



**TRANSBOTICS**

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## TRANSBOTICS CORPORATION TERMS AND CONDITIONS OF SALE DISTRIBUTION PARTS

[Rev. 02-15-2005]

1. **Acceptance.** All orders received by Transbotics Corporation (hereinafter referred to as "the Company") are subject to final acceptance or confirmation by Company, and no terms or orders are binding upon Company until so accepted.

2. **Deliveries.** Unless otherwise specified by Company in writing, all deliveries are F.O.B. Company's place of business (UCC terms). All deliveries shall be made via common carrier or some other reasonable means chosen by Company. All risk of loss or damage to Products sold shall pass to Purchaser upon delivery by Company of such Products to a common carrier. Delivery is conditional on timely receipt by Company of documents necessary for the completion of the order (including, without limitation, all technical documentation and data, if any), any down payment, and Purchaser's compliance with these terms and conditions. Partial deliveries are permissible. Company will use reasonable efforts to meet delivery schedules, but Company will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of Products, or for any damages suffered by Purchaser or Purchaser's employees, agents, or customers by reason of such delay. Delivery is subject to Purchaser maintaining credit satisfactory to Company. Company may suspend or delay performance or delivery at any time, pending receipt of assurances, including full or partial prepayment or payment of any outstanding amounts owed, adequate to Company in its discretion of Purchaser's ability to pay. Failure to provide such assurances shall entitle Company to terminate this order without further liability or obligation to Purchaser and permit Company to seek damages for Purchaser's failure to perform hereunder.

3. **Prices.** Unless otherwise specified by Company, prices are quoted FOB Company's place of business (UCC terms). Published or quoted Prices are subject to change by Company without notice, and those prices set forth on Company's order confirmation or invoice will apply to the order. Prices do not include sales, use, excise, privilege, or any similar transaction tax levied by any government, and any such applicable tax shall be paid by Purchaser. Purchaser shall, upon the request of Company, provide Company a tax exemption certificate acceptable to the appropriate taxing authorities.

4. **Terms of Payment.** Unless otherwise specified by Company in writing, the purchase price shall be due in full by Purchaser on tender of invoice, which may be with delivery of the Products. Extension of credit, if any, may be changed or withdrawn by Company at any time. Invoices not paid within thirty (30) days after their due date will be subject to annual interest in the amount of four percentage points over prime of any overdue, unpaid balance, calculated monthly in arrears from and after the thirty-first day after the due date, or the maximum rate permitted by law, whichever is less. Purchaser may not hold back or set off any amounts owed to Company in satisfaction of any claims asserted by Purchaser against Company.

5. **Returned Goods and Claims.** Within ten (10) business days after receipt by Purchaser of Products sold, Purchaser must give written notice to the Company of any claim by it based upon the condition, quantity, or grade of the Products sold, or of any claimed nonconformity with Purchaser's specifications, which notice must indicate the basis of Purchaser's claim in detail. The failure of Purchaser to comply with this paragraph shall constitute irrevocable acceptance by Purchaser of the Products delivered. Products may not be returned until Company issues a Return Materials Authorization. Purchaser must either reject and return the Products or pay the purchase price. Under no circumstances shall Purchaser have the right to retain the Products and withhold any payment based on the condition of the Product.

6. **Cancellations / Changes.** An order, once placed with and accepted by the Company, can be canceled by Purchaser only with the written consent of the Company and upon terms that will indemnify the Company against any loss, including lost profit on the canceled order. Company may correct mathematical or clerical errors.

7. **Limited Warranties.**

- 7.1. COMPANY MAKES NO WARRANTY OF ANY KIND with respect to design, materials, workmanship, or quality, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE for all Products that Company does not design or manufacture. Company agrees to cooperate with Purchaser to obtain full benefit of the manufacturer's warranties, if any.
- 7.2. For those Hardware Products designed or manufactured by Company, Company warrants each Product at the time of delivery is free of material defects in workmanship and materials for one (1) year from completion of the installation of the Products, but in no event shall such warranty exceed eighteen (18) months from date of shipment of goods.
- 7.3. Company shall repair and/or replace, at its option, free of charge, those Hardware Products found to be defective and under warranty; provided, however, that Purchaser must provide proof of purchase of such defective Hardware Product;
  - 7.3.1. Purchaser shall bear the cost of freight, packaging, and insurance charges for shipment of the Hardware Product back to the Company; and Purchaser shall request from Company a Return Material Authorization (RMA) prior to shipping the defective material back to Company.
  - 7.3.2. In the event the Hardware Product is not covered by the foregoing warranty, Company shall provide Purchaser with an estimated cost of repair or replacement of such Hardware Product, if Company believes it can repair or replace such Hardware Product. Thereafter, Company shall attempt to repair or replace the Hardware Product if requested to do so in writing by Purchaser. Standard Company charges shall apply. In such event, all costs of freight, packaging, and insurance shall be the responsibility of Purchaser.
- 7.4. For those Software Products designed and produced by Company, and for which Purchaser has paid Company's maintenance fee, maintenance support will be furnished by Company to Purchaser for a period of twelve (12) months from date of Software Product delivery, provided Purchaser has returned to Company appropriately executed registration cards for the software Product and has obtained a valid license. Maintenance support shall consist of a Company's best efforts during normal business hours and subject to staff availability to correct documented software errors reported to Company by Purchaser.
- 7.5. THERE ARE NO WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, MADE OR EXTENDED WITH RESPECT TO SOFTWARE PRODUCTS OR COMPANY MAINTENANCE. The entire risk as to the results, performance, and suitability of the Software Product is assumed by the Purchaser.
- 7.6. The foregoing limited warranties and maintenance support, where applicable, are given in lieu of all other warranties of Product, expressed or implied, and state Company's entire obligation with respect to defects or non-conformities in Products. Company shall not be liable for, and this limited warranty or maintenance support agreement where otherwise applicable, shall not apply to Product failures, non-conformities, errors or defects caused, in whole or in part, by improper installation by an entity or person other than Company, failure to follow written Company instructions or recommendations, use or application of the Products inconsistent with Product specifications or performance parameters, unauthorized repair or modifications, defects or failures of or incompatibility with other materials, components assemblies on software used in the final Product assembled or installed by or on behalf of Purchaser, negligent or improper storage or handling, storage or use under adverse environmental conditions as specified in appropriate Company literature, acts of nature or force majeure, including lightning, wind, storm, flood, rain earthquake, or other natural calamity. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. Company shall not be liable for incidental or consequential damages, including loss of profits or damage to products supplied by or belonging to others, in connection with a breach of warranty or shipment delays. This limited warranty is Purchaser's exclusive remedy and, except as herein provided, Company shall not be liable to Purchaser in any other manner with respect to Products. It shall not be deemed to have failed of its essential purpose so long as Company is willing and able to replace or repair defective Products covered by the limited warranty in the manner specified. In no event shall Company's liability to Purchaser ever exceed the original purchase price of defective Products.
- 7.7. The warranty provided herein shall be Purchaser's sole remedy against the Company. Purchaser agrees to hold Company harmless for any and all other claims arising out of or relating to the products, goods or services purchased pursuant to these Terms and Conditions of Sales.

