



## RESOLUTION MEDICAL GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the Goods (as defined below) by Resolution Medical (“**Seller**”) to the purchaser set forth on the sales confirmation to which these Terms are attached (“**Buyer**” and together with Seller, collectively, the “**Parties**” and individually, a “**Party**”). The “**Goods**” means Lattice Nasopharyngeal Swabs to be delivered individually packaged, non-sterile, and ready for autoclave. The Goods and Resolution Medical are FDA registered. The Goods are a Class I, 510(k) Exempt, in vitro diagnostic medical device.

(b) The accompanying sales confirmation (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

### 2. Shipment and Delivery.

(a) Goods will be shipped EXW INCOTERMS 2010 Seller’s loading dock located in Minneapolis, MN. Upon tender to a mutually agreed upon carrier, Buyer will bear all risk of loss, delay, or damage in transit, as well as the cost of all freight and insurance of each shipment. Seller may, upon agreement by Parties, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(b) Unless expressly agreed to by the Parties in writing, Seller shall ship the Goods to the delivery location set forth on the Sales Confirmation (the “**Delivery Point**”) using Seller’s standard methods for packaging such Goods. Buyer shall take delivery of the Goods immediately upon delivery of the Goods to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Goods shall be deemed to have been delivered; and (ii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. **Title and Risk of Loss.** Title and risk of loss to the Goods passes to Buyer upon tender of the Goods to the carrier at Seller's loading dock located in Minneapolis, MN. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller 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 Minnesota Uniform Commercial Code.

6. **Amendment and Modification.** Seller reserves the right at any time to amend these terms and conditions, and Buyer shall be deemed to accept such amended terms and conditions by ordering products after the date of such amendment.

7. **Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods within five (5) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**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.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Upon request, Buyer shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to Seller's facility located at 42 Northern Stacks Dr. Suite 200 Minneapolis, MN 55421.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. **Price & Payment Terms.**

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") agreed upon by the Parties as of the date of Buyer's purchase order by one of the following payment methods & terms:

(i) Payment via credit card: payable in full prior to shipping; or

(ii) Payment via wire transfer: 20% payable prior to shipping and the balance payable net 30 of the date of the invoice.

(b) Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of all 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 Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes

imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

(c) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller 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 days following written notice thereof.

(d) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

9. Cancellation or Change of Purchase Order. Buyer shall have no right to cancel or amend any Purchase Order submitted by it. In the event Buyer desires to cancel or amend any Purchase Order, Buyer shall notify Seller of such request in writing as soon as possible (each a "**Cancellation Notice**" or "**Change Notice**," as the case may be). Upon receipt of a Cancellation Notice or Change Notice, Seller may, in its sole and absolute discretion, either: (a) reject such request; or (b) within 7 days of receipt of the Cancellation Notice or Change Notice, accept such request; provided, however, that (i) with respect to any accepted Cancellation Notice, Buyer shall pay Seller an amount equal to all costs incurred by Seller in connection with such Purchase Order (including, without limitation, the cost of any materials, labor and credit card processing fees), plus a \$300 cancellation fee; and (ii) with respect to any accepted Change Notice, Seller shall submit to Buyer its good faith description of the impact of such changes on the applicable Purchase Order and Buyer may either submit an amended Purchase Order reflecting all of Seller's changes or reject Seller's changes thereby terminating its Change Notice. Failure of Seller to timely accept a Cancellation Notice or Change Notice shall constitute a rejection of the request.

10. Prohibition of Resale. Buyer shall purchase the Goods for its own use only, and shall not resell the Goods to any other party. Buyer represents it has evaluated the Goods and that they are acceptable and clinically suitable for its intended purposes.

