

## GENERAL TERMS AND CONDITIONS OF SALE OR RENTAL

### 1. GENERAL.

- a) These General Terms and Conditions of Sale or Rental (“**Terms**”), to the exclusion of all other terms and conditions, apply to and form an integral part of the Quotation to which these Terms are attached as well as to all other contracts or agreements (collectively, with the Quotation and the Terms, the “**Contract**”) pursuant to which the “**Customer**” (as defined in the Quotation) purchases medical devices, options, modules, upgrades, maintenance parts, spare parts, service parts, Software (defined below) and consumables (collectively, “**Products**” and each a “**Product**”) and/or installation, training, maintenance, repair or other services (“**Service Programs**”) from THERA-Trainer USA, LLC (“**THERA-Trainer**”, together with Customer the “**Parties**” and each a “**Party**”).
  - i. For purposes of the Contract, “**Software**” means all software that is offered/provided by THERA-Trainer including, but not limited to, software on THERA-Trainer device and any electronic device used to access or interface with THERA-Trainer device including all Updates, programs, operating information, open source code, and other confidential or proprietary information relating thereto.
  - ii. For purposes of the Contract, “**Updates**” means, if and when available, any error corrections, fixes, workarounds or other maintenance releases in respect of the Software that may or may not add additional functionality to the Software.
- b) These Terms are not an expression of acceptance or a confirmation document as contemplated by Section 2-207 of the Uniform Commercial code, or M.G.L.A. 106 Section 2-207. The application of Customer’s contractual or business terms is hereby expressly excluded. In the event of a contradiction or addition of terms between the Quotation and these Terms, the terms of the Quotation shall control. The acceptance of any Contract is expressly conditioned on Customer’s assent to any additional or conflicting terms contained in the Quotation.
- c) 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. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by THERA-Trainer unless and until we expressly confirm our acceptance in writing.

### 2. CONTRACT FORMATION.

- a) The Quotation specifies the Products and/or the Service Programs which may be purchased by THERA-Trainer. Such Quotation shall be binding for the period or until the deadline specified therein. If a Quotation does not specify any period or deadline, it is valid for the ninety (90) day period immediately following the date of the quote.
- b) Customer may order the Products and/or the Service Programs identified in the Quotation by signing the Quotation, where indicated, and returning the signed Quotation to THERA-Trainer. The Quotation is a binding agreement between THERA-Trainer and Customer on the date on which both Parties have executed the Quotation (“**Effective Date**”).

### 3. PRICES / PAYMENT.

- a) Prices quoted in the Contract are exclusive of (a) sales tax and (b) any similar and other taxes, duties, levies or other charges. THERA-Trainer shall be entitled to charge Customer, and customer shall pay THERA-Trainer, for all taxes, duties, levies or other charges resulting from the performance of the Contract. The prices are based on delivery in accordance with the delivery terms stated in the Contract.
- b) Unless otherwise agreed to in a writing signed by both Parties, payment for the Products and/or the Service Programs must be made in accordance with the payment terms specified in the Contract. In the event that Customer fails to adhere to the payment terms specified in the Contract, in addition to all other remedies allowed by law or the Contract, THERA-Trainer shall be entitled, without further notice, to charge to and receive from Customer interest at the rate of twelve percent (12%) per annum (without calculation of a compound interest) on the unpaid invoice amount. The charging of interest on any past-due amounts shall not be deemed an agreement to extend credit. Customer is not permitted to withhold, defer payment or offset any amount owed to THERA-Trainer under any Contract because of any (alleged) counterclaim or for any other reason (including breach of warranty, partial or late delivery).
- c) In the case of a rental of the Product, THERA-Trainer remains the owner of the Product.

