

NEOCUTIS® TERMS AND CONDITIONS OF SALE

Agreement: These NEOCUTIS® Terms and Conditions of Sale (the “Agreement”) constitutes the entire binding agreement by and between the customer signing below (“Customer”) and Merz North America, Inc. (“Merz”; Customer and Merz, hereinafter, collectively, the “Parties”) regarding Customer’s purchase and use of NEOCUTIS products (the “Product(s)”). This Agreement supersedes all other agreements and understandings, whether written or oral, between the Parties. Notwithstanding anything to the contrary, whether executing a purchase order, quotation, proposal, standing order, or letter of authorization, or by accepting delivery of the Products, Customer agrees to be bound by and accept the terms and conditions contained in this Agreement. No additions, conditions, amendments, alterations, or modifications by Customer or any other person, whether oral or contained in any other documents submitted from Customer to Merz will be binding on Merz, regardless of Merz’s failure to object or Merz’s shipment of Products, unless otherwise agreed to in writing and signed by Merz. These terms and conditions may be updated or amended from time to time by Merz without notice to Customer; a copy of such updated terms will be available for Customer’s review at <http://www.merzusa.com/about-merz/terms-and-conditions-products/>. Customer agrees to be bound by the most recent terms. THIS AGREEMENT WILL APPLY UNLESS CUSTOMER HAS A SEPARATE WRITTEN AGREEMENT WITH MERZ THAT EXPRESSLY REPLACES THIS AGREEMENT.

Prices and Payment Terms: All orders are subject to current credit approval. Applicable shipping, handling, and other taxes will be added to the final invoice price for each Product order. Applicable sales tax will be invoiced unless Customer supplies a valid tax-exempt certificate prior to delivery. Full Product order payment is due upon receipt of the order unless Merz has extended other terms to Customer in writing. If Customer’s account is delinquent by more than thirty (30) days, it shall accrue interest at the rate of 1.5% per month on the balance due or, if less, the maximum rate permitted by law. Additionally, if Customer fails to fulfill the terms of payment, Merz will have the option to do one or more of the following: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any shipment until payment is received by Merz or further assurances asked for by Merz are received; (iv) declare all outstanding sums immediately due and payable; or (v) require payment for all Products delivered hereunder to be made by irrevocable letter of credit in a form approved by Merz. Nothing contained herein will release Customer from any previous obligations. Customer will be liable to Merz for all costs incurred by Merz in its collection of any amounts owing by Customer which are not paid when due, including collection agencies’ and attorneys’ fees and expenses, regardless of whether a lawsuit is commenced. From time to time, Merz may review Customer’s creditworthiness. Customer agrees to provide Merz with all credit information reasonably requested, and Customer represents and warrants to Merz now, and each time Customer places an order, that all information Customer has provided is true and correct. Merz reserves the right to change Product prices and discontinue Products without prior notice.

Delivery and Risk of Loss; Lead Times: Unless otherwise agreed in writing between the Parties, all orders within the United States will be delivered FOB Merz’s facilities. Upon Merz’s tender of the Products to a common carrier, title and risk of loss shall pass to Customer, and delivery shall be deemed completed. Quoted delivery dates are estimates only; however, Merz will make commercially reasonable efforts to fulfill each order by the quoted delivery date. At times, Merz may ship partial orders as needed.

Inspection and Acceptance: Customer must inspect delivered Products and report claims for defects, shortages, or receipt of wrong Products within ten (10) business days of delivery, or the Products will be deemed irrevocably accepted and such claims will be deemed waived. Customer shall communicate any such claims to Merz via telephone at 1.866.636.2884 or via e-mail to orders@merz.com. Shipping damage claims must be made by Customer directly with the shipping company in accordance with such company’s policies, which generally require such claims to be made prior to the time the carrier of the Products leaves the delivery destination. In the event of loss or damage in transit, Customer’s payment obligations will not be affected. If Merz approves the return of any Product, then, upon Customer’s return of the Product, Customer’s sole remedy and Merz’s sole liability shall be replacement of the Product or credit at the original Product invoice price. No acts on the part of Merz, including, but not limited to, Merz’s receipt of returned Products from Customer, shall constitute Merz’s approval and acceptance of the returned Products or cancelled order, unless Merz has provided its prior written consent to Customer. In no event will promotional Product or expired Product be returnable or replaced by Merz.

Returns: In accordance with Merz’s Return Materials Policy (available at www.merzusa.com/about-merz/terms-and-conditions-products/), all Product sales are final.

Unauthorized Resale/Use: The Products, and any samples thereof which Merz may provide to Customer, are exclusively for Customer’s professional transfer or resale to Customer’s own patients. In particular, Customer agrees that it shall not, directly or through any other parties, offer for sale or sell MPC Products online. Merz tracks Customer’s Product purchases and reserves the right, with or without notice, to cancel or reduce the quantity of any order to be filled if Merz believes, in its sole discretion, that fulfillment of such order may result in the violation of this Agreement.

