

TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** These Terms and Conditions of Sale ("Terms") are the only terms and conditions which govern the sale of the goods ("Goods") by Vander-Bend Manufacturing Inc dba Vantedge Medical, its subsidiaries, delegates and affiliates (including but not limited to Swiss Precision Machining, LLC, Omni Components Corporation, J.L. Haley Enterprises, Inc. and Hobson and Motzer, LLC) (collectively, "Seller") to buyer ("Buyer") and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms.
2. **ENTIRETY.** These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement. Buyer's acceptance of Goods is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to Terms. The earlier of Seller's commencement of performance or Buyer's receipt of any of the Goods shall constitute acceptance of these Terms. If a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
3. **PRICES.** Prices quoted are based on the price at the time of quotation and are subject to change with or without notice. Seller may update prices periodically without prior notice. Clerical errors may be corrected without liability.
4. **TAXES.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any foreign, federal, state, or local law, rule, or regulation (collectively, "Law") concerning the Goods or the manufacture or sale thereof. If Seller is required to pay any such taxes or assessments, Buyer agrees to reimburse Seller promptly upon demand.
5. **TERMS OF PAYMENT.** All payments are due net 30 days from date of invoice. All orders are subject to acceptance in writing by Seller. No discounts shall be taken unless specifically allowed in writing by Seller. All amounts due Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted under the law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys' fees and costs. If, in Seller's judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.
6. **FREIGHT.** Unless agreed by Seller in writing, all shipments shall be F.O.B. origin. Risk of loss or damage to Goods shall pass to Buyer upon delivery to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first.
7. **DELIVERY.** Shipping and delivery dates are estimates and are based upon prompt receipt of all necessary information from Buyer. Delays in securing Buyer's approval of any matter shall, at Seller's discretion, extend the date of delivery. Seller shall not be liable for any claim, Loss, expense, or damage of any kind whatsoever resulting from delays, loss or damage in transit, except as mandated by applicable law.
8. **INSPECTION.** Buyer shall inspect the Goods upon arrival, and Buyer shall immediately notify Seller in writing of any claims that the Goods do not conform to Seller's warranty for such Goods. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all Goods.
9. **BLANKET ORDERS.** All Goods under a blanket order must be requested by Buyer for delivery within the agreed-upon time frame, which shall not exceed one year from the date of the blanket order, and shall be delivered in the agreed-upon release quantities.
10. **CHANGES.** Changes in specifications or designs relating to any products, changes in delivery schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted such changes in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer.
11. **RETURNS.** Goods may not be returned without prior written authorization by Seller and compliance with Seller's return policies and procedures. Goods that are made to order, discontinued or custom products are not returnable. Returns are subject to a 25% restocking fee and must be shipped prepaid.
12. **STORAGE.** In the absence of agreed shipping dates, Seller may invoice Buyer and ship the Goods once they are ready for shipment. If, because of Buyer's inability to take delivery, the Goods are not shipped, stopped in transit or returned, Seller may store them for Buyer at Buyer's expense and risk and risk of loss shall pass to Buyer when the Goods are placed in storage and such date shall constitute the date of shipment for purposes of beginning the warranty and payment periods.
13. **WARRANTIES.** Seller warrants the Goods in accordance with its written limited warranty in effect from time to time and if none, then Seller warrants that the Goods will be free from defects in material and workmanship for a period of 12 months after shipment. **THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.** If Buyer notifies Seller in writing during the warranty period that the Goods are not in conformity with the warranty, and if Seller determines that the Goods are non-conforming, Seller will, at Seller's sole option, repair or replace or refund the purchase price, F.O.B. point of manufacture, provided Buyer returns such Goods to Seller's plant, freight prepaid. This shall be Buyer's exclusive remedy for Seller's liability. Any claims not made during the warranty period are deemed waived by Buyer. Seller's warranty does not attach to Goods or parts not manufactured by Seller. Seller will pass on to Buyer the warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer. Seller's aggregate liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or Loss arising out of or relating to any Goods or alleged to have resulted from any act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, shall be limited to an amount not to exceed the price received by Seller for the Goods with respect to which such liability is claimed. Any contract created between the Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer (other than as provided in Section 15), and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES, INCLUDING WITHOUT LIMITATION, FOR INJURIES TO PERSONS OR DAMAGE TO PROPERTY, LOSS OF PROFIT, REVENUES OR USE, DIMINUTION IN VALUE, COST OF SUBSTITUTE PRODUCTS, DOWNTIME COSTS, OR CLAIMS OF BUYER'S CUSTOMERS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.** Upon the occurrence of any event described in Section 15(i)-(vi) without the prior written consent of Seller, this warranty shall be void.
14. **LIMITATIONS OF LIABILITY.** Buyer's right to recover damages due to Seller's fault or negligence shall be limited to the return of the Goods and the return of the amount paid by Buyer to Seller for such Goods causing or connected to the damage that gave rise to the liability. Seller will not be liable in any event for any damages resulting from loss of profits, use of products for any incidental or consequential damages even if advised of the possibility of such damage. This limitation will apply regardless of the form of the action.
15. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Goods including ("Buyer's Specifications"), without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Goods or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Goods subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; (v) repairs or modifications made to all or part of the Goods without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller's instructions.
16. **PATENTS.** If any Goods are manufactured and/or sold by Seller to Buyer's particular specifications or requirements, Buyer shall defend, protect and hold harmless Seller again any and all claims, suits, disputes and demands for actual or alleged infringement of any patent and shall defend any result or action which may be brought against Seller for any alleged infringement based on the manufacture and/or sale of the Goods.
17. **TOOLING.** Any tools, jigs, dies, patterns, etc. (collectively, "Tooling"), which Seller owns, makes or acquires for the production of Goods shall be and remain Seller's property, notwithstanding any charge Seller may have made therefor. In no event shall Buyer have any interest in any Tooling which is utilized in the production of Goods, or which has been converted or adapted by Seller for such use, notwithstanding any charge for any such utilization, conversion or adaptation.
18. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.
19. **FORCE MAJEURE.** Seller shall not be liable for any delay in or failure to perform due to any cause, matter or contingency beyond its reasonable control.
20. **TERMINATION.** Seller reserves the right to cease work or terminate these Terms or any purchase order, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms or any other agreement it has with Seller; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit of creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within ten days after written request therefore by Seller. In all cases, Seller's rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.
21. **WAIVER.** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein. No waiver of any term or condition of these Terms shall be construed as a continuing waiver, or a waiver of any other term or condition.
22. **ASSIGNMENT.** Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. In the event of the sale or transfer by Seller of all or substantially all of its assets to a third party, whether by sale, merger or change of control, Seller would have the right to assign any or all rights and obligations contained herein to such third party without the consent of Buyer, and all Terms shall be binding upon the acquirer and would remain in full force and effect.
23. **MISCELLANEOUS.** Buyer shall comply with all applicable laws. There are no third-party beneficiaries. These Terms shall be construed in accordance with the laws of the State of California without regard to any rules on conflicts of laws. Provisions which by their nature should survive will remain in force after any termination or expiration. If legal action is brought to enforce these Terms, Seller shall be entitled to recover attorney's fees and other costs incurred. In the absence of a signed, written agreement between the parties, the acceptance of Goods constitutes acceptance of these Terms. If said signed, written agreement is silent or vague as to a particular term, these Terms shall prevail. Terms are subject to change without notice. The section headings are included solely for the convenience of the parties.

Effective Date: *August 14, 2024*