

These General Terms and Conditions (“GTC”) govern the conclusion, content, performance and termination of contracts for the sale of products (“Products”) and provision of services (“Services”), if applicable by RIWOspine Inc. (“RIWOspine”, “we”, “our”, or “us”). All our quotations, sales and deliveries are subject to these GTC which shall apply exclusively and shall be considered accepted if the customer (“Customer”) of such Products and/or Services orders from RIWOspine and reference is made to them in an Offer, as defined hereinafter, or in the order confirmation.

Section 1 - General

- (1.1) Any terms and conditions of Customer, which deviate from these GTC or provide additional terms, are hereby expressly rejected. Neither our failure to object to Customer’s terms and conditions, nor our delivery of Products nor performance of Services shall be deemed an acceptance of any Customer’s terms and conditions.
- (1.2) These GTC, together with all relevant documentation such as offers, estimates or quotations (“Offers”) from RIWOspine, and all accepted orders placed by the Customer for RIWOspine’s Products and Services (an “Order”) constitute the contract (“Contract”) between RIWOspine and the Customer. The application of these GTC may only be varied by agreement in writing between the Parties.
- (1.3) Orders are subject to our written order confirmation. Any Orders by customer shall become effective only if confirmed by us in writing. Written quotations or order confirmations may only be modified or amended in writing.
- (1.4) If an Order of the Customer deviates from the Offer or the order confirmation provided by RIWOspine, the Offer or order confirmation, respectively, applies, unless the Customer objects, in writing, to RIWOspine within two (2) business days of the Customer receiving the order confirmation.
- (1.5) Once accepted by RIWOspine, Orders may not be cancelled or varied by the Customer without the consent of RIWOspine in writing. Customer shall bear all costs associated with the cancellation or modification of an Order
- (1.6) RIWOspine reserves the right to correct any significant errors or omissions in its Offers, order confirmations or invoices.
- (1.7) All returns require our prior written authorization. Special order instruments are not returnable. If a Product is returned within 30 days of purchase due to an error by RIWOspine, no restocking fee will be assessed. If Product is returned after 30 days due to an error by RIWOspine, a 15% restocking fee applies. If a Product is returned within 30 days of purchase due to customer error, a 15% restocking fee will be assessed unless a replacement of equal or greater value is ordered at the time a return authorization (“RA”) is requested. If a Product is returned after 30 days due to customer error, a 30% restocking fee will be assessed unless a replacement of equal or greater value is ordered at the time the RA is requested. If an item is returned after 90 days, it is within RIWOspine’s sole discretion to accept the return. All sterile Product sales are final and cannot be returned. The above applies to unused and unopened Products only. If the returned Product is inactive or used, each as determined by RIWOspine, a “used/old equipment allowance” will be given. Unless otherwise determined by RIWOspine, a used/old equipment allowance shall mean a partial credit for the purchase price. No allowance or other credit will be issues for used Products that are single use or have been phased out.
- (1.8) These GTC, including without limitation the limited warranty stated in Section 5 and the limitation of liability stated in Section 8, shall also apply to Products and medical instruments that are supplied to Customer as samples, on loan or for demonstration purposes.

