



Sales Terms & Conditions

1. AGREEMENT. This document is an offer by Phillips-Medisize, LLC (hereinafter referred to as "Phillips-Medisize") to sell the products and/or services described herein and is expressly conditioned upon Customer's assent to these terms and conditions. No additional or different terms or conditions will apply to this sale or be binding upon Phillips-Medisize. Phillips-Medisize objects to any terms or conditions, which are in addition to or different from these terms and conditions. By accepting this offer, Customer agrees to and accepts all these terms and conditions; any additional or different terms or conditions contained in any document sent by Customer to Phillips-Medisize shall be of no effect. By acceptance of any goods or services produced hereunder, Customer specifically waives any additional or different terms or conditions. Acceptance hereof shall occur when Customer (i) in writing, by facsimile transmittal (FAX), or otherwise orders any of the products, or authorizes Phillips-Medisize to perform any of the work, shown on the face hereof, or (ii) receives any product from Phillips-Medisize, whichever occurs first. This document constitutes the entire agreement between Phillips-Medisize and Customer. It shall be governed by and be construed according to its terms and the internal laws of the state of Wisconsin. Wisconsin courts shall be the only forum for any disputes arising hereunder. Phillips-Medisize and Customer consent and submit to the exercise of personal jurisdiction by the courts located in the state of Wisconsin. Any provision hereof prohibited or unenforceable under applicable law shall be ineffective only to such extent and without invalidating the remaining provisions of this document.

2. DELIVERY, CLAIMS, AND DELAYS. For domestic shipments (i.e.: both origin and destination are within the United States), products are sold "F.O.B. Phillips-Medisize's facility" and Customer shall bear all freight costs and risk of loss or damage in transit. For international shipments (i.e.: either origin or destination is outside the United States), products are sold "Ex Works Phillips-Medisize's facility", as that term is defined in Incoterms 2000, and Customer shall bear all freight costs and risk of loss or damage in transit. Any delivery not in dispute shall be paid for regardless of any controversies relating to other products. Claims for shortages or other errors in delivery must be made in writing to Phillips-Medisize within thirty days (30) from date of invoice. Failure to give such notice shall constitute Customer's unqualified acceptance of delivery and waiver of any such claims. All products furnished by Phillips-Medisize shall be subject to commercial variations. A variation of ten percent (10%) or less in the quantity ordered by Customer shall constitute acceptable delivery and shall result in a corresponding percentage price increase or decrease. Phillips-Medisize shall not be liable for any damage resulting from any cause beyond Phillips-Medisize's control, including, without limitation, an act of God, act of the Customer, embargo or other government act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, inability to obtain necessary labor, materials, or manufacturing facilities.

3. RIGHT TO CHANGES. Changes to the product and/or services shall be in accordance with the following provisions.

Custom Products: Phillips-Medisize shall not make any changes to custom products or services produced to customer's specifications without Customer's written authorization.

Standard Products: Phillips-Medisize may at any time make such changes in its standard products or services as shall, in Phillips-Medisize's judgment, constitute an improvement. Phillips-Medisize may furnish suitable substitutes for materials unobtainable because of good or reasonable cause.

Termination for Convenience: The parties hereto may terminate for convenience as follows:

Phillips-Medisize has the right, with thirty (30) days written notice to Customer, to terminate for convenience any of its commitments described on the face hereof, without liability to the Customer other than refunding to Customer any payment made by Customer prior to termination. Phillips-Medisize shall notify Customer of any such termination in writing.

Customer may terminate for convenience at any time, with thirty (30) days written notice to Phillips-Medisize. Customer shall be liable for the price of all finished goods and services and for all cost Phillips-Medisize necessarily incurred in the performance of its obligations prior to the effective date of termination, including but not limited to the cost of work-in-progress and raw materials. For the avoidance of doubt, raw materials include but are not limited to long lead, minimum buy, and non-cancelable or non-returnable materials.

Termination for Breach: Either party may terminate for breach provided the non-breaching party has given thirty (30) days written notice and such breach remains uncured at the expiration of such notice. The terminating party shall have no liability or obligation regarding the products or services that are the subject of such breach. Regarding the products or services, which are not the subject of such breach, a party's liabilities and obligations shall be the same as if the termination were for convenience.

Engineering Change Orders: Any changes in drawings, materials, or design specifications which affect cost will entitle Phillips-Medisize to establish new prices, and if work has been started, Phillips-Medisize shall be properly reimbursed for work already performed regardless of whether products or services are accepted by Customer. Phillips-Medisize similarly reserves the right to establish new prices if changes involve an increase or decrease in the quantities due or in the time required for performance under the order.

Government Regulation: In the event that Phillips-Medisize shall be required by any governmental authority, including government agency, regulatory body, law, rule, regulation, or order, to implement technologies for the protection of the environment, which technologies are not in place as of the date on the face hereof at the Phillips-Medisize facility selected by Phillips-Medisize for production, or to change operations as a result of the environmental impact of the production techniques required to complete Customer's order, Phillips-Medisize shall be entitled to pass to Customer the increased cost to Phillips-Medisize of the required technology and the same shall be deemed added to the prices quoted herein and order(s) submitted.

4. PAYMENT. The price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Quantity prices shall be based on the released amount of each part for each scheduled shipment. Invoices are due and payable within thirty days (30) of date of invoice ("Due Date"). Any amount not paid by such Due Date shall be subject to a finance charge of 1.5% per month until paid. Customer agrees to pay all Phillips-Medisize's reasonable attorney fees, collection fees, and costs arising out of any breach by Customer of this or any subsequent agreement. If the order requires advance payments: (a) Phillips-Medisize is not responsible to pay interest on such payments, and (b) Phillips shall not be obligated to perform upon any order until Phillips-Medisize receives any agreed upon advance payment.

