

## TERMS OF SALE – JAPAN

**1. Additional or Different Terms.** These terms of sale ("TOS") are subject to any related signed agreement between [ASP Japan GK] (the "Seller" or "ASP") and the Buyer and/ or an agreement with a GPO or IDN that Buyer is an affiliated member (the "Buyer"). Absent any such agreement, this instrument constitutes an offer by the Seller to sell the products and services covered by this Quote ("Products and Services") at the price and subject to all terms stated in this Quote. The Buyer may not modify any terms of these TOS, and the Seller hereby objects in advance to any additional or different terms proposed by or on behalf of the Buyer in any instrument requesting or confirming this Quote. No course of dealing between the parties shall be effective to amend or waive any provision of this Quote. Acceptance by the Buyer of the Products and Services will constitute acceptance of TOS and an express waiver by the Buyer of any additional or different term that it had previously proposed. Terms that are printed on or contained in a purchase order ("PO") or other form prepared by Buyer which is additional to, in conflict with or inconsistent with TOS shall be considered to be inapplicable and shall have no force or effect. These TOS shall only apply towards businesses such as companies, merchants, legal entities under public law, separate estates created under public law or any equivalent business or public entity, but not towards end users.

**2. Price.** The prices of the Products and Services are listed on the Quote. Prices quoted are firm for 30 days from the date of quotation by Seller or as expressed in the Quote, with the exception that Seller reserves the right to correct any and all typographical errors. Seller has the right to increase its prices at any time upon notice to Buyer to reflect any increase in Seller's costs, including, but not limited to, an increase in the cost of materials, cost of labor, inflation rate, foreign exchange rate and any other changes in economic or market conditions. If Buyer requests and Seller agrees to any changes in Buyer's order after its receipt by Seller, Buyer shall pay all charges reasonably assessed by Seller with respect to those changes. Any change to the Products and Services by Buyer will permit Seller to re-quote the Products and Services in their entirety. In the event that any change to the Products and Services results in the obsolescence of any raw material or supplies reasonably purchased by Seller, Buyer shall pay for such costs prior to the delivery of any modified

Products and Services. These conditions shall apply to all POs or releases issued by Buyer regardless of their nature of being a requirement, serial, blanket, or open PO.

### **3. Returns.**

Without prejudice to contractual remedies for warranties, if any, Seller may additionally grant you the right to return Products and Services subject to the terms of our international return policy which Buyer may find at <https://www.asp.com/en-us/international-return-policy>. Buyer may only return Products and Services for credit if Seller or one of its affiliates has previously authorized that return in accordance with the terms of ASP's international return policy.

### **4. Adjustments.**

If the Buyer believes the invoice from the Quote contains any errors, it must notify the Seller's customer service department no later than 30 days after the date of the invoice if it wishes to have those errors rectified. If the Buyer wishes to make a claim for loss or damage to any Products and Services as a result of shipment, it must include a copy of the delivery receipt. In the event a Quote has not been provided, the standard terms of sale still apply.

**5. Delivery; Transfer of Title.** Products and Services will be delivered, subject to availability, in accordance with the terms of the relevant Quote. Partial deliveries are permitted. Seller shall not be liable for any delays. Seller shall not be liable for any non-delivery of Products and Services (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of non-delivery within 5 working days of the date when the Products and Services would have been received as per the purchase order. Any liability of Seller for non-delivery of the Products and Services shall be limited to replacing the Products and Services within a reasonable time or adjusting the Quote respecting such Products and Services to reflect the actual quantity delivered.

Delivery of the Products and Services will be CPT (Carrier Paid To) /CIP (Carrier and Insurance Paid) (Incoterms 2020) at the place of destination described in the Products and Services order confirmation.

**6. Security of Payment of Price.** The Buyer shall assist and cooperate with the Seller in taking any further actions reasonably necessary to secure full payment of the purchase prices for the respective Products and Services e.g. by signing at the

Seller's request appropriate documents such as financing statements.

**7. Impaired Financial Prospect of the Buyer.** In the event of the insolvency, bankruptcy, reorganization, receivership, or liquidation by the Buyer options on acceleration or deceleration shall apply pursuant to the Applicable Laws. If the Seller believes in good faith that the prospect of the Buyer paying its due amounts has or is likely to be impaired, Seller may make delivery subject to prepayment by Buyer. By accepting the Products and Services, the Buyer is representing that it is not then insolvent within the meaning of the Applicable Laws.