Section 2 - Delivery

- (2.1) Any time or date for delivery quoted by us shall begin to run only upon Customer’s satisfaction of all Customer’s obligations of cooperation, in particular clarification of all technical aspects. If we have quoted a definite delivery date, any delay caused by Customer shall extend the delivery date by an equivalent time.
- (2.2) Unless otherwise agreed in writing, all deliveries are FOB our warehouse in Alpharetta, Georgia, a facility in Vernon Hills, Illinois or another location set forth by RIWOspine. Risk of loss shall in any event pass to Customer upon the earlier of (i) our notice that the Products have been placed at Customer’s disposal or (ii) when the Products leave our warehouse.
- (2.3) At our discretion, delivery may be made in partial shipments.
- (2.4) RIWOspine shall not be held responsible for failure to perform or delay in performing any of its contractual obligations if such failure or delay is due to unforeseeable events beyond RIWOspine’s or its suppliers or subcontractors’ reasonable control (“Force Majeure”), including but not limited to acts of God, war, insurrection, pandemics, epidemics, sabotage, labor disputes, lock-outs, shortages of labor, interruption or delays in transportation, fire, explosion, equipment or machinery breakdown, failure or delays of RIWOspine’s source of supply, shortage in material or energy, acts, orders or priorities of any government, embargo and any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of RIWOspine.
- (2.5) RIWOspine shall notify the Customer in writing within one (1) week following the occurrence of any event of Force Majeure citing the Section 2.1 in said notice and shall supply all relevant information about its effects on the performance of the Contract. Unless otherwise agreed in writing between the parties hereto, if RIWOspine is unable to perform the Contract because of Force Majeure, RIWOspine is temporarily excused from performance while the incident of Force Majeure is occurring and shall perform as soon as reasonably possible after the incident ends. The duration of the incident of Force Majeure shall be added to the time of performance granted to RIWOspine, and RIWOspine shall not be subject to damage claims. In case the duration of Force Majeure exceeds three (3) months, the parties hereto will have the right to terminate the Contract immediately. Contractual obligations performed up to such date of termination shall be remunerated. If the purchase price has been paid by the Customer in full, RIWOspine will refund the purchase price paid less the accrued cost and expenses of the contractual obligations.
- (2.6) In the event of the Customer’s failure to accept the ordered Products, we shall, in addition to any other remedies we may have under applicable law, be entitled to (i) sell the Products at any price we, in our sole discretion, shall deem acceptable or (ii) store the Products, at Customer’s expense, in a warehouse selected by us in our sole discretion.

Section 3 - Prices, Payment

- (3.1) Except as otherwise expressly agreed upon, our prices are net prices, FOB our warehouse in Alpharetta, Georgia, a facility in Vernon Hills, Illinois or another location set forth by RIWOspine. Any sales taxes or similar governmental charges, and any expenses, freight, packaging, insurance and assembly will be charged in addition. Packaging material will be charged at cost price. The Customer shall be responsible for payment of all taxes, including sales and use tax, inventory tax, duties, fees, or other taxes of any nature assessed by governmental authorities applicable to the sale of Products and performance of Services hereunder.
- (3.2) Unless otherwise provided in the order confirmation, the purchase price shall be payable within thirty (30) days of the invoice date.
- (3.3) Payment shall not be deemed to have been received by us unless and until the respective amounts have been finally credited to us. All bank fees and charges shall be borne by Customer.
- (3.4) Upon the Customer’s failure to make payments when they are due, unpaid amounts shall bear interest at the annual rate of two (2) percentage points over the prevailing prime rate of the Fifth Third Bank, Atlanta, or the maximum rate permitted by law.
- (3.5) If we, in our reasonable discretion, shall determine that the financial condition of Customer at any time jeopardizes Customer’s ability to perform any of its obligations to us, we may require cash payment, immediate payment of the entire balance, and/or furnishing collateral satisfactory to us.
- (3.6) Customer’s failure to pay timely and fully any invoice shall operate to make all our other outstanding invoices to Customer immediately due and payable and, at our sole discretion, shall be grounds for cancellation of any further performance by us.
- (3.7) Our receipt and acceptance of partial payments shall not constitute a waiver of any of our rights set forth herein or available to us under applicable law.
- (3.8) If allowed by applicable law, Customer shall also pay on demand any costs incurred by RIWOspine (including reasonable attorney’s fees and legal expenses) in connection with the collection of any amounts due from Customer to RIWOspine which are not paid as agreed herein.
- (3.9) Any Product returned for credit is subject to restocking fees equal to 15% of original invoice for new equipment and 30% for used equipment. Sterile item sales are final, and sterile Products cannot be returned.

