

Hamilton Medical Inc.

Terms and Conditions of Sale

1. Applicability

- 1.1. These terms and conditions of sale (“Terms”) are the only terms which govern the sale of the goods (“Goods”) by Hamilton Medical, Inc., (“Hamilton”) a Nevada corporation, and the Buyer as that term is set out within the signature block of these Terms (“Buyer”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 1.2. In order to meet the needs of State and County tax laws for products and services, it is necessary to place purchase orders with Hamilton by line item as they appear in the final quotation. By stating each item to be delivered on a purchase order, it alleviates issues with tax on services, matching up packing lists with purchased items, priority partial shipments, invoicing shipped items and 3rd party regulatory and warranty issues.

2. Quotations

- 2.1. Quotations shall only be binding if they contain a stated period of validity and upon approval of credit application per consent from the Hamilton finance department.

3. Delivery

- 3.1. The delivery time of a system will be stated on each quotation and will be dependent upon multiple factors such as current resource workload, third party item delivery times. Notwithstanding the foregoing, without prior written notice, in no event will the delivery time exceed ten (10) business days beyond the time stated on the quotation. The delivery time starts with the date of Hamilton order acknowledgement, and ends when the shipment is ready for dispatch or a Site Acceptance Test if required, as stated within the applicable quotation. Compliance with the delivery time is conditional upon the customer fulfilling their contractual obligations, e.g. notification of all essential technical specifications, availability of samples, import permits, down payments, letters of credit etc.
- 3.2. The delivery time is reasonably extended if one of the cases applies:
 - 3.2.1. The information required by Hamilton for performance of the contract is not received in time, or if the customer subsequently changes the contract thereby causing a delivery delay of the Goods. All contract changes require revised Purchase Orders from the customer.
 - 3.2.2. Hindrances occur which prevent Hamilton from performing the contract by force majeure. Hindrances include epidemics, mobilization, war, revolution, serious breakdowns in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, official actions or omissions by any state authorities or public bodies, and natural catastrophes.
- 3.3. If the customer claims damages for delayed delivery, it must be proved that the delay has been caused through Hamilton’s fault and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to claim any delay damages. Any delayed delivery does not entitle the customer to any rights and claims other than those expressly stipulated herein.

4. Shipping Terms, Title and Risk of Loss

- 4.1. Delivery shall be made F.O.B. Hamilton. Title and risk of loss passes to Buyer upon delivery of the Goods to the common carrier.

5. Acceptance

- 5.1. Unless otherwise agreed upon, acceptance shall be affected immediately after configuration and set up at the customer's premises ("Acceptance Date"), with the delivery of a report detailing the installation and current operational status of the machine ("Installation Report"). The customer shall inspect the Goods as provided in Section 6.1 below, and shall immediately notify Hamilton in writing of any deficiencies in the Goods. If the customer fails to do so, the Goods shall be deemed to have been accepted. In no event shall any period of time greater than thirty (30) calendar days be considered a "reasonable period" as set forth above. In addition, acceptance shall also be deemed completed when Hamilton has provided Buyer with an Installation Report for the Goods; or as soon as the customer uses the Goods in a non-acceptance test mode. If the customer delays acceptance, the outstanding amounts are due 30 days after delivery.

6. Inspection and Rejection of Nonconforming Goods

- 6.1. Upon delivery of the Goods and the installation and set up by Hamilton, the Buyer shall be issued, for each machine, an Installation Report at which time, Buyer shall be deemed to have accepted the goods, unless within five (5) business days after receiving the Installation Report Buyer makes a written rejection of the Goods ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Hamilton in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Hamilton. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- 6.2. If Buyer timely notifies Hamilton of any Nonconforming Goods, Hamilton shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the purchase price for such Nonconforming Goods, 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 Goods to Hamilton's facility located at 4990 Energy Way, Reno, Nevada 89502. If Hamilton exercises its option to replace Nonconforming Goods, Hamilton shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Buyer at their location.
- 6.3. Buyer acknowledges and agrees that the remedies set forth in Section 6.2 are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

7. Security Interest

- 7.1. In order to secure payment for the Goods and as collateral security for the payment of the purchase price of the Goods and any other current or future obligations of the Buyer to Hamilton, Buyer hereby grants to Hamilton a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. This security interest will terminate only on the discharge in full of all the payment obligations for purchase of the Goods and all such other obligations of Buyer to Hamilton.

