in furtherance of its obligations under this Agreement. In order to remedy a breach or anticipated breach of this paragraph 7, any party may pursue any legal, equitable (including without limitation, the right to seek injunctive relief where available under applicable law) or administrative rights and remedies; provided, however, that such rights and remedies shall at all times be subject to the limitations of this Agreement.

b. The recipient understands and agrees that it will not, for itself or in conjunction with others, test, modify, manipulate, research, reverse engineer or replicate the discloser's Confidential Information in an effort to understand the discloser's proprietary technology or learn information not explicitly stated in the discloser's Confidential Information, except as strictly required for performance under any agreement between the parties that incorporates the terms and conditions of this Agreement. Any such understanding of the discloser's proprietary technology not explicitly stated in the discloser's Confidential Information shall be treated as the discloser's Confidential Information under this Agreement.

c. Unless otherwise agreed upon between the parties hereto, the recipient agrees that it will not use the discloser's Confidential Information, or any improvement or other modification of the discloser's Confidential Information, or any data derived from the discloser's Confidential Information, for securing any intellectual property rights. No license or other rights to the discloser's Confidential Information or other intellectual property is granted or implied hereby. Neither party shall have the right to use the other party's name, or any trademarks or trade names of the other party, without express advance written permission.

8. Buyer shall reimburse Seller for all taxes (excluding income taxes), excises or other charges which Seller may be required to pay to any Government (National, State or Local) upon the sale, production or transportation of the Products sold hereunder. For jurisdictions where taxes are imposed by statute upon Buyer and for which Seller has a responsibility to collect and remit, Seller shall separately itemize the taxes on each invoice for which the taxes are applicable. In the alternative, Buyer may timely provide Seller with the required documentation to exempt the Products from the taxes or to evidence Buyer's authority to remit the taxes directly. Seller will rely on such documentation as provided to Seller in good faith and therefore will not be responsible for such taxes. Buyer will indemnify and hold harmless Seller for any taxes assessed upon and paid by Seller following reliance upon Buyer's documentation.

9. In the event Buyer fails to fulfill Seller's terms of payment, or in case Seller shall have any doubt any time as to Buyer's financial ability to fulfill its payment responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security.

10. This Agreement is not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller. Seller reserves the right to sell, assign, or otherwise transfer its right to receive payment under this Agreement.

11. Except for unpaid invoices owed by Buyer, Buyer and Seller agree to arbitrate all disputes, claims or controversies whether based on contract, tort, statute, or any other legal or equitable theory, arising out of or relating to this Agreement, including the scope and validity of this paragraph. Any such claim or controversy which cannot be resolved amicably by the parties shall be finally resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then currently in effect. Such arbitration shall be conducted in Harris County, Texas. Any judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

12. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with Texas law, without regard to any applicable conflicts of law provisions, and the terms of the United Nations Convention on Contracts for the International Sale of Goods, shall not apply.

13. Except as otherwise expressly provided in any other term or condition of this Agreement, title, liability for and risk of loss to Products sold hereunder passes to Buyer upon loading for shipment at Seller's producing location.

14. Except as expressly provided in any other term or condition of this Agreement, any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

15. Subject to the first paragraph, this Agreement supersedes all prior agreements, representations and understandings between the parties (whether written or oral) with respect to its subject matter and constitutes (along with the exhibits and schedules attached hereto) a complete and exclusive statement of the terms of the agreement between the parties with respect to the provision of Products hereunder. Not by way of limitation of the unqualified nature of the foregoing, Buyer acknowledges, agrees and represents that it is not relying upon, and it has not been induced by, any representation, warranty, statement made by, or other information provided by Seller in connection with its decision to purchase or use any Products, other than the representations and warranties made by Seller as and only to the extent expressly provided in this Agreement. No modification of this Agreement shall be binding upon Seller unless separately contracted in writing and executed by a duly authorized representative of Seller. No modification shall be effected by the acknowledgment or acceptance of purchase order forms stipulating different conditions.