Section 4 - Grant of Security Interest

(4.1) To the extent that title to a Product passes to Customer before full payment and in order to ensure compliance with all of its obligations hereunder, Customer hereby grants to us security interest(s) until all amounts due have been paid in full, in each case in good, collected and indefeasible funds in all Products sold to the Customer, including any replacement parts or accessories thereto, currently or hereafter held by Customer (including any returned or repossessed Products), and in any proceeds therefrom (including proceeds which Customer received as payment from an insurer or third party, for or as a result of the partial damage or loss of the Products), in order to secure payment of the entire purchase price for all Products currently, previously or hereafter delivered by us to Customer and secure all costs, expenses or other charges payable by Customer to us.

(4.2) Customer shall execute and deliver such instruments, in particular financing statements, as shall be required by us to perfect our security interest(s) in the Products.

(4.3) Customer hereby acknowledges that we will prepare, execute, deliver, and file any and all documents required or necessary to create, perfect, preserve and enforce our security interest in the Product until such time as the Product is fully paid by and title has transferred to Customer.

(4.4) If allowed by applicable law, any collection expenses incurred by us shall be borne by Customer. Such collection expenses shall include our reasonable costs and expenses (including reasonable attorney's fees and legal expenses) for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling the Products as well as any deficiency resulting from a sale of the Products. The reasonable costs and expenses (including reasonable attorney's fees and legal expenses) incurred by us in any defense against third party claims to the Product shall also become part of the Customer's indebtedness to us.

(4.5) THE CUSTOMER SHALL NOT SELL, PLEDGE, TRANSFER OR ASSIGN THE PRODUCTS OR OTHER COLLATERAL (FOR SECURITY OR OTHERWISE) UNTIL THE PURCHASE PRICE HAS BEEN PAID IN FULL.

(4.5) The Customer agrees that until the purchase price has been paid in full, RIWOspine and its designees have the right, with or without prior notice to the Customer, to enter upon any of Customer's premises in order to inspect the Products.

(4.6) For the duration of any security interest(s) so retained by us, Customer shall insure the Products for their full value against all risks customarily insured against in Customer's industry, and the respective insurance policies of Customer shall name us as an additional insured.

(4.7) In the event Customer (a) breaches any representation, warranty or covenant under the Contract; (b) defaults under any other present or future agreement between the Customer and RIWOspine; (c) shall be legally dissolved, adjudicated insolvent or bankrupt or cease to pay its debts as they mature, make a general assignment for the benefit of or enter into an arrangement with creditors, (c) shall apply for or consent to the appointment of a receiver, trustee or liquidator of it or a substantial part of its property, (d) shall take action to dissolve or terminate its legal existence, or authorize or file a voluntary petition in bankruptcy or under any similar law, or consent to such a petition; or (e) suffer such a petition or proceeding of the type described in subsection (d) to be instituted against it which remains undismissed for a period of sixty (60) days; then RIWOspine may, in its sole discretion, exercise any and all remedies available under applicable law or in equity, including, without limitation, (i) enter any premises where any Products or other collateral may be located and repossess, disable or take possession of such Products or other collateral (and/or any attached or unattached parts) by self-help, summary proceedings or otherwise without liability for rent, costs, damages or otherwise; (ii) use Customer's premises for storage without rent or liability; (iii) sell, lease or otherwise dispose of, or realize value from, any or all of the Products or other collateral at private or public sale, in bulk or in parcels, with or without notice except to the extent required by applicable laws, and without having the Products or other collateral present at the place of sale or in Customer's possession; and (iv) upon application to a court of competent jurisdiction, seek the immediate appointment of a receiver for all or part of the Products or other collateral, whether such receivership is incidental to a proposed sale of such collateral, pursuant to the UCC or otherwise. No remedy referred to this Section 4.5 is intended to be exclusive, but all remedies shall be cumulative and in addition to any other remedy referred to above or otherwise available to RIWOspine at law or in equity. In all cases, the Customer will be responsible for RIWOSPINE's costs and expenses in exercising its rights.

Section 5 – Limited Warranty

(5.1) Subject to the other clauses contained in the Section 5, we warrant that our Products are free from defects in workmanship and materials under normal use and service, excepting ordinary wear and tear, and inappropriate, incorrect, or excessive use or application.