### 4. CUSTOMER OBLIGATIONS.

- a) Immediately after the Effective Date, Customer shall (i) arrange for all specific governmental, statutory and other regulatory licenses, approvals, authorizations,

- registrations, trainings and consents that are required to import and clear the Products through customs and for the Customer to use the Products and/or Service Programs; and (ii) provide THERA-Trainer with all the information that may be required for THERA-Trainer to duly perform its obligations under the Contract. For the avoidance of doubt, THERA-Trainer shall arrange for all general governmental, statutory, and other regulatory licenses, approvals, authorizations, registrations, trainings and consents that are needed for the use of the Products and/or Service Programs and that are required from THERA-Trainer as distributor or supplier of the Products or as provider of the Service Programs.
- b) Before using the Products, Customer shall carefully read all parts of the user manual for the Products, as amended by THERA-Trainer from time to time (“**User Manual**”) and any separate or additional instructions, as amended by THERA-Trainer from time to time (“**THERA-Trainer Instructions**”). At all times Customer shall strictly comply with the instructions in the User Manual, THERA-Trainer Instructions and all applicable laws, standards, rules and regulations. CUSTOMER SHALL NOT USE THE PRODUCTS FOR ANY PURPOSE OTHER THAN AS INTENDED ACCORDING TO THE USER MANUAL. For Products intended to be connected to the internet, Customer shall guarantee a valid internet connection that allow THERA-Trainer to provide remote assistance and maintenance. In order to take advantage of THERA-Trainer’s remote technical service offerings and in order to receive Product software updates, it is the sole responsibility of Customer to provide internet access to the Product in accordance to THERA-Trainer’s specification. Failure to comply with Section 4 may result in damage to the Product, serious personal injury or death. Customer shall not permit any person (whether clinician, therapist, patient or any other person) to access or use the Products for any purpose (whether therapy, research, demonstration, training or any other purpose) unless such person successfully completed the necessary training provided in the User Manual and THERA-Trainer Instructions and, if applicable, obtained a use certificate from THERA-Trainer. Any failure to comply with the User Manual, Supplier Instructions, and all applicable laws, standards, rules and regulations shall be deemed a breach of the Contract by Customer.
- c) Customer is solely responsible for the provision of medical care, including, without limitation any medical diagnosis and compliance with indications and contraindications of patients. Customer is solely responsible for obtaining the informed consent of patients with respect to the use of the Products. Under no circumstances may patients with contraindications use the Products, whether for therapy, research, demonstration, training or any other purposes.
- d) Customer’s designated technician may repair the Products or replace maintenance parts, service parts and/or consumables for the Products only after receiving training from THERA-Trainer and in compliance with the User Manual and THERA-Trainer Instructions. Customer shall not undertake or permit the modification of a Product in any way. Any such modification will constitute a breach of the Contract.
- e) Customer shall immediately refrain from using any Defective Product (as defined in Section 8.b) below) or any Product which Customer suspects has a Defect (as defined in Section 8.b) below) and inform THERA-Trainer of such Defect or suspicion of Defect. Customer shall not use any Product that is subject to a product recall, irrespective of whether such product recall is arranged for voluntarily by THERA-Trainer or required by any competent authority.
- f) Customer shall not resell, lease, lend, transfer, or otherwise convey the Products to a third party without the express, written permission of THERA-Trainer. THERA-Trainer shall have no responsibility or liability arising from or relating to the Products from and after the date of Customer’s breach of the immediately preceding sentence.
- g) Customer shall not alter, modify, amend, remove, tamper or obliterate any signs, trademarks, names, logos or plaques affixed to the Products by THERA-Trainer. Customer shall not be entitled to affix any other signs, trademarks, names, logos or plaques to the Products. Nothing contained herein shall be deemed to afford Customer any rights in any trademarks or intellectual property of THERA-Trainer and Customer shall not make any representations to the contrary.
- h) In the event Customer sells, leases, lends, transfers or otherwise conveys Products to a third party (whether or not in violation of Section 4.f) hereof), Customer shall obtain such third party’s written acceptance of and commitment to all obligations in Sections 4, 11, and 22 hereof.

### 5. DELIVERY.

- a) The Products and/or Service Programs shall be delivered in accordance with the terms specified in the Contract. All Products delivered pursuant to the Contract shall be packed and shipped by THERA-Trainer or an agent of THERA-Trainer and marked for shipment to Customer, at the address set forth in the applicable Quotation. All Product shipments will be made EXW unless expressed otherwise in the Quotation.

