



SYNQOR, INC. TERMS AND CONDITIONS OF SALE

[\(CLICK HERE FOR PRODUCTS COVERED\)](#)

1. **Definitions.** “SynQor” means SynQor, Inc.; “Buyer” means the customer identified on SynQor’s sales order acknowledgement; “products” or “parts” mean the goods identified as accessories in SynQor’s sales order acknowledgement; “terms and conditions” means these terms and conditions of sale together with any other terms set forth in SynQor’s sales order acknowledgement. In the event of any conflict between these terms and conditions and any other terms set forth in SynQor’s sales order acknowledgement, the terms set forth in the sales order acknowledgement shall control.

2. **Effect of Terms and Conditions.** SynQor undertakes to sell and deliver the products to the Buyer on the express conditions that (i) the Buyer assents to these terms and conditions, to which acceptance is expressly limited, (ii) these terms and conditions constitute the complete and exclusive agreement between the Buyer and SynQor, superseding all prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof other than any and all agreements between the parties relating to the confidentiality of proprietary information, which shall remain in full force and effect in accordance with their respective terms, and (iii) Buyer acknowledges and agrees that SynQor is not bound by any provisions, printed or otherwise, varying from or supplementing these terms and conditions that may appear in any purchase order or other document of the Buyer.

3. **Bulk Supplier.** Buyer acknowledges that SynQor is a bulk supplier of components and other products.

4. **Buyer’s Assent.** The Buyer’s assent to these terms and conditions shall be conclusively evidenced by the Buyer’s taking possession of the products, by the Buyer’s acceptance or deemed acceptance of the products, by the Buyer’s payment for the products, or by any other evidence establishing assent.

5. **Prices and Terms.** All prices are subject to change by SynQor without prior notice to Buyer. Payment shall be for the full amount stated on the sales order acknowledgement and shall be due not later than thirty (30) days after the date of invoice. All amounts stated herein and all payments to be made hereunder are in U.S. dollars. In addition to its other rights and remedies, SynQor may charge interest at the rate of 1½% per month on any overdue unpaid balance and all other costs of collection. Any sale to the Buyer is subject to final credit approval by SynQor. SynQor reserves the right to cancel orders or decline to make deliveries hereunder whenever Buyer is in default under any of its obligations to SynQor or SynQor determines that the Buyer is not financially sound. If delivery is made in installments, no breach by SynQor with respect to any installment shall be deemed to be a breach of the entire contract.



6. **Taxes.** Any excise, sales, use, VAT, or similar taxes imposed by any governmental authority that SynQor may be required to pay, or to reimburse to others, by reason of the manufacture, ownership, use, or sale of any products delivered to the Buyer shall be the responsibility of the Buyer, and SynQor may invoice the Buyer therefor as SynQor may determine.

7. **Shipment and Delivery.** Unless a different shipping or freight term is expressly stated in SynQor's sales order acknowledgment ("SOA"), the following shall apply: All products are sold and prices are quoted F.O.B. Origin (as defined in the Massachusetts Uniform Commercial Code) for products shipped within the United States and ExW–Origin (as defined in Incoterms 2010) for products shipped outside the United States. Upon tender of the products to the designated carrier for shipment to Buyer, or if no carrier has been designated upon tender to the carrier selected by SynQor, all risk of loss and responsibility for damage, deterioration, or destruction of the products shall be transferred to Buyer. Buyer is responsible for all costs of transportation, freight, duties, export or import fees and insurance. Shipment may be made by the method or carrier selected by SynQor.

Schedule dates quoted by SynQor in the SOA are shipment dates. Shipment dates are not guaranteed and SynQor will not be liable for any damages for failure to ship or deliver or to ship or deliver within the time specified in the SOA, but will use commercially reasonable efforts to make shipment within such time. SynQor reserves the right to deliver product up to three days earlier than Buyer's requested delivery date. Buyer assumes all risks of failure of SynQor's performance as a result of action or inaction (including failure to grant an export license) by governmental authority or strikes, accidents, acts or omissions of carriers, fire, flood, severe weather conditions, acts of God, force majeure, acts of terrorism or other causes beyond SynQor's reasonable control or within Buyer's reasonable control. The shipment schedule specified in the SOA shall be extended by the amount of any delay resulting from any such event.

8. **Inspection, Acceptance, Rejection.** The Buyer agrees to exercise, within (3) days following receipt, its right of rejection as to any non-conforming products delivered to Buyer by written notice to SynQor that states, with particularity, the nonconformity upon which the rejection is predicated. Failure to inspect or to provide written notice of rejection within such period shall constitute acceptance. In the absence of earlier notification of rejection, Buyer will be deemed to have accepted products three (3) days after delivery. In addition to such other duties as the Uniform Commercial Code may impose, the Buyer agrees that upon rejection it will comply with all reasonable instructions of SynQor.

9. **License.** With respect to software or firmware imbedded in the product, if any, Buyer shall obtain a non-exclusive, non-transferrable right to use the software or firmware as part of the product. All other rights, including all rights of ownership, copyright or patent rights relating to such software or firmware shall remain exclusively with SynQor.