(5.2) Customer must inspect all Products delivered without delay and notify us in writing of any defects. We shall not be liable in any way if Customer fails to inspect the Products upon receipt or fails to notify us in writing of any defect within seven (7) days of delivery.

(5.3) In the event that we agree that a defect exists, we will, at our sole discretion, correct the same by repairing the defect in the Products or by delivering replacement products.

(5.4) The cleaning fee provided for in Section 6.5 shall also apply to returns for Products under warranty.

(5.5) This warranty does not cover damages or defects caused by or resulting from (i) unauthorized repairs, service, maintenance, alterations, or modifications of the Products, except as authorized by us (ii) negligence, accident, abuse, misuse, improper, unsuitable or abnormal usage or maintenance of the Products, (iii) failure to conform strictly to our specifications and instructions with respect to the installation, operation, use, maintenance and/or repair of the Products, including replacement of any parts unless authorized by us and by a part supplied or specified by us, (iv) exposure of the Products to unreasonable temperatures or conditions, and (v) maintenance and usage past the normal life span of the Products.

(5.6) Subject to Section 6.6, all warranties hereunder shall remain in effect for a period of one (1) year after the date of delivery, with the exception of video cameras (2-years) and Bi-polar cables (90 days). Video accessories manufactured by other parties carry the original manufacturer's warranties.

(5.7) RIWOSPINE PROVIDES ANY AND ALL SERVICES ON AN "AS-IS" BASIS AND, EXCEPT AS SET OTHERWISE AGREED TO IN WRITING, MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE SERVICES PROVIDED. THE SERVICE PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS AGREEMENT.

(5.8) THE REMEDIES AND EXCLUSIONS SET FORTH IN THIS SECTION 5 ARE CUSTOMERS SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF ANY BREACH OF THE WARRANTIES PROVIDED ABOVE. EXCEPT FOR THE WARRANTY PROVIDED ABOVE WE DISCLAIM ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS AND SERVICES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, AND IN PARTICULAR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, ARE HEREBY EXPRESSLY DISCLAIMED.

Section 6 - Repair, Replacement and Spare Parts

(6.1) REPAIRS MADE BY US AND PARTS DELIVERED SEPARATELY BY US ARE SUBJECT TO ALL OF THESE GENERAL TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION THE LIMITED WARRANTY STATED IN SECTION 5 AND THE LIMITATIONS OF LIABILITY STATED IN SECTION 8.

(6.2) Any necessary or desired repair of and/or part replacement in our Products may only be handled by us (or, directly, by Richard Wolf Medical Instruments), unless we have expressly authorized Customer to do so in writing. If we have so authorized Customer, (i) Products must only be repaired in strict conformance with our specifications and instructions and (ii) parts must only be replaced by parts supplied or specified by us (or Richard Wolf Medical Instruments) and in strict conformance with our specifications and instructions, in each case including post-repair and/or post replacement testing and recalibration. Failure to follow this requirement can be dangerous to Customer, Customer's personnel and Customer's patients and voids the warranty for the Product repaired or in which the part was replaced and, if the part was supplied by us, for that part.

(6.3) Unless we have expressly authorized a repair and/or part replacement by Customer, and if Customer fails to follow the other procedures provided in Section 6.2, we shall not incur any liability whatsoever based on the repair of or the replacement of parts in our Products by Customer or by third parties.

(6.4) Delivery by us of technical documents such as circuit or other design diagrams does not constitute authorization for replacement of parts or for repair.

(6.5) WE REQUIRE THAT ALL INSTRUMENTS BE CLEANED AND STERILIZED BEFORE BEING RETURNED TO US FOR REPAIR. INSTRUMENTS RECEIVED IN AN UNSANITARY CONDITION ARE SUBJECT TO A CLEANING FEE TO BE PAID BY CUSTOMER.