- b) All delivery periods or dates specified in the Contract are to be treated as estimates only and as non-binding on THERA-Trainer. In no event shall THERA-Trainer be liable for any delay in delivery. Delay in delivery of any equipment shall not relieve Customer of its obligation to accept delivery thereof. Customer shall be responsible for preparing a site suitable for the installation and operation of the Products.
  - c) Prior to the delivery of Products, Customer shall provide THERA-Trainer detailed information regarding the installation site for each Product (each, a "Site"), including information regarding any specific risks present at the Site and information regarding prevention and emergency measures used by Customer. The safety of THERA-Trainer's personnel at the Site is the exclusive responsibility of Customer. Customer shall ensure access to the Site is safe and clear of equipment, trash or other material, and ensure access through corridors, stairs or elevators is suitable to Product's dimensions. THERA-Trainer may inspect the Site prior to installation. THERA-Trainer has the right to delay the delivery of Products in the event that THERA-Trainer determines the Site is inappropriate or unsuitable for delivery or there is a total or partial absence of adequate safety or emergency measures at the Site (a "Site Concern"). Customer agrees to indemnify, defend and hold harmless THERA-Trainer from any and all damages, losses, or expenses incurred by THERA-Trainer or third parties resulting from or relating to the condition of the Site or any Site Concern. Customer's obligations in the immediately preceding sentence shall not be modified or affected in any way by THERA-Trainer's inspection or failure to inspect the Site or to identify any Site Concern.
  - d) In the event THERA-Trainer is prevented from delivering the Products and/or Service Programs or complying with any other obligation under the Contract due to reasons or circumstances which THERA-Trainer could not reasonably have foreseen on the Effective Date or over which THERA-Trainer has no control (including acts of God; war; epidemics; revolutions; fire; explosion; accident; natural disasters; sabotage; governmental decisions or actions; limitations on exports, imports, transit, re-exports or re-imports; revocation of licenses; acts of terrorism; riot or civil commotion; labor conflicts or other disputes; delayed or absence of deliveries by subcontractors; or Customer's failure to comply with its obligations under the Contract), the delivery and other obligations of THERA-Trainer shall be suspended during the period such reasons or circumstances persist and for a period of seven (7) calendar days thereafter. In the event the period during which THERA-Trainer is unable to perform its obligations as a result of such reasons or circumstances is longer than thirty (30) calendar days, in addition to all other remedies allowed by law or the Contract, THERA-Trainer shall have the right to terminate the Contract without liability.
  - e) Customer must take possession of the Products upon delivery. In the event Products ready for delivery cannot be delivered due to circumstances attributable to Customer (including, without limitation, changes in agreed installation and/or training dates), THERA-Trainer shall be entitled to charge Customer for any additional costs and expenses incurred by THERA-Trainer including storage, insurance, transportation, personnel and travel expenses until delivery becomes possible as determined by THERA-Trainer in its reasonable discretion. THERA-Trainer, at all times, retains the right to make, and Customer shall accept, partial deliveries. Packaging may not be returned to THERA-Trainer by Customer.
- 6. SOFTWARE.**
- a) The Software remains, at all times, the exclusive property of THERA-Trainer or its affiliates, vendors, manufacturers, contractors or agents (the "THERA-Trainer Group"). Any Software is provided to Customer under a non-exclusive, non-transferable prepaid user license, solely for use with the Product for which it was intended according to the user manual. Customer shall not requalify, modify, recompile, distribute, extract, or otherwise exploit the Software, directly or indirectly, either in whole or in part. Customer shall indemnify THERA-Trainer for any violation of the described restrictions in this section.
  - b) If included in the Quotation, the Customer may purchase from THERA-Trainer also non-exclusive, non-transferable licenses of use of Software for a duration and in return of a compensation defined into the same Quotation.
  - c) THERA-Trainer reserves the right to make updates to the Software at its sole discretion and without liability to the Customer in such updates. THERA-Trainer undertakes to correct and eliminate, any flaws or discrepancies of the Software even also those notified by the Customer.
