



## TERMS AND CONDITIONS

All sales made by THERA-Trainer USA, LLC ("THERA-Trainer") to any third-party ("Buyer") are subject to these terms and conditions ("Terms"). These Terms apply to orders for, and sales of, all products described in THERA-Trainer's then-current comprehensive product listing (each individually referred to a "Product" and collectively, the "Products"). THERA-Trainer's quotation, including any terms included with the quotation (the "Quotation") provided to Buyer and these Terms shall be collectively referred to as this "Agreement" and 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. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted any purchase order or such terms. 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 this Agreement. THERA-Trainer may modify these Terms from time to time. Any modifications of these Terms will not retroactively affect Quotations which have previously been submitted and accepted by THERA-Trainer.

- 1. ORDERING.** THERA-Trainer shall provide Buyer with a Quotation. Buyer shall indicate Buyer's acceptance of the Quotation (and agreement to these Terms) by providing THERA-Trainer with a copy of the Quotation signed by Buyer. THERA-Trainer reserves the right to require information in addition to the information provided in the Quotation. Buyer shall be bound by all Quotations signed by or on behalf of Buyer. THERA-Trainer shall have no obligation to confirm the validity of any signed Quotation or the authority of the person sending the signed Quotation to THERA-Trainer. Buyer shall be solely responsible for, and shall pay THERA-Trainer for, all shipping and other costs related to any Quotation that is cancelled after shipment, including, but not limited to, shipment costs related to transportation both to and from the original departure point of the Products covered by such Quotation; provided that Buyer shall not cancel any Quotation after delivery.
- 2. NO MODIFICATION OF THE AGREEMENT.** All quotations, purchase orders, authorizations, acknowledgments and invoices issued pursuant to this Agreement are issued for convenience of the parties only and shall be subject to the provisions of this Agreement. Nothing contained in any purchase order or other document submitted to THERA-Trainer by Buyer shall in any way modify or add to the terms and conditions contained in this Agreement. THERA-Trainer, by this Agreement, objects to any modification of, or addition to, this Agreement. The parties acknowledge that the preprinted provisions on any quotation, purchase order, release, authorization, acknowledgment or invoice shall be deemed deleted and shall have no legal effect. No modification to this Agreement shall be valid without the prior written consent of a duly authorized representative of THERA-Trainer.
- 3. PRICE.** Pricing for Products shall be quoted by an authorized THERA-Trainer representative in writing on an individual basis and is not subject to further discount. All pricing shall be quoted in U.S. Dollars by a duly authorized representative of THERA-Trainer. All price quotes from THERA-Trainer are only valid for the ninety (90) day period immediately following the date of the quote and shall expire after such ninety (90) day period. THERA-Trainer shall not be required to honor any expired price quote. Unless the Quotation provides otherwise, THERA-Trainer's prices are exclusive of insurance, shipping, handling, duties, customs fees and charges and all sales, use and excise taxes levied upon or measured by the sale, price or use of the Products or otherwise. Buyer shall have the sole responsibility for payment of all such insurance, shipping, handling, duties, customs fees and charges and taxes with respect to the purchase of Products as set forth on the Quotation. Charges for insurance, shipping, handling, duties, customs fees and charges and taxes shall be billed to Buyer with the invoice sent to Buyer. THERA-Trainer shall use commercially reasonable efforts to provide Buyer with prior notice of any price increase. Notwithstanding the foregoing, all prices are subject to change without notice and will be established at the time of THERA-Trainer's issuance of the Quotation. Prices for all backordered Products are not guaranteed by THERA-Trainer.
- 4. SHIPMENT AND DELIVERY.** All Products delivered pursuant to this Agreement shall be packed and shipped by THERA-Trainer or an agent of THERA-Trainer and marked for shipment to Buyer, at the address set forth in the applicable Quotation. All Product shipments will be made FOB Destination. Title of the Products and risk of loss on the Products shall pass from THERA-Trainer when the Products are delivered to the address set forth on the Quotation. Buyer shall be exclusively responsible for the cost of insurance, shipping, handling, duties, custom fees and charges and taxes, which shall be billed to Buyer with the invoice sent to Buyer unless otherwise provided on the Quotation. THERA-Trainer shall make shipments in accordance with the reasonable instructions of Buyer provided such instructions are in compliance with applicable shipping regulations and this Agreement, and THERA-Trainer, in its sole discretion, shall be permitted to select or substitute a shipper, at Buyer's cost. Any times or dates for delivery by THERA-Trainer are estimates and shall not be binding on THERA-Trainer. THERA-Trainer is entitled to deliver the Products in part and to invoice Buyer separately for such partial deliveries. In no event shall THERA-Trainer be liable for any delay in delivery. Delay in delivery of any equipment shall not relieve Buyer of its obligation to accept delivery thereof. Buyer shall be responsible for preparing a site suitable for the installation and operation of the Products.
- 5. PAYMENT TERMS.** Buyer shall make full payment net thirty (30) calendar days from the date of the installation of the Products. Payments shall be in U.S. Dollars. Payments may be made by check or wire in accordance with the wire instructions set forth in the applicable invoice. Any late payment by Buyer shall be subject to and Buyer shall pay THERA-Trainer: (a) an interest rate of one and one-half percent (1.5%) per month (or part thereof) or, if lower, the highest rate