5. TOOLINGS AND MOLDS; SECURITY INTEREST. Tooling prices quoted on the face hereof include molded samples for dimensional approval only. Production samples, validation runs, prototypes, and pilot runs are subject to separate quotation and negotiation. Customer hereby grants to Phillips-Medisize a security interest in all tools, dies, molds, models, prototypes, and other equipment constructed by Phillips-Medisize for Customer (collectively the "Equipment"), to secure all of Customer's obligations to Phillips-Medisize hereunder. Such security interest shall be effective during any period where Phillips-Medisize has not been paid in full for the price of the Equipment or maintenance of the Equipment, (whether or not payment is then due and owing). During such periods, Phillips-Medisize may lawfully retain possession of the Equipment and possession shall constitute perfection of this security interest. Phillips-Medisize shall have all the rights and remedies provided by law, including those of a secured creditor under Chapter 409 of the Wisconsin Statutes. Phillips-Medisize shall not be obligated to retain any tooling or mold beyond its normal productive life, as determined by Phillips-Medisize. Further, Phillips-Medisize shall have no obligation or responsibility to retain any mold after the production of its guaranteed number of parts or for a period longer than one hundred eighty days (180) following completion of the most recent production, model, or prototype order, whichever occurs first.

6. TAXES AND OTHER CHARGES. Any tax, fee, or charge of any nature whatsoever imposed by any governmental authority shall be paid by Customer in addition to the prices quoted or invoiced.

7. SPECIAL FIXTURES. All special inspection jigs and fixtures shall be furnished by Customer.

8. LIMITED WARRANTY. Phillips-Medisize warrants that: (a) standard and custom products supplied hereunder shall be free from defects in materials or workmanship appearing within a period of one year from delivery, (b) services supplied hereunder shall be performed in a professional manor and comply with applicable industry standards, (c) production tooling supplied hereunder shall be free from defects in material or workmanship and be capable of producing the number of units detailed in Phillips-Medisize's proposal provided such tools are used and maintained exclusively by Phillips-Medisize at Phillips-Medisize's facilities, and (d) engineering samples, models, and prototypes shall be built from sound materials and conform to workmanship standards typical for such samples, models, or prototypes. Should the services, products, or production tools supplied hereunder fail to conform to the above stated limited warranty, Phillips-Medisize in its sole discretion shall repair, replace, or refund the purchase price of the non-conforming services, products, or tools. This remedy shall be Customer's exclusive remedy for Phillips-Medisize's breach of warranty. Customer shall give Phillips-Medisize written notice of any alleged non-conformance within ten days (10) after discovery by Customer. Upon request, Customer shall return the allegedly non-conforming item, F.O.B. Phillips-Medisize's facility, transportation charges prepaid. No warranty hereunder shall be assignable or transferable by Customer, or shall inure to any third party. THE FOREGOING LIMITED WARRANTY AND REMEDY ARE EXCLUSIVE AND IN LIEU OF ALL CONTRACT OR TORT LIABILITY AND ALL OTHER WARRANTIES OR RIGHTS OF REJECTION, EXPRESS OR IMPLIED BY LAW, EQUITY, CONTRACT, CUSTOM, USAGE, OR COURSE OF DEALING, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PHILLIPS-MEDISIZE SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, OR CONTINGENT DAMAGES WHATSOEVER.

9. APPROVAL; PATENTS, COPYRIGHTS. Customer shall review and approve all plans, drawings, sketches, renderings, diagrams, specifications, models and prototypes prepared for Customer by Phillips-Medisize (collectively "Design Work"). Such approval shall constitute Customer's warranty and representation to Phillips-Medisize that no Design Work or custom product produced by Phillips-Medisize for Customer infringes upon any patent, copyright, or trade secret. Customer acknowledges that Phillips-Medisize is relying upon Customer's representations herein and that

Phillips-Medisize has not made and is not obligated to make any independent inquiry or investigation. Phillips-Medisize neither warrants nor represents that any products or services furnished hereunder may be patentable or copyrightable.

10. INDEMNITY. Except for Phillips-Medisize's gross negligence or willful misconduct, Customer shall, at no expense to Phillips-Medisize, indemnify, defend, and hold Phillips-Medisize harmless against any and all losses, damages, and expenses (including punitive damages, multiple damages, attorney fees, and other costs of defending any action) that Phillips-Medisize may incur as a result of any claim made against Phillips-Medisize by any person, including, without limitation, Customer, its successors, assigns and customers, actually or allegedly arising in any way out of any of custom products or services furnished hereunder by Phillips-Medisize or out of any products manufactured or sold by Customer, including, without limitation, any claim which in whole or in part actually or allegedly arises out of (a) danger or defect in any product or service sold by Phillips-Medisize to Customer, or (b) infringement by Phillips-Medisize of any patent, copyright, or trade secret relating to any Design Work or to any custom products made by Phillips-Medisize for Customer.

11. TECHNICAL INFORMATION. Any sketches, models, or samples submitted by Phillips-Medisize to Customer shall remain the confidential property of Phillips-Medisize unless or until Customer has paid Phillips-Medisize in full for the same. Customer shall not use or disclose, or permit any other person to use or disclose, any sketches, models, or samples for which Customer has not paid Phillips-Medisize in full and, in any case, shall not reveal any Phillips-Medisize's proprietary design or production technique revealed thereby or inferable there from.

12. NO WAIVER. No provision hereof and no breach of any provision hereof shall be deemed waived by any previous waiver of such provision or of any breach thereof, by any previous custom, practice, or course of dealing or by Phillips-Medisize's failure to object to provisions contained in any communication or order from Customer.