  - d) Software License does not grant to the Customer any rights to the original source codes. All the techniques, algorithms and procedures contained in the Software and in the related documentation are the exclusive property of THERA-Trainer and therefore, they cannot be used in any way by the Customer and for any purposes other than those indicated by THERA-Trainer through the User Manual.
  - e) THERA-Trainer guarantees the Customer against all third-party claims concerning rights to the Software purchased.
- f) THERA-Trainer cannot, however, be held responsible for any type of damage to the Software resulting from:
    - i. absence of internet connection that doesn't allow THERA-Trainer to fix potential malfunctions;
    - ii. unforeseeable circumstances or force majeure and does not provide any guarantee for them, nor will it be liable for indirect damages to things or persons caused by the use of the Software by THERA-Trainer
  - g) THERA-Trainer undertakes to make the necessary adjustments in the event of any operational defects, without additional charges for the Customer and only in the event that such malfunctions are not a result of failure to comply with the rules indicated in the User Manual and of an incorrect use of the Software by the Customer.
  - h) THERA-Trainer cannot in any way be held responsible for disservices and/or damage caused by the use of the Software in the event of:
    - i. tampering or interventions that compromise the correct functioning of the Software carried out by the Customer's personnel or by third parties not authorized by THERA-Trainer;
    - ii. incorrect use of the Software by the Customer or operators or third-party users authorized by the Customer;
    - iii. non-compliance, non-fulfillment and violations of the law attributable to the Customer, such as, by way of example only, but not exhaustive, violations of applicable data protection law.
- 7. INTELLECTUAL PROPERTY.**
- a) The Product and all worldwide copyrights, trade secrets, and other intellectual property rights therein are the exclusive property of the THERA-Trainer Group and its licensors and THERA-Trainer Group reserves all rights in and to the Product (including, without limitation, the Software) not expressly granted to Customer under these Terms. The Software is licensed to Customer, not sold, under these Terms. There are no implied licenses in these Terms.
- 8. WARRANTY, REMEDIES AND LIMITATIONS.**
- a) THERA-Trainer represents and warrants to Customer that each Product will conform to THERA-Trainer's specifications published in the User Manual provided to Customer for such Product. In the case of a purchase this representation and warranty shall be effective for a period of twelve (12) months after delivery ("Warranty Period"). The replaced parts or physical components will have a warranty period until the end of the original Warranty Period but for a minimum of one (1) year. In the case of a rental THERA-Trainer provides an extended warranty for the entire duration of the rental.
  - b) Only Products which breach the warranty set forth herein (a "Defect") shall be considered as defective Products ("Defective Products") under the Contract.
  - c) The warranty becomes void if:
    - i. Customer modifies, maintains or repairs the Product in any manner not authorized by THERA-Trainer;
    - ii. Customer fails to comply with Section 4.b), 4.d) and 4.g).
    - iii. Customer moves the Product from the Site without the written consent of THERA-Trainer;
  - d) Upon delivery or, in cases where THERA-Trainer provides installation pursuant to the Contract, upon completion of the installation by THERA-Trainer, Customer shall thoroughly inspect the Product. Any conditions not in compliance with the warranty provided in Section 8.a) that are or could have been discovered by such inspection must be reported in a writing explaining the asserted Defect to THERA-Trainer no more than fifteen (15) calendar days after the start of the Warranty Period (the "Inspection Period"). After the Inspection Period expires, THERA-Trainer shall not be liable for any breaches of warranty that are or could have been discovered during the Inspection Period.
  - e) Breaches of warranty that were not discoverable during the Inspection Period must be reported in writing explaining the asserted Defect to THERA-Trainer within eight (8) calendar days after discovery of the Defect, but in any case within the Warranty Period. THERA-Trainer shall not be liable for any breaches of warranty not reported to THERA-Trainer in compliance with this Section.
  - f) Customer shall have fifteen (15) calendar 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 Customer.
  - g) Timely complaints by Customer do not relieve Customer of its obligation to pay for and accept receipt of all delivered Products.

