

OmniActive Health Technologies, Inc

Terms and Conditions of Sale

1. Definitions and Interpretation

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller; "Goods" means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions. "Seller" means OmniActive Health Technologies, Inc., a 'C' corporation; "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller; "Contract" means a contract for the purchase and sale of the Goods, if any, an acknowledgment from Seller of Buyer's offer to purchase Goods and these Conditions; and "Writing" includes email, facsimile transmission and comparable means of communication.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 Unless otherwise specified herein, these Conditions constitute the COMPLETE AND FINAL AGREEMENT between the Buyer and the Seller with respect to the Goods purchased pursuant to a purchase order, and may not be added to, modified, superseded or altered except by a written agreement or modification signed by the Seller's authorized representative. The Seller hereby objects to any additional, modified, superseded or altered terms and conditions not agreed to in writing by the Seller. The Seller does not accept any terms or conditions set forth in any documentation of the Buyer referencing the Goods, which are inconsistent with these Conditions, unless such documentation is signed by both the Buyer and Seller and expressly states that it supersedes the inconsistent terms and conditions set forth herein.

2.2 No variation or amendment to, or waiver of, these Conditions shall be binding unless agreed in Writing by the authorized representatives of the Buyer and the Seller.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales or technical literature, quotation, price list, acceptance of offer, invoice, photographs or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorized representative. Upon the Buyer's receipt of such confirmation, these Conditions will be deemed accepted by the Buyer in the form delivered thereto and will constitute a valid and legally binding obligation enforceable against the Buyer in accordance with its terms and conditions.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a reasonable period of time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The Buyer undertakes to seek and obtain appropriately qualified professional advice from its own advisers regarding the use and suitability of the Goods and hereby acknowledges and agrees that no reliance will be placed on information prepared by representatives of the Seller which are issued for initial guidance only. Further, the Buyer shall indemnify, defend and hold harmless the Seller against all third party claims, losses, damages, costs and expenses arising therefrom or in connection therewith.

3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation or the Buyer's order (if accepted by the Seller), as the case may be.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify, defend and hold harmless the Seller from and against all claims, losses, damages, costs and expenses arising from or in connection with the Seller's infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and provided that the Buyer shall indemnify, defend and hold harmless the Seller in full from and against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulations, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on an [ex works basis] basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable taxes, which the Buyer shall pay in addition to such price.

5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods before or at any time after delivery of the Goods, or if the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods. For the sake of clarity, the revenue shall be recognized as per the INCOTERMS

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) on or before delivery or within 30 days of the date the Seller's invoice whichever shall be earlier notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to: cancel the contract or suspend any further deliveries to the Buyer; appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and charge the Buyer interest (both before and after any judgment) on the amount unpaid at greater

OmniActive Health Technologies, Inc

Terms and Conditions of Sale

of the rate of 1% per month and the maximum rate permitted under applicable law, in addition to, including all legal costs relating to full settlement of the debt.

6. Delivery

- 6.1 Any dates quoted for delivery of Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, the Buyer's exclusive remedy shall be to terminate the applicable Contract (after notifying the Seller in Writing of the breach and providing the Seller with a reasonable time to cure) by a notice in Writing thereof to the Seller, and to receive a refund of the amount, if previously paid, for any Goods that have not been shipped as of the date of such termination.
- 6.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may: store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer: in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other sums due from the Seller to the Buyer on any basis whatsoever have been finally paid in full. For the sake of clarity, risk & property shall be transferred from Seller to Buyer based on the agreed INCOTERMS between the parties prevailing at that point of time. The Buyer grants to the Seller a purchase money security interest in the Goods to secure, if deemed necessary by the Seller, the payment of the purchase price of the Goods and all other amounts due to the Seller from the Buyer. The Buyer shall provide to the Seller financing statements and other documents requested by the Seller to evidence the same.
- 7.3 Until such time as title in the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver the Goods to the Seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all amounts owing by the Buyer to the Seller shall (without prejudice to any other right or remedy

of the Seller forthwith) become due and payable.

8. Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from delivery. OTHER THAN THIS LIMITED WARRANTY, THE GOODS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY SPECIFICALLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, NON-INFRINGEMENT AND OF MERCHANTABILITY.
- 8.2 The above warranty is given by the Seller subject to the following conditions: the Seller shall be under no liability with respect to any defect in the Goods arising from any instruction, design or specification supplied by the Buyer; or any defect arising from, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (in Writing), misuse or alteration or repair of the Goods without the Seller's approval; or under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.3 Each sale of the Goods is final. Seller will not accept, and will not be liable for its refusal to accept, any return of delivered Goods. Notwithstanding the foregoing, any claim by the Buyer which is based on any defect or shortage in the quality/quantity or condition of the Goods or their failure to correspond with specification/invoice shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect/shortage or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect/shortage or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract; provided always that the Buyer shall not be entitled to reject the Goods on the grounds of shortage alone.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.5 THE SELLER SHALL NOT BE LIABLE IN TORT, INCLUDING LIABILITY IN NEGLIGENCE OR STRICT LIABILITY, AND SHALL HAVE NO LIABILITY AT ALL FOR INJURY TO PERSONS OR PROPERTY WITH RESPECT TO THE GOODS OR THE SELLER'S PERFORMANCE HEREUNDER. THE SELLER'S CONTRACTUAL LIABILITY FOR FAILURE TO FULFILL ITS OBLIGATIONS HEREUNDER OR ANY OTHER LIABILITY IN CONNECTION WITH THE GOODS SHALL BE LIMITED TO THE AMOUNT OF THE PURCHASE PRICE OF THE GOODS. EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOLLOWING, THE SELLER SHALL NOT BE LIABLE HEREUNDER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND REVENUES, LOSSES DUE TO DELAY IN SHIPMENT, FAILURE TO REALIZE EXPECTED SAVINGS, ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND. These limitations and disclaimers are not made by the Seller where prohibited by law.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: Act of God, explosion, flood, tempest, fire, pandemic or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial

OmniActive Health Technologies, Inc

Terms and Conditions of Sale

actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labor, fuel, parts or machinery; and power failure or breakdown in machinery.

such cause of action arose.

9. Indemnification by the Buyer

- 9.1** In connection with the Buyer's indemnification obligations set forth herein, the Buyer shall give the Seller reasonable assistance for the purposes of any proceedings or negotiations.
- 9.2** The Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld)
- 9.3** The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavors to do):
- 9.4** The Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favor of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim: and
- 9.5** Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. Export Terms

- 10.1** In these Conditions, "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2** The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 10.3** The Buyer shall be responsible for arranging, for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 10.4** Payment of all amounts due to the Seller shall be made by a method of payment acceptable to the Seller in United States dollars.
- 10.5** The U.N. Convention on the International Sale of Goods shall not apply.

11. General

- 11.1** Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party as its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same of any other provision.
- 11.3** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision, in question shall not be affected thereby.
- 11.4** The Contract shall be governed by the laws of the State of New Jersey. All disputes arising out of or in connection with these Conditions or the Goods shall be finally settled under the Commercial Arbitration Rules of the American Arbitration Association. Any and all arbitration proceedings, whether brought and maintained by the Seller or the Buyer, will be held in Short Hills, New Jersey. Any cause of action arising under these Conditions must be commenced within one (1) year after