8. Amendment and Modification

- 8.1. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

9. Taxes and Fees

- 9.1. Buyer will pay, when due, all taxes, including sales, use, privilege, excise, personal property, value added, and other taxes, but not federal or state income or franchise taxes imposed on Hamilton, and all other governmental charges, assessments, fees and any related interest or penalties imposed with respect to the Goods or the transactions contemplated by this Agreement. If Buyer fails to pay any such amount when due, Hamilton may elect to pay it and Buyer will promptly reimburse Hamilton for such payment, together with interest from the date paid at the Short Term Quarterly Applicable Federal Rate. If Hamilton is required to obtain any local permit or license to enable it to install the Goods or perform any services for Buyer, Buyer shall reimburse Hamilton for such related fees and charges.

10. Payment Terms

- 10.1. Standard Payment Terms - Buyer shall pay all invoiced amounts due to Hamilton NET30 days from the date after receipt of Hamilton's invoice. Buyer shall make all payments hereunder in US dollars.
- 10.2. Late Payment – Buyer shall pay interest on all late payments at the lesser of the rate of two percent 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Hamilton for all costs incurred in collecting any late payments, including, without limitation, attorney fees and costs. In addition to all other remedies available under these Terms or at law (which Hamilton does not waive by the exercise of any rights hereunder), Hamilton shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) business days following written notice thereof.
- 10.3. No Withholding – Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Hamilton, whether relating to Hamilton's breach, bankruptcy, or otherwise.
- 10.4. Payment Under Protest – Should an invoiced payment be disputed by the customer, customer shall have the opportunity to pay the dispute in full under protest in order to avoid the application of penalties and interest as set out above in Section 10.2 above. Should the dispute be determined and resolved in favor of the customer, customer shall be entitled to reimbursement of the disputed amount, including interest computed at the rate set forth above. Where the dispute is resolved in customer's favor, accrued interest shall inure to the customer from the time of payment under protest to the final determination on the invoice is made. Where the dispute is resolved in favor of Hamilton, accrued interest shall inure to Hamilton from the date that payment was due until resolution of the dispute, and the purchaser shall be liable for all such amounts.

11. Customer Returned Goods

- 11.1. If a customer decides to return goods a fifteen percent (15%) restocking fee will be charged to the customer with the assumption that the original packaging is intact and is used to return said goods or optional custom approved packaging is used to return the product to Hamilton. If the original packaging or custom approved packaging is not utilized, Hamilton has the right not to issue credit for the unit until a damage assessment is completed. No credit will be given on returned customized products, third party equipment or other non-recoverable costs such as method development, training, project management, or application support.

12. Limited Warranty

- 12.1. The parts warranty period is twenty four (24) months and the labor warranty is (12) months from the Acceptance Date. The Acceptance Date shall be that date more fully set out at Section 5 above. The warranty period begins on the Acceptance Date at the time of the Installation Report. Upon written request from the customer, the Hamilton shall quickly repair or replace, at its option, all parts which become defective or unserviceable if determined to be due to bad material, faulty design or poor workmanship. All returned parts which are replaced become the property of the Hamilton. Hamilton is responsible only for the cost of repair or replacement of defective parts. The warranty expressly does not cover consumable parts, damage caused by normal wear, faulty maintenance performed by a third party, failure to observe the operating instructions, and installation not carried out by Hamilton as well as due to other reasons for which Hamilton is not responsible. For Goods or essential components manufactured by a third party and not authorized by Hamilton, there is no warranty.

HAMILTON MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING BUT NOT LIMITED TO ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- 12.2. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11.

For the avoidance of doubt, HAMILTON MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

- 12.3. Hamilton shall not be liable for a breach of the warranty set forth in Section 11 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Hamilton's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Hamilton.
- 12.4. THE REMEDIES SET FORTH IN SECTION 11 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND HAMILTON'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1.

13. Technical data and documents

- 13.1. Technical documents such as drawings, descriptions, illustrations and data on dimensions, performance and weight are for information purposes only and shall not imply any warranties. Hamilton reserves the right to make any necessary changes. All technical documentation and technical data remain the property of the Hamilton and may neither be used for production purposes nor be made available to third parties.