**8. Payment.** If Seller is required to pay any tax, duty or other fee, Buyer will reimburse the Seller the amount of that tax, duty, or other fee. All prices are exclusive of sales, use, and excise taxes and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by under this Quote. Exempt Buyer must provide tax exempt certification at the time of purchase order. If payment is not received within thirty (30) days from date of invoice, Seller shall be entitled to suspend delivery of any Products and/or Services if Buyer fails to pay any amounts to the Government or any local government when due hereunder and if such failure continues thirty (30) days following written notice thereof. In the event, the account may be transferred to a 3rd party collection agency, Seller reserves the right to recoup all unpaid invoices, late fees and legal fees.

**9. Cost Reporting.**

Buyer acknowledges that it may be required under the Applicable Laws to disclose cost of the Product or the Service (including, but not limited to, any discounts, rebates or other price concessions) or cost related documents (such as invoices, statements), e.g. in cost reports or claims for reimbursement submitted to health care programs or other (public) institutions. The Buyer shall make any such required disclosures in accordance with the Applicable Laws.

**10. Intellectual Property.** Seller reserves all rights in its intellectual property whether or not any such intellectual property is subsumed in any Product provided to Buyer, and nothing contained herein will be construed as granting Buyer any ownership interest or other rights to the intellectual property of the Seller.

**11. No Resale.** The Buyer must use the

Products and Services solely for the purpose set in the products IFUs and by competent and authorized medical personnel, for the ultimate benefit of patients. The Buyer will not resell any Products and Services, including, without limitation, in retail outlets or to any affiliate. If the Buyer is the Seller's authorized distributor, the Products and Services are for resale pursuant to a signed distribution agreement between Buyer and Seller.

**12. Import/Export.** Seller's Products and Services including software, spare parts, technical information, technology, services and its affiliates are subject to U.S., E.U., and other countries' export controls and sanction laws and regulations. This includes but is not limited to the U.S. Export Administration Regulations administered by the Bureau of Industry and Security, U.S. Department of Commerce, and the Foreign Assets Control Regulations ("FACR") administered by the Office of Foreign Assets Control ("OFAC"), U.S. Department of Treasury. These laws and regulations apply to all transactions including domestic sales or distribution and restrict to whom and to which countries Products and Services can be sold, distributed, serviced, and used directly or indirectly in a manner which would violate these laws and regulations. Governmental authorities may prohibit the sale, supply, transfer, transship, export, re-export ("Export") or diversion of certain Products and Services to certain parties or countries. Buyer warrants that it will at all times comply in all respects with the applicable laws and regulations and shall not Export any Products and Services, directly or indirectly, except as authorized by these regulations. Buyer further warrants that it will not take any action that will cause a violation of the applicable regulations. Buyer shall supply ASP on a timely basis with all information and documentation requested by ASP to permit ASP to apply for and obtain any licenses that may be required for the Export of Products and Services. ASP is not obligated by the terms of sale to submit any license applications to the competent authorities, and the decision to submit any such license application shall be made in the sole discretion of ASP. If a license application submitted by ASP is denied, the relevant purchase order shall be considered as cancelled (in whole or in part, depending on the case) and ASP shall not be held liable for any damages or compensation to the Buyer.

Buyer agrees it will not directly or indirectly export or transfer Products and Services to any sanctioned destination, entity, or person. This

includes (1) sanctioned countries, current list consists of Belarus, the Crimea and the so-called Donetsk People's Republic and Luhansk, People's Republic region of Ukraine, Cuba, Iran, North Korea, Russia, or Syria. The U.S. government, E.U. and other countries update list of countries from time to time; or (2) sanctioned entities or persons ("entity/ies") listed on or owned or controlled 50% or more by any party entity listed on any EAR or OFAC Denied Parties List, Entities List, Specially Designated National List, Foreign Sanctions Evaders List, Unverified List and/or the Consolidated List of Persons (reference resources such as the Consolidated Screening List ("CSL"), which can be searched here: <https://www.export.gov/csl-search>), and Groups and Entities subject to the E.U. financial sanction, any national E.U. Member State designed parties list, the Consolidated List of Financial Sanctions Targets in the UK, or similar applicable lists of restricted parties as updated from time to time. Buyer also agrees it will not directly or indirectly export or allow to be exported any Products and Services to any party if the Buyer knows that the third party is a military or military-intelligence end-user or if the Buyer knows that the third party will use that Product in any military or military-intelligence end-use. Military End Use includes incorporation of any item into any military item, use of any item in supporting or contributing to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production, of any military items, or use in a plant for the production of military items.

