



GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of goods and/or equipment ("**Goods**") and services (other than maintenance services) ("**Services**") by Motus GI, Inc. ("**Seller**") to the buyer identified on Seller's Sales Order ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying Sales Order 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. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the parties, (i) Seller shall deliver the Goods to the location specified in the Sales Order (the "**Delivery Point**") using FedEx Ground delivery services, and (ii) Buyer shall be responsible for shipping costs associated with the delivery of the Goods and shall either pay the applicable delivery service or reimburse Seller, at Seller's option, for same. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Seller may, in its sole discretion, 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. 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) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) 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). Seller shall make delivery in accordance with the terms on the face of the Sales Order.

(b) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Order, and any such dates shall be estimates only. With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and



comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Title and Risk of Loss. Except as otherwise set forth herein (including, without limitation, the second sentence of Section 2(a) above), title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. 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 applicable Uniform Commercial Code.

4. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within twenty-four (24) hours 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. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (iii) replace such Nonconforming Goods with conforming Goods, or (iv) credit or refund the 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 and otherwise in accordance with Seller's instructions, the Nonconforming Goods to Seller's facility but only if and to the extent Buyer receives prior written authorization from Seller in accordance with Section 5(c) to do so. Notwithstanding the foregoing, Seller will not accept returns from any person or entity other than Buyer and unauthorized returns will be destroyed without the issuance of a refund, credit or other remuneration to Buyer.

(b) If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) In order for Buyer to obtain Seller's prior written authorization to return Goods pursuant to Section 5(a), Buyer must email Seller a request for same to customer@motusgi.com. Such email must include Buyer's account name, complete billing and shipping addresses, contact name and contact phone number, as well as a brief explanation of the applicable issue and the product number of the Good Buyer desires to return.

(d) Buyer acknowledges and agrees that the remedies set forth in this Section 5 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this



Section 5, 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.

6. Price. Buyer shall purchase the Goods and Services from Seller at the prices (the "**Prices**") set forth in the Sales Order. The Prices are net of discounts provided at the time of purchase. Buyer must: (a) claim the value of all discounts in Buyer's fiscal year earned or the immediately following fiscal year; (b) properly report and appropriately reflect discounts in Medicare/Medicaid cost reports and all claims for payment filed with third party payors as required by law or contract; and (c) provide agents of the United States or a state agency with access to all information from Seller concerning discounts upon request. 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, personal or real property, or other assets.

7. Payment Terms. Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars. 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 or performance of any Services if Buyer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof. 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.

8. Limited Warranty.

(a) (i) Seller warrants to Buyer that for a period of 12 months from the date of shipment of the Goods (or such shorter period as may be indicated on the packaging for such Goods) ("**Warranty Period**"), such Goods will materially conform to Seller's published specifications in effect as of the date of shipment and will be free from material defects in material and workmanship. (ii) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, and shall devote adequate resources to meet its obligations under this Agreement.

(b) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) 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; IT BEING UNDERSTOOD THAT ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute or contain, or be contained in, incorporated into, attached to or packaged together with, the Goods.



Third Party Products are not covered by the warranty in 8(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) 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; IT BEING UNDERSTOOD THAT ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.**

(d) Seller shall not be liable for a breach of the warranties set forth in Section 8(a) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Seller within 14 days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 8(a)(i) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business in accordance with Seller's instructions at Seller's cost for the examination to take place there; (iii) Seller reasonably verifies Buyer's claim that the Goods or Services are defective; and (iv) with respect to Pure-Vu disposable kits, such kits are in their original, unopened outer carton. In addition, the Seller shall not be liable for a breach of the warranty set forth in Section 8(a)(i) if: (v) Buyer makes any further use of such Goods after giving such notice; (vi) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, handling, installation, commissioning, use or maintenance of the Goods or otherwise because of misconduct, misuse, abuse or negligence; (vii) the defect arises because of interaction of the Goods with third party equipment, products or software not approved by Seller; (viii) Buyer alters or repairs such Goods without the prior written consent of Seller; (ix) the defect arises in relation to single devices (packaged in pouches); or (x) the defect arises in Goods that have been opened, partly used or from which the labels or seals have been removed or tampered.

(e) Subject to Section 8(d) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the Prices of such Goods at the pro rata contract rate; provided that, if Seller so requests, Buyer shall, at Seller's expense and in accordance with Seller's instructions, return such Goods to Seller. Notwithstanding the foregoing, Seller will not accept returns from any person or entity other than Buyer and unauthorized returns will be destroyed without the issuance of a refund, credit or other remuneration to Buyer. Subject to Section 8(d) above, with respect to any Services subject to a claim under the warranty set forth in Section 8(a)(ii), Seller shall, in its sole discretion, (iii) repair or re-perform the applicable Services or (iv) credit or refund the Prices of such Services at the pro rata contract rate. **THE REMEDIES SET FORTH IN THIS SECTION 8(E) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 8(A).**

9. Limitation of Liability. **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. 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 TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

10. Acknowledgements and Covenants. Buyer acknowledges and agrees that neither Buyer nor any physician, nurse or other Health Care Professional (as defined by the AdvaMed Code of Ethics on Interactions with Health Care Professionals) affiliated with Buyer has or will receive any reimbursement or other payment for the Goods or Services provided hereunder from any governmental or third party payor and that none of Medicare, Medicaid, any of their state equivalents or any other governmental entity is or will be providing separate reimbursement or otherwise making separate payment for any of the Goods or Services. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all licenses, permissions, authorizations, consents, and permits required 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.

11. 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: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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.

12. 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 by either party 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 by either party hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege of such party.

13. 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, research, 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, may be used by Buyer solely for the performance of this Agreement and may not be disclosed or copied by Buyer 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.

14. 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.

15. Governing Law and Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida. 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 Florida in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. Notices. All notices, requests, 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 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), 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.

17. Miscellaneous. 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. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Governing Law, Submission to Jurisdiction and Miscellaneous. 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. 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. 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. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.