



Terms and Conditions

1. The following provisions set forth the Terms and Conditions by which **M. HOLLAND COMPANY**, an Illinois corporation with its principal office located at 400 Skokie Boulevard, Suite 600, Northbrook, IL 60062, together with its affiliated companies (“Seller”), shall, as the case may be, sell goods to a buyer (“Buyer”) of its goods and by which such Buyer shall be bound upon any purchase of goods from Seller.
2. These Terms and Conditions constitute the sole and complete agreement between Seller and Buyer covering the sale of goods by Seller to Buyer and shall apply as if made and agreed to each and every time Seller and Buyer enter into a transaction by which Buyer purchases goods from Seller. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to interpret or determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, warranties, understandings or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein. The terms hereof can only be modified by a writing signed by Seller and Buyer or their duly authorized agents. Seller shall not be bound by any additional provisions (including, without limitation, provisions at variance herewith) that may appear in Buyer’s purchase order, terms and conditions or acknowledgment or in any other communication from Buyer to Seller, unless such provisions are expressly agreed to in writing signed by Seller. Neither Seller’s acceptance of payment for goods nor any other action or inaction on the part of Seller shall constitute acceptance of any counter-proposal, purchase order, terms and conditions, acknowledgment or other communication from Buyer to Seller not otherwise accepted in writing by Seller.

REFERENCE IS MADE TO SELLER'S MEDICAL, PHARMACEUTICAL AND RELATED APPLICATIONS POLICY (THE "MEDICAL POLICY") WHICH IS INCLUDED AT THE END OF THESE TERMS AND CONDITIONS. BY SUBMITTING ITS ORDER FOR GOODS, BUYER AGREES, CERTIFIES, REPRESENTS AND WARRANTS THAT IT HAS FULLY COMPLIED, AND AT ALL TIMES WILL BE IN FULL COMPLIANCE, WITH THE MEDICAL POLICY.

3. Seller’s shipment of goods or dispatch of an invoice for the sale of goods to Buyer or actions or commitments taken to facilitate execution and/or completion of the shipment of goods or dispatch of an invoice, whichever occurs first, constitutes acceptance of Buyer’s order, which order becomes non-cancellable upon such shipment or invoice, unless (i) Seller, at its sole discretion, shall consent or otherwise provide in writing and (ii) Buyer shall pay a minimum charge of 15% of the price of the cancelled portion plus the full cost of any special order or non-standard goods manufactured or purchased, or for which commitments have been made, specifically for that portion of the order which has been cancelled, plus any sales expense incurred by Seller, plus all storage, transportation and carrier charges incurred incident to the cancellation.
4. All prices of goods sold to Buyer are quoted on the basis of current prices at the time of the order. Seller reserves the right to increase the price per pound of goods sold pursuant to an order in accordance with current prices in effect at the time of shipment to Buyer or to reflect adverse market changes occurring prior to shipment. Buyer shall have the right to cancel such order in the event that it does not accept said price increase quoted by Seller provided that it notifies Seller in writing within two (2) days from the time it receives said notice of price increase. Buyer shall also be responsible to pay all sales or use taxes, excise taxes, duties, customs, import or export fees, and any other taxes, fees or charges of any nature applicable to Buyer's purchase of goods.
5. All payments on invoices are to be made in United States currency (unless another currency is agreed to in writing by Seller in advance of shipment), upon the terms and conditions set forth in such invoices. Seller reserves the right to restrict or alter the terms of payment or to require payment prior to time of shipment if in Seller’s opinion Buyer’s financial condition or other circumstances do not warrant shipment on the terms originally specified in Buyer’s order. If Buyer defaults on payment under the terms agreed with Seller or otherwise, Seller shall have the right to seek payment in full by whatever means necessary or appropriate. Buyer agrees to pay reasonable costs of collection, including, without limitation, agency fees and attorney’s fees.
6. Unless specified by Seller to the contrary in writing, all goods sold by Seller to Buyer shall be delivered F.O.B. Seller’s shipping point where the transfer of custody of such goods from Seller to Buyer shall occur (“Point of Delivery”). Title and risk of loss shall pass to Buyer at the Point of Delivery irrespective of whether Seller has sold the goods “freight prepaid” and notwithstanding any right of Buyer to cancel or return goods. In the event Seller is forced to delay delivery of goods to the initial carrier due to any action or request of Buyer, risk of loss or damage shall have passed upon the date Seller would have otherwise delivered the goods to the Point of Delivery; Buyer agrees to pay all reasonable storage and insurance charges specified by Seller. In the event goods are returned pursuant to paragraph 8,