- h) The burden of proof that the delivered Products are Defective Products lies with Customer. Customer shall provide THERA-Trainer with its full cooperation in investigating the basis of the complaint. If Customer's complaint is determined by THERA-Trainer to be unfounded, Customer shall bear the costs of the investigation.
- i) In case of breach of Product warranty, THERA-Trainer's sole obligation is, at THERA-Trainer's option, to correct, repair or replace any Defective Product.
- j) THERA-Trainer represents and warrants that the Service Programs rendered pursuant to the Contract will be of a professional and competent quality and will be rendered by qualified personnel familiar with the Product. In case of breach of this Service Program warranty, THERA-Trainer's sole obligation is to re-perform the relevant Service Program. The preceding warranty is the sole and exclusive warranty made by THERA-Trainer with respect to the Service Programs.
- k) In the case of a rental, the Customer is responsible to reimburse THERA-Trainer for the loss of Product or any repairs arising from voided warranty according to 8.c)
- l) THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED). ALL SUCH OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

**9. LIMITATION OF LIABILITY.**

- a) CUSTOMER IS SOLELY RESPONSIBLE FOR USE OF THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ASSESSING THE SAFETY, SUITABILITY AND RISK OF USING THE PRODUCT.
- b) OTHER THAN AS PROVIDED IN SECTION 11, ABOVE, OR WITH RESPECT TO ANY CLAIMS CAUSED BY THERA-TRAINER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE:
  - i. THERA-TRAINER'S LIABILITY FOR ANY AND ALL LOSSES, DAMAGES, INJURIES, CAUSES OF ACTION OR CLAIMS OF ANY KIND SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO THERA-TRAINER FOR THE PRODUCT AND/OR SERVICE PROGRAM THAT FORMS THE BASIS OF SUCH CLAIM; AND
  - ii. IN NO EVENT SHALL THERA-TRAINER OR THERA-TRAINER'S DIRECTORS, OFFICERS, EMPLOYEES, OWNERS, AFFILIATES, VENDORS, CONTRACTORS, AGENTS OR REPRESENTATIVES (COLLECTIVELY, "THERA-TRAINER INDEMNITEES") BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE PRODUCT OR SERVICE PROGRAMS OR ANY BREACH OF THE CONTRACT BY THERA-TRAINER REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (III) THE LEGAL OR EQUITABLE THEORY (WHETHER CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED.
- c) THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

**10. INDEMNIFICATION BY CUSTOMER.**

- a) Customer shall diligently defend, hold harmless and indemnify THERA-Trainer Indemnitees from and against any and all liability, losses, damages, injuries, causes of action or claims of any kind which arise from or relate to, directly or indirectly, (i) the Product or Service Programs (ii) use of the Product or Service Programs, (iii) any matter for which Customer is responsible under the terms of the Contract (including, without limitation, Customer's obligations under Sections 4.b), 5.e) and 9.a) hereof), (iv) any failure to comply with the User Manual or THERA-Trainer Instructions, or (v) any breach of the Contract (collectively "Losses"), except to the extent Losses are caused by THERA-Trainer's willful misconduct or gross negligence.
- b) Customer shall promptly notify THERA-Trainer and THERA-Trainer shall promptly notify Customer of any Losses for which Customer may have indemnification obligations under this Section. Notwithstanding the foregoing sentence, any failure by THERA-Trainer to provide prompt written notice hereunder shall excuse Customer only to the extent Customer is prejudiced by such failure to give notice. THERA-Trainer shall have the right, but not the obligation, to participate in the defense against any Losses in such manner as THERA-Trainer deems appropriate. Without the prior written consent of THERA-Trainer, Customer shall not enter into any settlement or cease to defend against any Losses if, pursuant to or as a result of such settlement or cessation, (i) injunctive or other equitable relief would be imposed against THERA-Trainer Indemnitees, (ii) such settlement or cessation