permitted by applicable law until payment is made; and (b) THERA-Trainer's cost of collection, including, but not limited to, reasonable attorneys' fees.

**6. INSPECTION AND REJECTION.**

- a) Buyer shall inspect the Products within one (1) business day of installation ("**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies THERA-Trainer in writing of any Nonconforming Product during the Inspection Period and furnishes such written evidence or other documentation as required by THERA-Trainer. "**Nonconforming Product**" means only the following: (i) product shipped is different than identified in the Quotation; or (ii) product's label or packaging incorrectly identifies its contents; or (iii) product does not perform in accordance with the specifications set forth in THERA-Trainer's published specifications in effect as of the date of manufacture.
- b) If Buyer timely notifies THERA-Trainer of any Nonconforming Product within fifteen (15) days after delivery as set forth in Section 7 below, THERA-Trainer shall, in its sole discretion, (i) replace such Nonconforming Product with conforming Product, or (ii) credit or refund the Price for such Nonconforming Product, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Product to THERA-Trainer's principal place of business. If THERA-Trainer exercises its option to replace Nonconforming Product, THERA-Trainer shall, after receiving Buyer's shipment of Nonconforming Product, ship to Buyer, at Buyer's expense and risk of loss, the replaced Product to the address specified by Buyer in writing.
- c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Product. Except as provided under Section 7(b), Buyer shall have no right to return any Product purchased under this Agreement to THERA-Trainer.

**7. BILLING AND SHIPPING DISCREPANCIES.** Buyer shall have fifteen (15) days after delivery of Products to the address set forth in the applicable Quotation to notify THERA-Trainer in writing of any discrepancies in the billing or shipment, or both, of such Products. Failure to timely notify THERA-Trainer in writing of a discrepancy shall be deemed an acceptance in full of such Products by Buyer.

**8. ACCESS.** If Buyer breaches this Agreement and the Products have not been paid for in full, THERA-Trainer shall have the right to regain possession of the Products by entering Buyer's premises at which the Products are located for the sole purpose of retrieving the Products or disabling the Products. Buyer holds THERA-Trainer harmless in the event that it does so.

**9. LIMITATIONS ON USE; REPORTING REQUIREMENTS.** Buyer shall not use the Products for any purpose other than as intended by THERA-Trainer. Buyer shall immediately provide THERA-Trainer with a copy of any information provided to the Food and Drug Administration (FDA).