risk of loss or damage shall remain upon Buyer until the goods are delivered to Seller's original Point of Delivery and accepted by Seller. Buyer agrees to indemnify and hold harmless Seller from any loss of or damage to the goods or consequence thereof sustained while the risk of such loss or damage remains with Buyer. Where goods are delivered in bulk by railcar, Buyer will be responsible for demurrage charges of \$50 US Dollars (fifty dollars) per calendar day for each day that railcars are kept beyond sixty days from the date of constructive placement. If, however, the shipper and/or rail carrier imposes higher demurrage charges, Buyer will be responsible for the higher costs.

7. Buyer waives all claims (including, without limitation, claims for shortages, defects or damages), regardless of the nature of said claim, unless it notifies Seller in writing within two (2) days after its receipt of any delivered goods, or should there be then-concealed shortages, defects or damages, within ten (10) days after its receipt of such goods. Should there be shortages, defects or damages observable at the time of delivery, Buyer must note such shortages, defects or damages on freight bills signed upon such delivery and also obtain the signature of the carrier on the freight bills at such time. If Buyer shall fail to so notify Seller within the above referenced applicable period, then such goods shall conclusively be deemed to conform to their respective specifications and to have been irrevocably accepted by Buyer. In the event that the condition, weight or quantity of any goods indicated on the certified scale tickets or on the carrier's freight bills signed by the carrier upon loading of any goods by Seller at the Point of Delivery differs from that indicated on the certified scale tickets or on the carriers freight bills signed by the carrier upon physical delivery to Buyer, Buyer shall file such claims for damages with the carrier as may be appropriate.

BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO ANY GOODS SOLD TO BUYER OR OTHERWISE ARISING UNDER THESE TERMS AND CONDITIONS OR UNDERLYING WRITTEN AGREEMENTS, IF ANY, BETWEEN THE PARTIES WITHIN ONE (1) YEAR AFTER THE DATE OF PHYSICAL DELIVERY OF SUCH GOODS SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.

Defective or damaged goods may not be returned without the express written consent of Seller. Goods so returned will be, at Seller's option, replaced or credited, but Seller shall not be liable for any loss, damage or expense directly or indirectly arising from the handling or use of goods returned by Buyer. Seller reserves the right to deduct from any credit due Buyer for returned goods any extraordinary costs or expenses incurred by Seller in the handling, use, storage or transporting of goods returned by Buyer. The provisions of this paragraph shall be the exclusive and sole remedy of Buyer with respect to defective or damaged goods, and Buyer shall have no further rights other than what is specified herein.

Conforming goods may not be returned for credit except with Seller's prior written agreement, and then only in strict compliance with Seller's instructions. Any returned goods may be subject to a restocking fee to be determined by Seller. Under no circumstances will Seller accept for return any special order or non-standard goods or any goods that are in a non-saleable condition.

Blanket (standing) Orders may be accepted by Seller on behalf of Buyer under which goods will be shipped, from time to time, pursuant to an agreed upon schedule. Once a Blanket Order has been accepted, however, Buyer will not be permitted to cancel or change such Blanket Order without Seller's prior written agreement. Subject to paragraph 5, all Blanket orders will be invoiced according to the shipping schedule in place at the time of the Blanket Order. Upon request, Seller may furnish such technical advice as it has available in reference to the use of goods by Buyer, it being expressly understood, however, that all such technical advice is given gratis and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given to and accepted by Buyer at Buyer's risk.