Products and Services may also be subject to import laws and regulations which may require registration, licensing, or other authorizations for import into certain countries. It is Buyer's responsibility to determine and comply with local import requirements. In the event Buyer is responsible for importation, Buyer shall at its own expense be responsible for obtaining all commercial licenses and permits, paying any customs charges, duty fees and taxes, and for satisfying any formalities that may be required for the implementation of this Agreement and/or the customs clearance, importation, sale, marketing, distribution and support of Products and Services into the Territory in accordance with the laws and regulations in force in the Territory.

Buyer shall indemnify and keep ASP, and any of its affiliates, indemnified from and against, and shall compensate and reimburse ASP for, all damages, costs, or losses, including reasonable attorney's fees, and reimburse ASP any penalties

imposed on ASP by any governmental body, court or third party as a result of any violation by Buyer.

This section and Section 13 shall survive the expiration or termination of this Agreement.

**13. Additional Compliance Measures Regarding Export Controls and Sanctions (applies to distributors only).**

Distributors/Resellers agree that it shall only resell Products and Services to parties located in the jurisdiction(s) specified in its written distributor agreement with Seller, and under no circumstances resell Product to parties located in, for further resale to, or for ultimate end-use in, any country/territory subject to comprehensive U.S. OFAC, as well as EU, UK, and Switzerland economic sanctions.

**14. Force Majeure.** The Seller is not liable for any loss, damage and delays in delivery, including delays due to product shortages, acts of nature, war, epidemics, pandemics, terrorism, regulatory or carrier issues, or any circumstance beyond its reasonable control. In the event of a shortage of Product, the Seller reserves the right to allocate Products and Services among their customers in any manner that they, in their sole discretion, determine is reasonable.

**15. Compliance with Law.** Buyer shall comply with all applicable laws and regulations in connection with the Products and Services, including those of the United States, and any and all other jurisdictions internationally and in any country, which apply to Buyer business activities in connection with these TOS.

Without limiting any provision in these TOS, Buyer specifically agrees to the following:

**a). Anti-corruption/Anti-Bribery**

Buyer represents and warrants to ASP that Buyer shall comply with all local, national, and international laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with these TOS, and that Buyer will take no action that will cause Buyer or ASP to violate any such laws. Buyer specifically represents and warrants to ASP that Buyer is, in particular, familiar with the Prevention of Corruption Act, 1988 ("PCA") and the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the U.K. Bribery Act and that Buyer shall comply with the FCPA, the PCA and U.K. Bribery Act, and will take no action that will cause Buyer or ASP to violate these laws. Buyer also represents and warrants that it will be

equally familiar and comply with all applicable national laws on anti-corruption and anti-bribery, as well as transparency in business activities, including where mandatory under national and local laws.

It is the intent of Buyer and ASP, and Buyer represents and warrants to ASP, that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for ASP, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related in any way to these TOS, including without limitation any payment of money or provision of anything of value to any employee of any customer in order to secure a sale.

Buyer has read and agrees to adhere to the Fortive Standards of Conduct, as updated from time to time, and available at: <http://www.fortive.com/integrity-and-compliance>.

**b). Disclosure to ASP**

Buyer agrees that should it learn or have reason to know of any offer, promise, payment or transfer of money or provision of anything of value that would violate the PCA, FCPA, the U.K. Bribery Act, or other anti-corruption and anti-bribery laws which apply to Buyer's business activities in connection with these TOS, Buyer shall immediately disclose it to ASP.

**c). Audit Rights**

ASP shall have reasonable access to Buyer's books and records for the sole purpose of exercising the right to audit them on a periodic basis to ensure Buyer's compliance with all applicable laws and the provisions of these TOS. Buyer shall cooperate fully and promptly with any compliance investigation ASP may initiate to review Buyer's performance under the Compliance with Laws provisions of these TOS.

**d). Certification and Training (applies to distributors only)**

Buyer shall provide annual certification of compliance with the PCA and FCPA, the U.K. Bribery Act and all other laws applicable to Buyer's activities related to these TOS in the form provided from time to time by ASP. Buyer shall participate

in anti-corruption/anti-bribery training offered by ASP as ASP may direct from time to time.

**e). Termination**

ASP may withhold payments under these TOS, suspend or cancel orders, reduce discounts or terminate this Agreement immediately, if it believes, in good faith, that Buyer has breached the foregoing Compliance With Laws provisions of these TOS or caused ASP to violate the PCA and/or FCPA, U.K. Bribery Act or any other anti-corruption or anti-bribery laws which apply to the Buyer. ASP shall not be liable to Buyer for any claim, losses, or damages related to ASP's decision to exercise its rights under this provision.