**10. CONFIDENTIAL INFORMATION.** Each party shall maintain any and all Confidential Information (defined below) of the other party in the strictest confidence and shall not disclose, use, commercialize or otherwise appropriate, in whole or in part, any Confidential Information of the other party without the prior written consent of such party. Notwithstanding the foregoing, THERA-Trainer may share Confidential Information with financing institutions and its agents. Without limiting the foregoing, each party shall safeguard the Confidential Information of the other party and prevent its unauthorized, negligent or inadvertent use, copying or disclosure in a manner not less than that employed to protect such party's similar confidential information and always with at least a reasonable degree of care. Upon the written request of the disclosing party, the receiving party shall return or, at the disclosing party's option, destroy all Confidential Information of the disclosing party. "**Confidential Information**" means any information (written, oral or stored in any information storage or retrieval medium or device) that the disclosing party treats as confidential or proprietary, including, but not limited to, all information, documents and financial reports relating to the disclosing party or its business, operations, technical or financial information, compositions, strategies, pricing information and any other information and materials that have not been made available to the general public. Confidential Information shall not include any information which: (a) is already known to the receiving party at the time of receipt or access without duty of confidentiality or other restriction; (b) is or becomes publicly known through no wrongful act of the receiving party; (c) is rightfully received from a third party without restriction and without breach of this Agreement; (d) is independently developed by the receiving party without use of or reliance on the disclosing party's Confidential Information; or (e) is approved for release by written authorization of the disclosing party. Should a party be required to disclose Confidential Information of the other party by order of a government agency or bureau or a court of law or equity, such party may make such disclosure, provided that the receiving party will first have provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the Confidential Information required to be disclosed. In the event of a breach or threatened breach of this Section, the non-breaching party shall be entitled to seek from a court of competent jurisdiction preliminary and permanent injunctive relief, which remedies shall be cumulative and in addition to any other rights and remedies to which the non-breaching party may be entitled at law or in equity, which may be exercised successively or concurrently and without necessity of posting bond or other security. Each party acknowledges that its breach of any of the covenants set forth in this



Section would result in immediate and irreparable injury to the other party. Notwithstanding anything in this Agreement to the contrary, Buyer agrees that to the extent the Product collects or stores any personally identifiable information or protected health information, Buyer will not transmit such information to THERA-Trainer and shall remove and delete all such information if the Product becomes in THERA-Trainer's possession. If Buyer fails to remove or delete such information, THERA-Trainer may do so and Buyer holds THERA-Trainer harmless for doing so.

**11. WARRANTIES.**

- a) THERA-Trainer warrants to Buyer for a period of one (1) year from the date of installation of the Products ("**Warranty Period**"), that the Products will materially conform to the specifications set forth in THERA-Trainer's published specifications in effect as of the date of manufacture and will be free from material effects in material and workmanship. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 11, THERA-Trainer MAKES NO WARRANTIES, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, IN CONNECTION WITH THIS AGREEMENT, THE PRODUCTS AND THERA-TRAINER'S PERFORMANCE UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, ORAL OR IN WRITING, IN FACT OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, AND BUYER EXPRESSLY WAIVES ANY AND ALL SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE AND NON-INFRINGEMENT.
- b) THERA-Trainer shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to THERA-Trainer within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) THERA-Trainer is given a reasonable opportunity after receiving the notice to examine such Product and Buyer (if requested to do so by THERA-Trainer) returns such Product to THERA-Trainer's place of business at THERA-Trainer's cost for the examination to take place there; and (iii) THERA-Trainer reasonably verifies Buyer's claim that the Product is defective.
- c) With respect to any defective Product during the Warranty Period, THERA-Trainer shall, in its sole discretion and provided that Section 11(b) is complied with by Buyer, either: (i) repair or replace such Product (or the defective part); or (ii) credit or refund the price of such Product provided that, if THERA-Trainer so requests, Buyer shall, at THERA-Trainer's expense, return such Product to THERA-Trainer.
- d) THERA-Trainer shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Product after giving such notice; (ii) the defect arises because Buyer failed to follow THERA-Trainer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product; or (iii) Buyer alters or repairs such Product without the prior written consent of THERA-Trainer.
- e) THE REMEDIES SET FORTH IN SECTION 11(c) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THERA-TRAINER'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 11(A).

