

**SEASTAR MEDICAL**  
**TERMS AND CONDITIONS OF SALE**

**1. DEFINITIONS**

a. “**Buyer**” means the other contracting party to a Sales Confirmation that is purchasing the Product.

b. “**Product**” means each product to be supplied by SeaStar pursuant to a Sales Confirmation.

c. “**Sales Confirmation**” means the quotation, confirmation of sale, acknowledgment, invoice, or other document to which these Terms are attached or incorporated by reference, including by reference to a URL where these Terms are made available.

d. “**SeaStar**” means SeaStar Medical Inc. or its affiliate that provides and is identified on the applicable Sales Confirmation.

**2. APPLICABILITY**

a. These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the Products by SeaStar to Buyer.

b. The Sales Confirmation and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Buyer’s payment for any Product, receipt of any Product, failure to reject these Terms within five days after they are provided by SeaStar, or any other means of acknowledgment or acceptance, whichever comes first, shall constitute Buyer’s acceptance of these Terms. These Terms prevail over any of Buyer’s general terms and conditions of purchase, including any that are inconsistent with or in addition to the terms and conditions herein, regardless of whether or when Buyer has submitted its purchase order or such terms, and SeaStar expressly rejects all such terms and conditions offered by Buyer. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

c. The Products are sold to Buyer solely for use for their intended purposes, and not for resale or further distribution.

**3. DELIVERY AND SHIPMENT**

Unless otherwise set forth in the Sales Confirmation, SeaStar will ship the Products F.O.B. Origin, SeaStar’s facility, and title and risk of loss will pass upon the carrier's collection therefrom. SeaStar identified delivery dates are nonbinding commercially reasonable estimates of actual delivery to the carrier

and not to the actual delivery to Buyer’s identified facility. Unless otherwise set forth in the Sales Confirmation, Buyer will pay freight based on normal course of business freight shipments. SeaStar shall not be liable for any delays, loss or damage in transit.

Delivery of Products, as well as the return of any Products to SeaStar, may be undertaken by one or more contractors or vendors of SeaStar.

**4. PRODUCT RETURNS**

Product returns are accepted under the following conditions only: (a) conforming, undamaged Product may be returned to SeaStar within 30 days of shipment by SeaStar Medical Inc. upon payment of a 30% restocking fee; and (b) non-conforming Product may be returned to SeaStar Medical, Inc. if approved by SeaStar Medical Inc. in advance and accompanied by a completed product return material authorization (RMA). Product RMA forms will be provided upon request. No other returns will be accepted. In no event will SeaStar Medical, Inc. accept any returned Product with less than 90 days shelf life remaining. Contact [feedback@seastarmed.com](mailto:feedback@seastarmed.com) for product return requests.

**5. PRICING**

a. Buyer shall purchase the Products from SeaStar at the prices set forth in the Sales Confirmation or, if no such price is listed in the Sales Confirmation, SeaStar’s published price list in force as of the date that SeaStar accepts Buyer’s purchase order.

b. All prices listed and payments required to be made by Buyer to SeaStar under this Agreement are exclusive of any applicable federal, state and local taxes, fees, duties and charges. Any present or future sales, revenue, excise, withholding or other tax, fees, duties or charge of any nature, imposed by any public authority, applicable to the purchase of Products hereunder (other than value added taxes or taxes based on SeaStar’s net income), shall be paid by Buyer unless an exemption therefrom is obtained and will hold harmless SeaStar from the payment of the same.

**6. PAYMENT TERMS**

a. Unless otherwise set forth in the Sales Confirmation, payment terms are net 30 days after the date of the invoice. All payments shall be made in U.S. dollars to such account(s) as designated by SeaStar from time to time. If Buyer has not paid any invoice when due, SeaStar may withhold shipment of any other Products until such past-due invoice is paid in full.

b. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse SeaStar for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

## **7. LIMITED WARRANTY**

SeaStar warrants that all Products will, at the time title passes to Buyer, be delivered free from any security interest, lien, or encumbrances, or claim of title hostile to the rights of Buyer. Any additional warranty, including the applicable warranty period, limits, and exclusive remedies, provided by SeaStar for a Product, if any, is solely as set forth on the packaging or packaging inserts for such Product. With respect to any Product that does not comply with its warranty during the applicable warranty period, SeaStar shall, in its sole discretion, either: (i) repair or replace such Product (or the defective part) or (ii) refund the price of such Product provided that, if SeaStar so requests, Buyer shall, at SeaStar's expense, return such Products to SeaStar. Any warranty or liability is excluded where the warranty claim, in SeaStar's reasonable opinion, arises out of accident, theft, misuse, or neglect or other matters outside of SeaStar's control. THESE REMEDIES SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SEASTAR'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY IN REGARD TO THE PRODUCT OR ITS USE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SEASTAR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO BUYER, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT. No other returns of Products are permitted unless approved in advance by SeaStar in its sole discretion and will be subject to SeaStar's then-current return policy, if any, a copy of which can be provided by SeaStar upon request.