**16. Governing Law. Place of Jurisdiction.**

These TOS as well as all related business agreements between the Seller and the Buyer shall be governed by and interpreted in accordance with the laws of the Seller's place of residence, excluding the 1980 U.N. Convention on Contracts for the International Sale of Goods.

All disputes arising out of or in connection with any sale governed by these TOS are exclusively subject to the jurisdiction of the courts at the Seller's place of residence.

**17. Single-Use Products.** The Buyer acknowledges the requirement that a Single-Use Product it purchases be used once and only once in delivering patient care is an express condition of the sale of the Product. All Product must be used in accordance with manufacturer specification including IFUs and package inserts. The Seller conveys no right in such patented Single-Use Product other than the right to use those units once and only once. A "Single-Use Product" means any Product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the Product is to be used once and only once in delivering patient care. The Seller does not grant the Buyer or any other person or entity any license to reprocess, remanufacture, or reconstruct any patented Single-Use Product. In addition to other available remedies, the sale or use of any reprocessed, remanufactured or reconstructed patented Single-Use Product will be subject to available remedies for patent infringement. In any event, Seller will not be liable for any quality or characteristic of such Product which has been reprocessed, remanufactured or reconstructed contrary to this provision – and Buyer shall indemnify Seller from all claims raised by third parties in connection with such reprocessed, remanufactured or reconstructed Products.

18. **Deductions.** Seller will not accept any deductions on payment remittance, unless Seller agrees to such deduction in advance in writing.

19. **Warranties.** Any warranties provided by the Seller or any affiliate, as applicable, with respect to any Product are as described in the package inserts accompanying units of that Product on purchase. OTHER THAN AS SET FORTH IN THE PREVIOUS SENTENCE, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS (IMPLIED OR EXPRESS) ON THE PRODUCTS AND SERVICES TO THE BUYER OR ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION THOSE OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NO ONE IS AUTHORIZED TO MAKE ANY MODIFICATION, EXTENSION OR ADDITION TO THIS WARRANTY.

20. **Limitation of Liability.**

IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES of any kind including, but not limited to, loss of business, profit, revenue or good will arising from any failure or matter arising under these TOS, nor shall any claim or recovery of any kind be greater than the purchase price of this Agreement to which such claim or recovery is made. IN ANY EVENT, THE AGGREGATE LIABILITY OF SELLER WILL NOT EXCEED ONE (1) TIME TOTAL AMOUNTS PAID HEREUNDER BY BUYER.

21. **Assignment.** Seller may assign this Agreement, including its responsibilities and obligations hereunder, to its affiliate. This Agreement shall not be assignable by the Buyer by operation of law or otherwise to any third party without the prior written consent of Seller.

22. **Confidentiality.**

(a) Each party shall hold the following "Confidential Information" in strict confidence and not disclose the same to any other person or entity except as provided herein: all information, pricing and terms relating to or contained in this agreement; all Product and Service data, trade secrets, financial data, pricing, business plans or any other information received from the other party in implementing this agreement; and all information derived from the foregoing.

(b) Notwithstanding the above: (1) A party may disclose Confidential Information to the personnel within its organization and its legal and accounting advisors that require the Confidential Information

in connection with the party's rights and obligations under this agreement, provided that the disclosing party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential. (2) A party may disclose Confidential Information as required by law, provided that the disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party reasonably cooperates with the other party upon request in seeking relief from or limiting the disclosure. (3) The Seller may disclose this agreement and Confidential Information related to this agreement: to any prospective Buyer of rights with respect to a Product or Service, provided that such Buyer agrees in writing to use the information solely in that capacity and to keep it strictly confidential; to its affiliates; and to any entity that manufactures, markets, co-markets, or distributes any Product or Service, provided that any such entity uses the information solely for these purposes and keeps it strictly confidential. (4) Neither party shall be obligated to hold the following information in confidence: information that is or becomes publicly available through no fault of the recipient; information developed by a party without using any Confidential Information; information lawfully possessed by a party before receipt from the disclosing party; and information lawfully disclosed to a party on a non-confidential basis from a person or entity that is not bound by a duty of confidentiality. (5) A party may disclose Confidential Information with the prior written consent of the other party.

23. **No Set-Off.** The Buyer will neither deduct nor set-off, from payments under this agreement, amounts allegedly owed to the Buyer by the Seller under a separate agreement or cause of action.

24. **Language.** The official version of these TOS, and all communications related to these TOS, will be in the English language. Any translation in another language shall be deemed for convenience only and shall not prevail over the original English version, unless required otherwise by mandatory local applicable laws.