**12. INDEMNIFICATION.** Each party (the "**Indemnifying Party**") shall, at its cost, indemnify and, at the other party's option, defend, the other party (and its officers, directors, members, managers, employees, agents and contractors) against any claims, demands, actions, causes of actions, proceedings, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including, but not limited to, reasonable attorneys' fees), arising from or related to, directly or indirectly: (a) the Indemnifying Party's breach of this Agreement; or (b) any negligence or other tortious conduct by the Indemnifying Party.

**13. LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, OR OTHER INDIRECT LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT, THE USE OR POSSESSION OF PRODUCTS OR PERFORMANCE UNDER THIS AGREEMENT HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), WHETHER BASED IN CONTRACT, TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THERA-TRAINER'S LIABILITY TO BUYER FOR ACTUAL DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR POSSESSION OF PRODUCTS OR THERA-TRAINER'S PERFORMANCE UNDER THIS AGREEMENT EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY BUYER TO THERA-TRAINER UNDER THIS AGREEMENT FOR THE PRODUCTS GIVING RISE TO THE LIABILITY, WHICH SHALL BE THE SOLE REMEDY FOR DAMAGES UNDER THIS AGREEMENT EXCEPT AS PROVIDED IN SECTION 6(B) WITH REGARD TO A NONCONFORMING PRODUCT AND SECTION 11(C) FOR A BREACH OF WARRANTY.

**14. DISCONTINUATION OF PRODUCTS.** THERA-Trainer may at any time discontinue offering or providing any or all of the Products without incurring any liability to Buyer.



15. **NOTICES.** All notices, requests, demands and other communications (“**Notice**”) must be in writing and shall be given by (a) personally delivering the Notice to an officer of the party, against a signed receipt, or (b) mailing the Notice by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth below, at the official corporate address of such party, or such other address as the parties may designate. Notices to THERA-Trainer shall be sent to: THERA-Trainer’s principal place of business. Notices to Buyer shall be sent to the address on the Quotation. Notices shall be effective on the earlier of: (i) the date of receipt; or (ii) three (3) days after mailing.
16. **COMPLIANCE WITH LAWS.** Each party shall comply with any and all laws, regulations and orders that may be applicable to such party and the Products, including, but not limited to, all product standards and applicable packaging and labeling requirements and the Federal Food, Drug and Cosmetic Act. Products may be subject to export controls under the laws and regulations of the United States and any other applicable countries’ laws and regulations. Buyer shall not export or otherwise distribute or direct Products or any part of the Products, in violation of any law or regulation. Buyer shall, at its own expense, obtain any and all import licenses and other approvals and controls required to permit the sale of and the purchase of Products in the applicable jurisdictions where Buyer does business, including, but not limited to, to guarantee payment in U.S. Dollars of all amounts due to THERA-Trainer under this Agreement. Buyer warrants that it shall not export any Products with knowledge that they will be used in the design, development, production or use of chemical, biological, nuclear or ballistic weapons, or in a facility engaged in such activities unless Buyer has obtained prior approval from the U.S. Department of Commerce. Buyer shall not knowingly sell Products, or otherwise transfer Products to, or make them available for use by or for, any government or military end-user located in or operating under the authority of any country not identified in Supplement No.1, Country Group A:1 to Part 740 of the EAR without the proper authorization and approval of the United States government. Neither party has made nor shall make any direct or indirect payment of, offer to pay, authorization to pay, gift of, promise to give, or authorization of the giving of anything of value to any U.S. or foreign government official, or the immediate family of any such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, such party in obtaining business, retaining business or securing an improper advantage.
17. **INDEPENDENT PARTIES.** Buyer’s relationship with THERA-Trainer shall be that of an independent contractor. Nothing contained in this Agreement shall be construed or implied to create an agency, association, partnership or joint venture between the parties. Buyer shall not have, and shall not represent that it has, any power, right or authority to bind THERA-Trainer, or to assume or create an obligation or responsibility, express, implied or by appearances, on behalf of THERA-Trainer or in THERA-Trainer’s name. Buyer shall make no warranty, guarantee or representation, whether written or oral, on behalf of THERA-Trainer.
18. **BINDING EFFECT/ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of THERA-Trainer and Buyer and their respective representatives, successors, heirs and permitted assigns. Buyer shall not assign or otherwise transfer any of its rights or duties, or both, under this Agreement, in whole or in part, directly or indirectly, by merger, consolidation, reorganization, sale of all or substantially all of Buyer’s assets or ownership interests or otherwise, without the prior written consent of THERA-Trainer. Any such attempted assignment in contravention of this Section 18 shall be void and ineffective.
19. **NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed as providing rights to any person other than the parties to this Agreement, and no third party shall be a beneficiary to this Agreement.
20. **FORCE MAJEURE.** Neither party shall be liable for any delay in or failure of performance resulting from fire, labor dispute, strike, war, insurrection, terrorist action, government restriction, act of God or other force majeure beyond its reasonable control, provided such party uses its best efforts to resume performance as promptly as possible following such an event.
21. **WAIVER.** The failure of either party to act upon any right, remedy or breach of this Agreement shall not constitute a waiver of that or any other right, remedy or breach. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
22. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, including, but not limited to, its provision of the Uniform Commercial Code, and the United States of America, without regard to principles of conflicts of laws. This Agreement and the rights and obligations of the parties under this Agreement shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sales of Goods or the United Nations Convention on the Limitation Period in the International Sales of Goods, as amended.
23. **CONSENT TO FORUM.** The Montgomery County Court of Common Pleas located in Norristown, Pennsylvania, USA and the United States District Court for the Eastern District of Pennsylvania located in Philadelphia, Pennsylvania, USA shall have exclusive jurisdiction over any dispute or controversy arising under or related to this Agreement including, but not limited to, the collection of any amounts due to THERA-Trainer for the Products. Each party consents to the personal and exclusive