8. **Repairs.** Company warrants that all repairs made by it will be done using new or as new parts, and that all workmanship shall be free from defect for a period of thirty (30) days after redelivery of the repaired Product to Customer. Company will correct any repair determined by it to have been defective if such defective repair is reported to Company within thirty (30) days after the completion of the repair. Any work performed by Company which it determines not to be covered by this limited repair warranty will be charged to Purchaser at Company's normal rates on a time and materials basis. Company makes no other warranties, express or implied, with respect to its repairs, including implied warranties of merchantability and fitness for a particular purpose.

9. **Engineering Services.** Company shall use due diligence and adhere to prevailing national standards of professionalism in the rendering of all engineering services. Company makes no other warranties, express or implied, with respect to the provision of engineering services. Purchaser agrees that engineering services, even when provided in connection with the sale of Products, are not goods subject to the Uniform Commercial Code.

10. **Company Specifications and Safety Devices.** The Purchaser shall follow all recommendations and procedures established by the Company prior to or after the sale of Products, including without limitation, installation, maintenance, intended use, and safety devices and procedures for Products; and the Purchaser shall see that its employees, agents, representatives, and others on its premises do the same. The Purchaser shall not modify, alter, remove, or change any safety devices on the Products, and the Purchaser shall see that its employees, agents, representatives, and others on its premises do the same. The Purchaser agrees to indemnify and hold the Company harmless from and against any all claims, causes of action, costs, fees, and expenses (including reasonable attorneys' fees) arising out of, or attributable to, any claim or proceeding asserted or brought against the Company which relates to or arises out of the failure of the Purchaser or its employees, agents, representative, or others on its premises to follow the recommendations and procedures established by the Company.

11. Security Agreement. Purchaser hereby grants to the Company a continuing purchase money security interest in all Products sold and/or delivered to Purchaser and of the proceeds thereof to secure all financial obligations owed Company by Purchaser. Purchaser shall execute and deliver any financing statements and other documents that the Company may reasonably require for the perfection of such security interest, and Purchaser hereby authorizes the Company to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of its security interest. Purchaser shall maintain adequate insurance against casualty, loss, fire, or theft of the Products for so long as the security interest is in effect.

12. Limitations. Any action by Purchaser under or relating to this Agreement or the Products sold must be commenced within one (1) year after such cause of action has accrued.

13. Choice of Law. This Agreement, and any dispute or claim relating to it, shall in all respects be governed by and construed according to the laws of the State of North Carolina. In the event Company contracts with a party located in a country which is a party to the 1980 United Nations Convention on the International Sale of Goods ("UNCISG"), the parties hereby agree that this Agreement and any dispute or claim relating to it shall not be governed by the provisions of the UNCISG; rather, this Agreement and any dispute or claim relating to it shall be governed by and construed according to the laws of the State of North Carolina, including its provisions of the Uniform Commercial Code.

14. Choice of Forum, Venue, and Consent to Jurisdiction. Purchaser and the Company agree that the North Carolina General Courts of Justice and United States District Courts in Charlotte, North Carolina shall constitute the exclusive forums for the adjudication of any and all disputes or controversies arising out of our relating to this Agreement or the Products sold. Purchaser and Company consent to the exercise of jurisdiction over them by such courts with respect to any such dispute or controversy, and Purchaser and Company waive any objection to the assertion or exercise by such court of such jurisdiction.

15. Entire Agreement. Purchaser and the Company acknowledge that these Terms and Conditions of Sale, together with Company's invoice, constitute the entire agreement between the Purchaser and the Company with regard to the sale or transfer of the Products sold and supersede all prior oral or written statements of any kind made by the parties or their representatives. These Terms and Conditions of Sale may not be amended, modified, or supplemented except by written agreement executed by the Purchaser and Company. The provisions of this Agreement are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.