- would lead to liability or create any financial or other obligation on the part of THERA-Trainer Indemnitees or for which THERA-Trainer Indemnitees are not entitled to indemnification under the Contract, (iii) such settlement does not expressly and unconditionally release THERA-Trainer Indemnitees from all liabilities with respect to such Losses, with prejudice, or (iv) such settlement requires THERA-Trainer Indemnitees to admit fault.
- c) Customer represents and warrants that Customer has the necessary insurance and informed consent declarations in place to cover the use of the Products. In addition, Customer represents and warrants that Customer maintains a policy of insurance at levels sufficient to fulfill the indemnification obligations of Customer in this Section.
- d) CUSTOMER, FOR ITSELF AND ON BEHALF OF ITS DIRECTORS, OFFICERS, EMPLOYEES, OWNERS, AFFILIATES, VENDORS, CONTRACTORS, AGENTS AND REPRESENTATIVES ("CUSTOMER AFFILIATES"), HEREBY COVENANTS NOT TO SUE THERA-TRAINER INDEMNITEES, OR ANY OF THEM, OR TO COMMENCE, AID IN ANY MANNER, PROSECUTE OR CAUSE TO BE COMMENCED OR PROSECUTED AGAINST ANY OF THERA-TRAINER INDEMNITEES, ANY ACTION BASED UPON ANY CLAIMS FOR WHICH CUSTOMER HAS INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION. CUSTOMER ACKNOWLEDGES AND AGREES THESE TERMS MAY BE PLEADED AS A FULL AND COMPLETE DEFENSE TO, AND MAY BE USED AS THE BASIS FOR AN INJUNCTION AGAINST, ANY ACTION IN BREACH OF THESE TERMS.
- e) Notwithstanding any applicable statute of limitations period to the contrary, Customer 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.

**11. DUTY TO REPORT INCIDENTS AND REGULATORY ACTIONS.**

- a) Customer shall immediately notify THERA-Trainer in written if any Product
  - i. fails or is alleged to have failed to comply with any product safety requirements or any other applicable laws, rules, regulations, specifications, or standards promulgated by any governmental agency;
  - ii. use has resulted in an adverse event such as death, serious injury or malfunction;
  - iii. constitutes a substantial risk of injury to the public, or
  - iv. is subject to any investigation or claim of any kind by a governmental agency or other third party (each a "Safety Concern"). Customer's obligation to notify THERA-Trainer shall continue regardless of whether Customer has sold, transferred or otherwise conveyed the Product to any third party.
- b) Customer shall promptly furnish to THERA-Trainer any documents, information or other data relating to the Product or the Safety Concern including, without limitation, a written description of the attendant circumstances and all statements, reports and tests made by Customer or made available to Customer by others. The furnishing of information to THERA-Trainer under this section and any investigation by THERA-Trainer of such information shall not in any way constitute an assumption of any liability for such Safety Concern by THERA-Trainer, nor shall it affect Customer's indemnification obligations.
- c) Unless otherwise required by law, Customer shall notify THERA-Trainer of a Safety Concern in accordance with section 11.a) before notifying any governmental agency of such Safety Concern. THERA-Trainer shall determine if, to what extent, and to what governmental agency a Safety Concern shall be reported and what remedial actions, if any, Customer and THERA-Trainer must take in response to a Safety Concern.

**12. CONFIDENTIALITY.**

- a) "Confidential Information" means the Product, the Software, accompanying documentation and all related technical and financial information, including any technical data or know-how, specifications, the sorter codes, the object codes, the research, the inventions, the processes, the projects, the drawings, the technical information, the Products, the Service Programs, the customers of THERA-Trainer and of THERA-Trainer Group and all other information that is treated as confidential or proprietary by THERA-Trainer or THERA-Trainer Group or that otherwise has value to THERA-Trainer or THERA-Trainer Group as a result of such information not being generally known to the public.
- b) Confidential Information does not include information that
  - i. Customer can demonstrate was lawfully in its possession, without confidentiality obligations, prior to the receipt of the same from THERA-Trainer,
  - ii. is or subsequently becomes in the public domain without an infringement by Customer or any third party of any rights of THERA-Trainer,
  - iii. are disclosed to Customer, without confidentiality obligations, by a third party who has the right to disclose such information, or