8. Buyer acknowledges that the goods sold to Buyer may be considered hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller) with any hazard of such goods and their applications and the containers in which the goods are shipped. Buyer agrees to inform and train its employees and customers as to such hazards. Buyer shall handle, store, dispose and transport all goods in an environmentally responsible manner and in compliance with all applicable laws and regulations. Buyer shall notify Seller promptly of any claims relating to the handling, storing, disposition, transport or use of goods sold by Seller to Buyer.
9. **GOODS SOLD TO BUYER ARE PURCHASED BY BUYER "AS IS" AND "WITH ALL FAULTS." SELLER NEITHER GIVES NOR MAKES (AND EXPRESSLY DISCLAIMS) ANY WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL OR ALLEGEDLY ARISING FROM ANY TRADE USAGE OR ANY COURSE OF DEALING, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, PRODUCTIVENESS, OR ANY OTHER MATTER, OF ANY GOODS WHICH SELLER SHALL SUPPLY. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE. SELLER SHALL BE IN NO WAY RESPONSIBLE FOR THE PROPER USE, STORAGE, TRANSPORTATION, HANDLING, DISPOSAL AND**

SERVICE OF THE GOODS. BUYER ASSUMES ALL RISKS PERTAINING TO THE USE AND THE RESULTS OBTAINED THEREFROM OF ALL GOODS WHICH SELLER MAY SUPPLY.

SELLER'S TOTAL LIABILITY ARISING FROM ANY SALE OF GOODS TO BUYER FOR ANY CLAIMS OF ANY NATURE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE GOODS IN RESPECT OF WHICH SUCH CLAIMS ARE MADE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY OR PUNITIVE DAMAGES INCURRED BY BUYER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10. BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER AND ITS AFFILIATES, AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, EMPLOYEES AND INSUREDS HARMLESS FROM AND AGAINST ANY AND ALL BREACHES OF AND DEFAULTS UNDER THESE TERMS AND CONDITIONS BY BUYER AND ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY AND CLAIMS THEREOF FOR INJURY OR DEATH TO ANY PERSON (INCLUDING, WITHOUT LIMITATION, BUYER'S EMPLOYEES, CUSTOMERS, REPRESENTATIVES AND AGENTS) OR FOR LOSS OF OR DAMAGE TO PROPERTY ARISING OUT OF, CONNECTED WITH OR RELATING IN ANY WAY TO BUYER'S PERFORMANCE OR ACTIONS FOLLOWING SALE OF THE GOODS FURNISHED BY SELLER TO BUYER (WHETHER IN THEIR ORIGINAL FORM AS SHIPPED BY SELLER OR AS A PRODUCT MADE FROM OR INCORPORATING SUCH GOODS), TOGETHER WITH ALL RELATED EXPENSES AND COSTS (INCLUDING, WITHOUT LIMITATION, COSTS AND FEES OF LEGAL COUNSEL AND ALL OTHER COSTS OF DEFENDING ANY ACTION) (COLLECTIVELY, "CLAIMS"). THE FOREGOING SHALL APPLY WHETHER OR NOT SELLER WAS OR IS CLAIMED TO BE PASSIVELY, CONCURRENTLY OR ACTIVELY NEGLIGENT, AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT IS IMPOSED OR SOUGHT TO BE IMPOSED ON SELLER, AND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THESE TERMS AND CONDITIONS AND THE COMPLETION OR CANCELLATION OF THE APPLICABLE TRANSACTION BETWEEN BUYER AND SELLER.
11. This agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its principles of conflicts of law. With respect to any disputes pertaining to these terms and conditions or the goods sold by Seller to Buyer, the parties consent to the jurisdiction of the federal and state courts whose venue includes Cook County, Illinois.
12. Seller's failure to strictly enforce any term or condition contained herein shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions at any time in the future. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions hereof.
13. Goods sold to Buyer by Seller are in partial consideration of Buyer's agreement, and Buyer hereby represents and warrants, that such goods will not, directly or indirectly, by Buyer, its customers or any third party be sold for or used in any of the following without prior written approval by Seller (and, as appropriate, the manufacturers of goods) for each specific product and application: (i) U.S. FDA Class I or Class II Medical Devices; (ii) Health Canada Class I, Class II or Class III Medical Devices; (iii) European Union Class I or Class II Medical Devices; (iv) film, overwrap and/or product packaging that is considered a part or component of one of the aforementioned medical devices; (v) packaging in direct contact with a pharmaceutical active ingredient and/or dosage form that is intended for inhalation, injection, intravenous administration, nasal spray or ophthalmic (eye) administration; and (vi) tobacco related products and applications. Buyer further warrants that such goods will not, directly or indirectly, by Buyer, its customers or any third party be sold for or used in any of the following applications: (i) U.S. FDA Class III Medical Devices; (ii) Health Canada Class IV Medical Devices; (iii) European Class III Medical Devices; (iv) applications involving permanent implantation into the body; life-sustaining medical applications; and (v) lead, asbestos or MTBE related applications. All references to U.S. FDA, Health Canada and European Union regulations include another country's equivalent regulatory classification. In addition to the foregoing, Buyer acknowledges that it has reviewed the Medical Policy (which follows) and shall at all times be in full compliance therewith.