14. Limitation of Liability

- 14.1. IN NO EVENT SHALL HAMILTON BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 14.2. IN NO EVENT SHALL HAMILTON'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO HAMILTON FOR THE GOODS SOLD HEREUNDER.

14.3. The limitation of liability set forth in Section 13.2 above shall not apply to (i) liability resulting from Hamilton's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Hamilton's gross negligent or willful acts or omissions.

15. License Agreement

- 15.1. The computer software programs remain the property of Hamilton. Hamilton grants to customer a non-exclusive license to use the proprietary software programs with the equipment specified in the purchase agreement and under the Terms specified herein. Hamilton is not aware of the rights of any third parties that would oppose the utilization purposes of the licensed software programs. Hamilton warranty expires immediately if changes in the setup of the equipment or the exchange of equipment the licensed software programs are operating take place without written confirmation of Hamilton. After expiry of the warranty period Hamilton will provide error maintenance and other support only if the customer agreed upon and entered into a maintenance and service contract.

16. Patents

- 16.1. Hamilton represents and warrants to Buyer that the manufacture, use or sale of the Goods do not infringe on any patent, trademark or other intellectual property of any third party. Hamilton agrees to indemnify and hold Buyer harmless from all lawsuits, judgments, claims, costs and expenses, including but not limited to reasonable attorney and accountant fees arising in connection with any third party patent infringement claim that have been preapproved in writing by Hamilton. Customer shall promptly, within ten (10) business days, notify and inform Hamilton of any claimed patent infringement claim that has been made against it relating to Hamilton products. If the standard products sold under the present conditions are produced or modified according to customer's specifications, customer agrees to indemnify and hold Hamilton harmless from all lawsuits, judgments, claims, costs and expenses, including but not limited to attorney's and accountant's fees arising in connection with patent infringement involving customer's modifications.

17. Compliance with Law

- 17.1. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

18. Waiver

- 18.1. No waiver by Hamilton of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Hamilton. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Attorney Fees

- 19.1. Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Agreement, other than as expressly set forth in Section 15 above relating to third party patent infringement claims, the parties shall be responsible for their own attorney's and accountant's fees associated with the costs of litigation, and in no even shall the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.

20. Confidential Information

- 20.1. All non-public, confidential or proprietary information of Hamilton, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Hamilton to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Hamilton in writing. Upon Hamilton’s request, Buyer shall promptly return all documents and other materials received from Hamilton. Hamilton shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is:
- (a) in the public domain;
 - (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
- 20.2. The Parties agree, and Buyer specifically agrees, that Hamilton may utilize Buyer information in subsequent marketing and promotional materials. Hamilton agrees not to make claims of satisfaction or other qualitative claims within such promotion and marketing materials, unless expressly authorized by the Buyer ahead of time. The Parties agree to work together on joint press releases where applicable and desirable between the parties.

21. Force Majeure

- 21.1. The Hamilton shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Hamilton including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

22. Assignment

- 22.1. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hamilton. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

23. Relationship of the Parties

- 23.1. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. No Third-Party Beneficiaries

- 24.1. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

25. Governing Law

- 25.1. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Nevada without giving effect to any choice or conflict of law provision or rule (whether of the State of Nevada or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Nevada.

26. Submission to Jurisdiction

- 26.1. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Nevada in each case located in the City of Reno and County of Washoe, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

27. Notices

- 27.1. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the sales confirmation, invoice, or purchase order, or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

28. Severability

- 28.1. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

29. Survival

- 29.1. Provisions of these Terms which by their nature should apply beyond their term will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Section 16 Compliance with Law, Section 20 Confidential Information, Section 25 Governing Law, Section 26 Submission to Jurisdiction, and Section 29 Survival.

30. Representation of Authority

- 30.1. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this agreement and the performance of such party's obligations hereunder have been duly authorized and that this agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

31. Headings

- 31.1. The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

32. Survival

- 32.1. Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive indefinitely after the date of this Agreement.

33. Ambiguities

- 33.1. Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

34. Entire Agreement

- 34.1. This Agreement, contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.
- 34.2. Additional terms and conditions of the Buyer submitted with or at a similar time as a purchase order shall be ineffective, as these Terms shall govern the sale of the Goods. These Terms may not be modified or amended except in writing signed by a dually authorized representative of each Party, and are not to be considered amended by later provided terms and conditions contained within a subsequent purchase order.