10. **Flexibility Policy.** Please refer to SynQor's flexibility policy which is set forth online at www.synqor.com/Company-Flexibility.html and is incorporated herein as if fully set forth in these terms and conditions. A hard copy is available on request.

11. **Warranty.** SynQor warrants that its accessory products (excluding battery pack, if any) will be free from defects in materials and workmanship and will perform in accordance with their



specifications (as set forth in the applicable SynQor Operator's Guide and/or product datasheet, if any) for one (1) year following the date of shipment.

SynQor warrants that battery pack products will be free from defects in materials and workmanship and will perform in accordance with their specifications (as set forth in the SynQor Operator's Guide and/or applicable datasheet) for the earlier of (i) one (1) year from the date of shipment, and (ii) three hundred (300) charge, discharge cycles, whichever comes first, provided, that the battery pack is stored and operated in accordance with conditions specified in the applicable SynQor Operator's Guide and/or product datasheet.

This warranty does not apply to (i) products damaged by abuse, misuse, neglect, improper installation or improper testing, alteration or tampering, (ii) products operated contrary to or outside the limits of their electrical, thermal or mechanical specifications or suggested operating environments, as set forth in the applicable product datasheet or Operating Guide, (iii) products subjected to unauthorized repairs or modifications or products which have been caused to fail by any product or component not supplied by SynQor, or (iv) improper performance of products as installed in Buyer applications where such products performed in accordance with product specifications prior to installation.

If SynQor determines that the product is defective SynQor will, at its option, repair or replace the product or refund all or part of the purchase price therefor. Replacement product may be new or refurbished equipment. To obtain a replacement or repaired product under this warranty, the Buyer must contact SynQor Sales within the warranty period to obtain a Return Material Authorization and shipping instructions. Buyer must return the product in the original packaging and pay all charges incurred in shipping the product back to SynQor. In shipping the product back to SynQor, the Buyer assumes all risk of damage or loss in transit. If SynQor determines that the product is defective, SynQor will pay any shipping charges in sending the replacement or repaired product to the Buyer. Products repaired or replaced pursuant to this warranty shall be warranted for the non-expired portion of the warranty applying to the original equipment

. THE FOREGOING WARRANTY IS BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

12. Limitation of Liability and Remedy. SynQor shall have no liability for any indirect, incidental, special or consequential damages in connection with the transactions contemplated hereby or arising from the use or inability to use the product, including without limitation, damages due to business interruption, lost profits, lost goodwill, economic or property damage, claims of third parties, or injury to or death of any person, whether based upon breach of contract, negligence, strict liability, tort or other legal theory. In no event shall SynQor's total liability arising from the sale or use of, or inability to use, SynQor's product exceed the price paid for the product net of discounts and rebates. Neither party may bring a cause of action under this agreement more than two (2) years after the cause of action arose.



13. Indemnity. Buyer agrees to indemnify, defend and hold harmless SynQor from and against all third party claims, costs, damages, fines, losses and expenses (including reasonable attorney's fees) to the extent that such claims, costs, damages, fines, losses and expenses result, in whole or in part, from: (i) death, personal injury or property damage arising from Buyer's negligent acts or omissions or willful misconduct; or (ii) any intellectual property infringement claim arising from any hardware, components, specifications, software, information supplied or any instructions given to SynQor by or on behalf of the Buyer, or (iii) use of any SynQor product in combination with Buyer's or any other party's product or equipment, provided that SynQor gives Buyer prompt notice in writing of the claim, provides reasonable assistance and co-operation to Buyer in defense of the claim and permits Buyer to control the defense of the claim. SynQor may employ counsel, at its own expense, to assist in the defense of the claim. SynQor shall have no authority to settle any claim on behalf of the Buyer.

14. Limitation on Use. SynQor's products are not authorized for use and should not be used, without the specific prior written approval of an authorized officer of SynQor making specific reference hereto, in any human implantation, life support system, nuclear facility or application, aircraft control application or any other application in which failure or malfunction of the product could reasonably result in loss of or harm to life, or catastrophic damage to property or the environment. Buyer will indemnify and hold SynQor harmless from any loss, cost or damage resulting from Buyer's use of the products in any such prohibited activity.

15. Compliance with Law; Export Control.

Buyer shall comply with all laws, ordinances, rules and regulations applicable to Buyer in connection with this transaction. Buyer agrees not to export or re-export the products, separately or as a part of a system, without compliance with applicable U.S. export control laws. In furtherance of the foregoing, and not by way of limitation, Buyer represents, warrants and agrees that it will not use the product in connection with any nuclear application, biological and/or chemical weapons, and/or delivery systems utilized in connection with any of the foregoing, and it will not export or re-export the products for any of such uses.

16. Miscellaneous.

- (a) No modification of these terms and conditions shall be of any force or effect unless signed by an authorized representative of SynQor making specific reference hereto.
- (b) SynQor may assign its rights and delegate its duties hereunder to any successor in interest to substantially all of its business and operations.
- (c) This agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States of America without regard to the conflict of law provisions thereof.
- (d) The United Nations Convention on Contracts for the International Sale of Goods of 1980 (and any amendments or successors thereto) is expressly excluded.