## **8. LIMITATION OF LIABILITY**

**EXCEPT WITH RESPECT TO LIABILITY ARISING FROM BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, RELIANCE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, PROSPECTIVE BUSINESS, DATA, OR USE, INCURRED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR**

**TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SEASTAR'S MAXIMUM LIABILITY HEREUNDER, WHETHER IN ANY ACTION IN CONTRACT, TORT, BREACH OF WARRANTY, OR OTHERWISE (WHETHER DAMAGES ARE AWARDED ON SINGLE OR MULTIPLE OCCASIONS), SHALL BE LIMITED TO THE TOTAL PRICE OF THE PRODUCTS GIVING RISE TO RESPECTIVE CLAIMS FOR SUCH LIABILITY.**

## **9. COMPLIANCE WITH LAW; DISCOUNTS; COMPLAINTS AND RECALLS**

a. Buyer agrees that it shall only use the Products in accordance with applicable FDA regulations and applicable IRB requirements.

b. Buyer shall comply with all federal, state, and local laws, rules, and regulations applicable to the purchase, reimbursement, and use of the Products. Pricing for Products (to the extent below the list price) must be treated as discounts on the Products on which the discounts are earned and must be fully and accurately reported on all claims for payment filed with third-party payers, including applicable Medicare, Medicaid, and state agency cost reports, in accordance with all applicable federal and state laws and applicable agreements. If Buyer is a cost reporting entity, Buyer shall report the actual prices paid net of the discounts received pursuant to this Agreement on Medicare, Medicaid, and all other federal health care program cost reports in the fiscal year in which the discount is earned or the following year. Buyer shall retain a copy of this Agreement, and communications regarding this Agreement, together with the invoices for purchase, and, upon request, permit agents of the U.S. Department of Health and Human Services or any state agency access to such records.

c. If Product is provided to Buyer by SeaStar at no charge for evaluation or demonstration purposes, Buyer agrees to not bill any third party for the no-charge Product, and if covered under a government reimbursement program, Buyer will not seek reimbursement under the billing procedures applicable to the payment system or the no-charge Product must be treated appropriately under the billing procedures applicable to the payment system. Unless purchased, any unused Product at the end of an evaluation period must be destroyed or returned per SeaStar's instructions. If the Product was provided to Buyer in replacement of previously purchased product, and if Buyer has previously billed for or sought reimbursement for the previously furnished Product, Buyer may not bill third parties for the replacement

Product and the replacement Product must be treated appropriately under the billing procedures applicable to the payment system.

d. If SeaStar is required by a regulatory agency to recall products, or SeaStar voluntarily initiates a recall of products, Buyer agrees to cooperate with and assist SeaStar in locating and retrieving the recalled products. Buyer shall promptly report to SeaStar at [feedback@seastarmed.com](mailto:feedback@seastarmed.com) any complaints or other information regarding the Products of which it becomes aware that could reasonably be expected to lead to recall or other regulatory action.

## 10. MISCELLANEOUS

This Agreement shall be governed by the laws of State of Colorado (excluding its rules of conflict of laws). All actions arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court located in Denver, CA (or in any appellate courts thereof). The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed by SeaStar and Buyer with respect to this Agreement and the transactions contemplated hereby. SeaStar shall not be liable for any delay (whether material or not) in or failure of shipment or delivery or other duties hereunder due to any event of force majeure, including acts of God, any governmental body (de jure or de facto) or public enemy, riots, embargoes, strikes or other concerted acts of workmen (whether of SeaStar or others), pandemics, casualties or accidents, deliveries or transportation and shortages of cars, fuel, power, labor or materials, or any other causes beyond SeaStar's control, which prevent or hinder the design, manufacture or delivery of Products (without regard to the availability of the Products in the market) or the performance by SeaStar of any of its obligations hereunder. Neither Party may assign this Agreement, or any of its rights or duties set forth herein, without the prior written consent of the other Party; provided, however, that SeaStar may assign this Agreement without consent to an affiliate or to any entity purchasing all, or substantially all, of the assets of

SeaStar. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. This Agreement and all attachments hereto embodies the entire agreement and understanding between Buyer and SeaStar with respect to the subject matter hereto and there are no agreements, understandings, conditions, warranties, or representations, oral or written, express or implied, with reference to the subject matter hereof, that are not merged herein and superseded hereby. Except as otherwise expressly set forth in this Agreement, this Agreement may not be modified except by an instrument in writing executed by the Party against whom the modification is sought to be enforced. No waiver, express or implied, or any breach of this Agreement shall constitute a waiver of any right under this Agreement or of any subsequent breach, whether of a similar or dissimilar nature. Notwithstanding the foregoing, the Parties recognize that Buyer or one of its affiliates may be party to a clinical trial agreement, clinical study agreement, product registry agreement, or similar agreement with SeaStar or with a contract research organization engaged by SeaStar, and such agreement remains in full force and effect and is not amended or superseded by this Agreement. If an ambiguity or question of intent or interpretation arises with respect to any term of this Agreement, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise, and no rule shall be enforced, favoring or disfavoring either Party by virtue of authorship of any of the terms of the Agreement.

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