- iv. Customer can demonstrate has been developed independently without the use of any Confidential Information, provided, however, if only a part of any Confidential Information falls within one or more of clauses (i) through (iv), the remainder of the Confidential Information will continue to be subject to the restrictions set forth in this Section.
- c) Customer may use the Confidential Information only for the purposes of the Contract and use of the Product in accordance with the Contract, User Manual and THERA-Trainer Instructions, and in this regard undertakes to:
- d) adopt the same means that are adopted to protect Customer's confidential information and, in any case, all appropriate and necessary means to prevent disclosure and to protect the confidentiality of the Confidential Information; and
- e) limit the disclosure of the Confidential Information only to its employees or contractors directly involved in the activities covered by the Contract and only after informing such persons of the confidential nature of the Confidential Information, with Customer remaining in any case responsible for the observance by its employees and contractors of the obligations described in this Section.
- f) 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.
- 13. PROCESSING OF THE PERSONAL DATA OF THE PARTIES.**
- a) By signing these Terms, the Parties acknowledge and accept that each party may process the personal data of the partners, administrators, consultants, employees, and collaborators of the other party within the context of the services subject of these conditions.
- 14. NOTICES.**
- a) 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 Customer 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.
- 15. COMPLIANCE WITH LAWS.**
- a) 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. Customer shall not export or otherwise distribute or direct Products or any part of the Products, in violation of any law or regulation. Customer 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 Customer does business, including, but not limited to, to guarantee payment in U.S. Dollars of all amounts due to THERA-Trainer under this Contract. Customer 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 Customer has obtained prior approval from the U.S. Department of Commerce. Customer 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.
- 16. INDEPENDENT PARTIES.**
- a) Customer's relationship with THERA-Trainer shall be that of an independent contractor. Nothing contained in this Contract shall be construed or implied to create an agency, association, partnership or joint venture between the parties. Customer 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. Customer shall make no warranty, guarantee or representation, whether written or oral, on behalf of THERA-Trainer.
- 17. BINDING EFFECT/ASSIGNMENT.**
- a) This Contract shall be binding upon and shall inure to the benefit of THERA-Trainer and Customer and their respective representatives, successors, heirs and permitted assigns. Customer shall not assign or otherwise transfer any of its rights or duties, or both, under this Contract, in whole or in part, directly or indirectly, by merger, consolidation, reorganization, sale of all or substantially all of Customer's assets or ownership interests or otherwise, without the prior written consent of THERA-Trainer. Any such attempted assignment in contravention of this section shall be void and ineffective.
- 18. FORCE MAJEURE.**
- a) 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.
- 19. WAIVER.**
- a) The failure of either party to act upon any right, remedy or breach of this Contract 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.
- 20. NO SETOFF.**
- a) Customer has no rights to set off against amounts due to THERA-Trainer for the Products. In the event Customer exercises a setoff, it shall constitute a breach of this Contract and entitle THERA-Trainer to all rights and remedies available under this Contract and any applicable law and in equity.
- 21. SEVERABILITY.**
- a) Any provision of this Contract 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 Contract which shall remain in full force and effect.
- 22. MISCELLANEOUS TERMS.**
- a) The Contract and all matters arising out of or relating to the Contract, shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict of law provisions thereof that would result in the application of the laws of a different jurisdiction. Any legal suit, action, or proceeding arising out of or related to the Contract shall be instituted in the court of the Commonwealth of Pennsylvania or the federal court of the United States
- b) Each Party irrevocably submits to the exclusive jurisdiction of 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.
- c) Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, (i) any right it may have to a forum non-convenient plea AND (ii) ANY RIGHT IT MAY have TO A JURY TRIAL IN ANY legal PROCEEDING directly or indirectly arising out of or relating to these Terms or the Contract.
- d) The prevailing Party shall be entitled to recover its costs, expenses and fees (including, without limitation, reasonable attorneys' fees) from the non-prevailing Party.
- e) No provision of the Contract may be amended or modified unless such amendment or modification is in writing signed by Customer and THERA-Trainer. No waiver by either Party of any breach of the Contract by the other Party shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure or delay by either Party in exercising any right, power or privilege hereunder operate as a waiver thereof to preclude any other or further exercise of such right, power or privilege.
- f) In jurisdictions where the disclaimer of warranties set forth in Section 10.b) or the limitation of liability are unlawful or restricted by law, such disclaimer or limitation of liability shall apply to the maximum extent permitted by applicable law.

Last updated: April 20, 2023