jurisdiction of such courts and waives any objection that it may have to the venue of any such proceeding and any claim or defense of inconvenient forum. Service of process may be made in accordance with the notice provision of this Agreement. Any award made by a court in conjunction with litigation between the parties regarding this Agreement shall include an award of all reasonable attorneys' fees and legal costs incurred by the party in whose favor the final decision is rendered, and such sum may be added to any judgment entered in the litigation. A party's right to the foregoing shall not merge with but shall survive the entry of judgment and shall extend to appeals and collection.

24. **TIME LIMIT TO BRING AN ACTION.** Notwithstanding any applicable statute of limitations period to the contrary, Buyer must file any civil action (whether at law or in equity) against THERA-Trainer no later than one (1) year after the event giving rise to liability or it will be forever barred from bringing such claim.
25. **NO SETOFF.** Buyer has no rights to set off against amounts due to THERA-Trainer for the Products. In the event Buyer exercises a setoff, it shall constitute a breach of this Agreement and entitle THERA-Trainer to all rights and remedies available under this Agreement and any applicable law and in equity.
26. **SEVERABILITY.** Any provision of this Agreement determined by a court of competent jurisdiction to be unenforceable or invalid shall be modified to the extent necessary to eliminate the invalidity or unenforceability and any remaining unenforceability or invalidity shall have no effect on any of the other terms of this Agreement which shall remain in full force and effect.
27. **INTERPRETATION.** This Agreement shall be fairly interpreted in accordance with their terms and without any strict construction in favor of or against either party. Any ambiguity shall not be interpreted against the drafting party.
28. **ENTIRE AGREEMENT.** This Agreement, together with the Quotation, constitutes the entire agreement between THERA-Trainer and Buyer and supersedes all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Agreement. In the event of conflict between this Agreement and the Quotation, the Quotation shall control and prevail.
29. **OPERATION AND USE OF THE PRODUCT. BUYER UNDERSTANDS AND AGREES THAT ONLY BUYER'S PERSONNEL WHO HAVE RECEIVED THERA-TRAINER'S TRAINING ARE ABLE TO, AND NO OTHER PERSON SHALL, OPERATE THE PRODUCT. THE PRODUCT SHALL ONLY BE OPERATED IN ACCORDANCE WITH THERA-TRAINER'S INSTRUCTIONS AND TRAINING.**

Last updated: June 1, 2021