11. Withdrawal of Goods. If Seller determines that any Goods sold to Buyer may be defective, at Seller's request, Buyer shall withdraw all similar Goods from sale and, at Seller's option, either return such Goods to Seller's place of business at Seller's cost or destroy the Goods and provide Seller with written certification of such destruction. If Buyer returns all withdrawn Goods or destroys all withdrawn Goods and provides Seller with written certification of such destruction within five (5) days following Seller's withdrawal request, in either case consistent with Seller's instructions, Seller shall (a) repair or replace all such returned Goods or (b) replace such destroyed Goods. Buyer's remedy hereunder is not available if (i) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (ii) Buyer alters or repairs such Goods without the prior written consent of Seller. **THIS SECTION SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION.**

12. Product Warranty.

(a) Limited Warranty & Extent of Liability. Seller warrants solely to Buyer that, for a period of ten (10) days (the "**Warranty Period**") from date of shipment from Seller, the Goods will be free from significant defects in material and workmanship and design. Seller further represents and warrants that the Goods shall be safe for their intended use. Notwithstanding the foregoing, Buyer shall be responsible for preparation and use of Good in accordance with the IFU. If any Goods fail to meet the warranties set forth in this Statement and a claim is made by Buyer on account of such defect prior to the expiration of the Warranty Period, Seller shall, in its reasonable discretion, either replace the defective Goods with substantially similar Goods or credit Buyer. Seller shall bear all costs of returning and replacing the defective Goods, as well as all risk of loss or damage to the

defective Goods from and after the time they leave the physical possession of Buyer. The warranties under this Statement do not apply where the Goods have (A) been subjected to abuse, misuse, neglect, negligence, accident, improper autoclave cycle, parameters and procedures, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller; (B) been reconstructed, repaired, or altered by Persons other than Seller or its authorized Representative; or (C) been used with any third-party product, hardware or product that has not been previously approved in writing by Seller. Buyer acknowledges that the warranties set forth herein are personal to Buyer and may be enforced against Seller solely by Buyer. No third party (including without limitation, any patients) shall have any rights to enforce any such warranties against Seller. All claims for breach of a Limited Warranty must be received by Seller no later than five (5) business days after the expiration of the limited warranty period of the Good. **THIS SECTION 11(a) SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO THE GOODS.**

(b) Warranties Disclaimer; Non-Reliance. **EXCEPT FOR THE LIMITED EXPRESS WARRANTIES DESCRIBED IN SECTION 11(a), (i) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY; TITLE; OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (ii) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 11(a) OF THIS AGREEMENT.**

13. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'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 LESSER OF THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER OR THE MINIMUM INSURANCE COVERAGE IN SECTION 13.**

(c) **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.**

14. Insurance. During the term of this Agreement and for a period of three (3) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with sixty (60) days' advance written

notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

15. Compliance with Law. 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. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

17. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

18. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller 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 Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller 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.

19. Force Majeure. The Seller 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 Seller 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, provided that, if the event in question continues for a continuous period in excess of 90 days, Buyer shall be entitled to give notice in writing to Seller to terminate this Agreement.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. 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.

21. Relationship of the Parties. 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.
22. No Third-Party Beneficiaries. 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.
23. Governing Law. 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 Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota. For purposes of clarity, the UN Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
24. Submission to Jurisdiction. 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 Minnesota in each case located in the City of Minneapolis and County of Hennepin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
25. Notices. 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 face of the Sales Confirmation 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), facsimile (with confirmation of transmission) 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.
26. Severability. 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.
27. Survival. Subject to the limitations and other provisions of this Agreement, Sections 9, 10, 12, 13, 14, 16, 17, 19, 21, 22, 23, 25, and 26 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement. Notwithstanding any right under any applicable statute of limitations to bring a claim, no lawsuit or other action based on or arising in any way out of this Agreement may be brought by either Party after the applicable survival period’s expiration; provided, however, that the foregoing limitation does not apply to the collection of any amounts due to Seller under the Agreement; and provided, further, that any claims asserted in good faith with reasonable specificity and in writing by Notice before the applicable survival period’s expiration is not thereafter barred by the relevant period’s expiration, and these claims survive until finally resolved.

Thank you for your business!