Merz’s name and logo; the Product images and descriptions; Merz’s website designs; the look and feel of its websites; the text, graphics, button icons, images, audio clips, page headers, trademarks, and content; the selection and arrangement of any of the foregoing; and all related software belongs to or is licensed to Merz, and is protected by U.S. and international laws, including laws governing copyrights and trademarks. Permission is granted to electronically copy and to print in hardcopy certain Product promotional materials made expressly available to Customer by Merz for Customer’s use in marketing and selling Product to Customer’s patients. Any other use of the materials without the prior written permission of Merz is strictly prohibited. Use of any such materials in any manner that is likely to cause confusion among end customers, or in any manner that disparages or discredits Merz, is also prohibited.

Complaints. If Customer has, or becomes aware of, a Product quality complaint, Customer shall promptly report such complaint to Merz via telephone at 1.866.862.1211 or via e-mail to complaints2@merz.com, and shall cooperate fully with Merz in investigating such complaint.

Compliance. It is the intent of Customer and Merz to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Customer’s price may constitute a ‘discount or other reduction in price’ under the Anti-Kickback Statute. Merz will provide Customer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Customer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of Products. Customer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third-party reimbursement programs. Customer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

Additionally, Customer will comply with all applicable anti-corruption, anti-bribery, and anti-kickback laws, rules, and regulations, including, without limitation, the United States Foreign Corrupt Practices Act (15 U.S.C. §78dd-1, et seq.) and other laws, rules, and regulations applicable to where Customer conducts business.

Limitation of Liabilities and Remedies. UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND EACH PARTY HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. CUSTOMER AGREES THAT UNDER NO CIRCUMSTANCES WILL MERZ'S LIABILITY RELATING TO ITS SALE OF PRODUCTS TO BUYER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE PARTICULAR PRODUCTS INVOLVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

Indemnity. To the fullest extent permitted by law, Customer will indemnify, defend, and hold harmless Merz, including Merz's affiliates and their officers, directors, agents, employees, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relate to: (i) Customer's modification of or addition to any Product(s); (ii) Customer's breach of this Agreement; (iii) Customer's gross negligence or willful misconduct; or (iv) Customer's failure to abide by all applicable laws, rules, regulations, and orders that affect the Products. To the fullest extent permitted by law, Merz will indemnify, defend, and hold harmless Customer, including Customer's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and permitted assigns, from and against any Liabilities arising out of a third party claim (i) for bodily injury to or property damage to the extent caused by a defect in a Product manufactured by Merz; (ii) to the extent caused by Merz's breach of this Agreement; or (iii) to the extent caused by Merz's gross negligence or willful misconduct. Merz is not required to indemnify Customer to the extent that any claim arises out of Customer's gross negligence or willful misconduct or use of a Product by any person or entity other than in accordance with this Agreement, Product labeling, and license restrictions.

Essential Basis of the Bargain. Customer acknowledges that Merz has set its Product prices and entered into the Agreement in reliance upon the limitations and exclusions of liability, the disclaimers of warranties, and Customer's indemnity obligations set forth herein, that the same form an essential basis of the bargain between the Parties, and THAT THE CONSIDERATION WOULD BE HIGHER IF MERZ WERE REQUIRED TO BEAR LIABILITY IN EXCESS OF THAT STATED HEREIN.

Assignment: This Agreement binds Customer, regardless of any financing arrangements, subrogations or assumptions. Customer may not assign its rights or delegate its obligations hereunder except with the prior written consent of Merz (which consent may be withheld in its sole discretion). Merz may subcontract the performance of any obligation of Merz under the Agreement, and Merz may assign any right or obligation under the Agreement, to an affiliated party of Merz.

Independent Contractors. No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between Merz and Customer. Customer and Merz are independent contractors. Neither Party will make any warranties or representations or assume any obligations on the other Party's behalf. Neither Party is or will claim to be a legal representative, partner, agent, or employee of the other Party. Each Party is responsible for the direction and compensation, and is liable for the actions of, its employees and subcontractors.

Amendments: The Agreement may not be amended, altered or modified except in writing by an authorized signatory of Merz. No other purported additions, amendments, alterations or modifications by Customer or any other person, whether oral or written, shall be binding on Merz, regardless of Merz's failure to object or Merz's shipment of products. In the event of a conflict between these terms and conditions and any other part of this Agreement, these terms and conditions shall govern.

Governing Law: This Agreement shall be construed in accordance with the laws of the State of North Carolina, USA without giving effect to its conflicts of laws rules. Customer hereby consents to the jurisdiction and venue of any North Carolina state or federal courts, and hereby waives any objections based on inconvenient forum or conflicts of laws principles. The provisions of this Agreement are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of this Agreement without the invalid or unenforceable provision or provision.

Entire Agreement: Customer and Merz acknowledge that there have been no warranties, representations, covenants or understandings made by either Party to the other, except such as are expressly set forth in the Agreement. **Without limiting the foregoing, Customer acknowledges and agrees, on behalf of Customer's practice and on his/her individual behalf, that in entering into this Agreement and this transaction: (1) it has relied solely on the terms and conditions of this Agreement; and (2) it has not relied on any oral or written statements by Merz sales representatives, other Merz personnel, or third parties (including, but not limited to, third-party financing companies), or on any statements included in any of Merz's written or electronic promotional materials (including its web sites).** This Agreement constitutes the entire understanding and obligation of Customer and Merz with respect to the subject matter of this Agreement and supersedes any prior agreements, writings, or understandings, whether oral or written.