(6.6) All warranties for repair work performed by us shall remain in effect for a period of six (6) months after the required Product was returned to Customer.

Section 7 - Installation

(7.1) Customer shall, at its own cost provide all materials and incidentals including but not limited to, special electrical wiring and shall furnish all permits, licenses, or other governmental authorizations necessary to permit installation and operation of our Products in accordance with our specifications and with applicable laws.

(7.2) We offer no warranty and assume no liability for the fitness or adequacy of the premises (or the utilities available at such premises) in which the Products are to be installed, used or operated. Customer shall indemnify and hold us harmless against any loss, damage, or claim arising out of the condition of the premises or such utilities.

Section 8 - Limitation of Liability

EXCEPT AS EXPRESSLY AGREED UPON, UNDER NO CIRCUMSTANCES SHALL WE HAVE ANY LIABILITY WHETHER DIRECTLY OR BY WAY OF INDEMNITY, FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, STRICT OR PRODUCTS LIABILITY, INFRINGEMENT OF PATENTS, TRADE SECRETS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS OR ANY OTHER LEGAL THEORY IN CONNECTION WITH THE PURCHASE, INSTALLATION OR USE OF THE PRODUCTS OR IN CONNECTION WITH OUR PERFORMANCE UNDER OUR ORDER CONFIRMATION. THESE GENERAL TERMS AND CONDITIONS, OR ANY BREACH OR DEFAULT THEREUNDER OR HEREUNDER.

Section 9 – Intellectual Property Rights

(9.1) Intellectual property rights (copyrights, patent rights etc.) that are created during the performance of the Contract belong exclusively to RIWospine. The Customer is granted a non-transferable, revocable, and non-exclusive right to use the emerging intellectual property rights within the purpose of the Contract. Both parties are entitled to use and dispose of ideas, procedures and methods which are not protected by law, but without being under the obligation to disclose them.

(9.2) Pre-Existing intellectual property rights (copyrights, patent rights etc.) remain with RIWospine or third parties. Customer shall not reverse-engineer or any other way alter the Products without RIWospine's prior written consent. The Customer is granted a non-exclusive, revocable, and non-transferable right to use the pre-existing intellectual property rights for the agreed purpose in the Contract. If RIWospine supplies any Products or Services in accordance with the Customer's specifications or using the Customer's goods, the Customer shall indemnify RIWospine from and against all actions, claims, demands, costs, expenses, and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.

Section 10 – Indemnity

(10.1) The Customer shall indemnify, defend, and hold harmless RIWospine, its shareholders, directors, officers, employees and other agents against all costs, claims, demands, expenses and liabilities of any nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against RIWospine or which the RIWospine may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Products or provision of the Services unless such costs, claims, demands, expenses or liabilities are directly and solely attributable to any breach of the Contract or guarantee by, or gross negligence of, RIWospine or its duly authorized employee or agent.

Section 11 - Miscellaneous

(11.1) Any claims, disputes or controversies arising between the Parties hereunder shall be governed by and construed in accordance with the internal laws of the State of Georgia, without regard to conflicts of laws that would require the application of the laws of another jurisdiction.

(11.2) The parties hereto shall attempt to resolve any dispute, controversy, or claim arising under or relating to the Contract, or to a material breach, including its interpretation, performance, or termination. If the parties do not reach settlement within a period of twenty (20) days, the parties shall submit the dispute to mediation on the terms and at a location determined by the Parties. If the Parties are unable to resolve such dispute through the methods outlined hereinbefore, either party may refer the dispute to arbitration. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in a location determined by the parties, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based and shall be final and binding upon the Parties. The prevailing party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of reasonable attorneys' fees, at the discretion of the arbitrator. Both parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either party.

(11.3) Should any provision of the GTC and/or Contract be deemed incomplete, legally invalid or unenforceable, such provision may be severed from the GTC and/or Contract and be replaced by as closely an equivalent effective provision as possible. The remaining terms of the GTC and/or Contract shall remain in full force and effect.

(11.4) The GTC may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of RIWospine.

5/1/2023