Medical, Pharmaceutical and Related Applications Policy.

Seller will not knowingly sell any products into or for use in any commercial or developmental application that is intended for:

- (a) Long-term or permanent contact with internal bodily tissues or fluids, or fluids entering the body. "Long-term" is contact which exceeds 24 hours, whether on a continual basis or a cumulative basis with respect to intermittent use;
- (b) Use in cardiac prosthetic devices (including, without limitation, pacemaker leads and devices, artificial hearts, heart valves, intra-aortic balloons and control systems, and ventricular bypass-assisted devices) regardless of the length of time involved;
- (c) Use as an essential or critical component in medical devices that support or sustain human life;
- (d) Use specifically by pregnant women, or in applications designed to promote or interfere with human reproduction;
- (e) Use in pharmaceutical devices and/or applications; or
- (f) Use in ancillary medical support articles and laboratory testing parts.

Seller does not endorse, recommend or claim suitability of its products for specific medical, pharmaceutical or related applications. It is the sole responsibility of a customer to determine whether any product of Seller is safe, lawful and technically suitable for its intended use. Seller is not responsible for any processing or compounding which may occur to produce finished product, articles, packaging materials or their components.

SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUITABILITY OF ANY OF SELLER'S PRODUCTS FOR USE IN MEDICAL, PHARMACEUTICAL AND RELATED APPLICATIONS, OR THE SUITABILITY OF ANY MEDICAL DEVICE OR OTHER PRODUCT MADE, WHOLLY OR IN PART, FROM ANY OF SELLER'S PRODUCTS.

In the event that a Buyer is considering the use of any of Seller's products in medical, pharmaceutical and related applications, Buyer must, prior to the submission of an order for such product, notify Seller of such fact so that Seller and the manufacturer of such product may conduct an appropriate assessment and determination with respect to whether the customer will be permitted to use such product in such applications. Buyer must promptly furnish all information, studies, data, request forms and other materials as Seller and the manufacturer of such product may request to facilitate such assessment and determination, and fully and completely satisfy and comply with any and all compliance procedures established by Seller and the manufacturer. If a determination is made by Seller and the manufacturer to permit use of such product in such applications, then Buyer shall enter into such ancillary and supplemental documentation and agreements as Seller and the manufacturer may require. Under no circumstances may Buyer use such product in such applications unless Buyer complies with the foregoing and receives the consent and approval of both Seller and the manufacturer.