

Customer Orders Terms and Conditions

ACCEPTANCE OF PURCHASE ORDERS

Sale of any goods or any related services (collectively, “Products”) referenced in Customer’s written Purchase Order to D. A. Surgical (“Purchase Order”) is expressly conditioned upon the terms and conditions set forth below. Other than as specifically provided in a separate written agreement between D. A. Surgical and Customer, any additional or different terms specified or referenced in Customer’s Purchase Order are hereby excluded and shall not be deemed effective or binding unless expressly agreed to in writing by an authorized representative of D. A. Surgical. No Purchase Order placed by Customer shall be deemed accepted unless or until D. A. Surgical issues a written acknowledgement. Any amendment, cancellation, change order, revision, or termination to an already-accepted Purchase Order shall be subject to acceptance by an authorized representative of D. A. Surgical.

PRICES, TAXES

The price set for in D. A. Surgical’s Quotation (“Price”) are in United States Dollars. Prices are confidential and may not be published or shared with parties not listed. Nothing set forth in Customer’s Purchase Order shall modify or amend the quoted Prices, quantities, and/or the scope of Products offered, unless such modification or addition is agreed to in writing by D. A. Surgical prior to the Purchase Order.

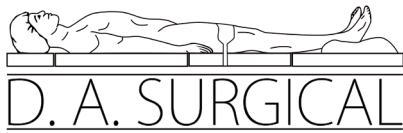
The prices are exclusive of any taxes (including, without limitation, sales, use, value added, goods and services, business, property (real or personal, tangible or intangible), license, documentation, registration, import, export, excise, franchise, stamp, or other tax), custom fees or tolls, levy, impost, withholding, fee, duty or other charge of any nature imposed by any governmental authority or other tax authority in any jurisdiction, and any and all fines, penalties, additions to tax, interest and other charges relating thereto (collectively, “Taxes”). All Taxes shall be paid by Customer in addition to the Price. If any payment by the Customer is subject to withholding tax, the Customer agrees to increase the amount of any payment which is subject to a withholding or pay an additional amount as is necessary to ensure that D. A. Surgical receives the same amount it would have received if there had been no withholding. Customer shall deliver any certifications and other documents required to demonstrate eligibility and to benefit from any exemption or other relief from any Tax.

PACKAGING, SHIPPING

D. A. Surgical shall pack all Products in accordance with its standard design and packaging specifications or practices. Special packaging or handling requirements may be accommodated at the discretion of D. A. Surgical’s Quality Assurance department and the impact to documented and approved specifications for packaging of the product.

D. A. Surgical offers Standard, overnight, freight, air, international shipping. D. A. Surgical ships Monday through Friday excluding Holidays. D. A. Surgical offers overnight shipping for emergency product needs. Orders requesting overnight delivery must be received by 3:00pm EST. Overnight shipping processing fees apply.

The Price does not include any shipping or handling charges, and Customer shall incur both the cost and the risk for bringing the Products to their final destination, and for completing any export documentation and clearing the Purchase Order through US Customs. In the event Customer would like for D. A. Surgical to deliver the articles to a specified destination, the destination shall be clearly identified in the Purchase Order and Customer shall provide an account number that D. A. Surgical can use for the shipping costs. In the absence of specific instructions, D. A. Surgical shall select the carrier and, at its discretion, may ship “collect”, prepaid or subject to invoice payment terms, but shall not be deemed to have assumed any liability in connection with the shipment, nor shall the carrier be construed as an agent of D. A. Surgical.



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DELIVERY, TITLE, AND RISK OF LOSS

D. A. Surgical's quoted delivery schedule represents its best estimate and is based on current schedules and workload. D. A. Surgical shall have no liability for delay or any damages or losses sustained by Customer as a result of such estimate not being met. Partial deliveries shall be permitted.

Unless otherwise agreed to by D. A. Surgical in writing, delivery shall be deemed to have occurred FOB origin for domestic shipments.

Title and liability for loss or damage to the Products shall transfer from D. A. Surgical to Customer upon delivery of the Products at FOB origin for domestic shipments.

PAYMENT

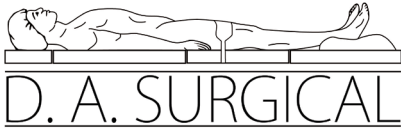
Customer shall pay for all Products delivered within 30 days from the date of D. A. Surgical's invoice. Payment shall be deemed to have been made when a check is received by D. A. Surgical or payment is received by an electronic transfer in D. A. Surgical's bank account. D. A. Surgical reserves the right to assess interest on any late payments from the date due until receipt of payment in full at the lesser of (a) one and one-half percent per month compounded monthly, or (b) the maximum rate permitted by law, and to charge Customer for any collection or litigation expenses, including reasonable attorney's fees incurred by D. A. Surgical in the collection of late payment. In addition to any remedies under law, D. A. Surgical may at its sole discretion suspend future deliveries or services until all delinquent payments due are received. D. A. Surgical may require an advance payment or milestone payments prior to beginning performance of the Purchase Order. D. A. Surgical may require Customer to obtain a letter of credit for international orders. All payments hereunder shall be paid without any deductions, set-off, or counter-claims including for any Taxes.

FORCE MAJEURE AND EXCUSABLE DELAY

D. A. Surgical shall not be liable for any damages of any kind for delayed or non-performance if such delayed or non-performance is due directly or indirectly to:

- (a) Customer, including omissions or failure to act on the part of Customer or its agents or employees;
- (b) An Event of Force Majeure, defined herein as including acts of God, acts of public enemies, fires, floods or unusually severe weather conditions, strikes, lockouts, disputes with workmen or other hostilities, embargoes, wars, riots or civil disturbances, epidemics or quarantine restrictions, delays or shortages of transportation, governmental action including the government's denial or failure to grant an export license or other needed government authorization;
- (c) Causes beyond D. A. Surgical's reasonable control, including severe accidents at D. A. Surgical's plant, unforeseen production or engineering delays or inability of D. A. Surgical or its vendors to secure adequate materials, manufacturing facilities or labor, or any other acts and causes not within the control of D. A. Surgical, which by the exercise of due diligence and reasonable effort, D. A. Surgical would not have been able to foresee, avoid or overcome.

D. A. Surgical shall notify Customer of any delayed or non-performance due to an excusable delay or Event of Force Majeure as soon as practicable. If either such event should occur, D. A. Surgical's period of performance shall be extended for a period of time equal to the duration of either such event. If the excusable delay or Event of Force Majeure extends more than six months, D. A. Surgical and Customer may mutually agree to terminate the Purchase Order or any



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portion thereof impacted by the excusable delay or Event of Force Majeure, and Customer shall promptly pay D. A. Surgical for any delivered Products or services performed, any works in process, any termination costs, including vendor settlement expenses, and a reasonable profit on the terminated Purchase Order or portion thereof that D. A. Surgical and Customer agreed to terminate.

WARRANTY AND RETURNS

Subject to the terms and conditions set forth, D. A. Surgical warrants that the durable Products manufactured by D. A. Surgical shall be free from defects, including latent defects, in material and workmanship for a period of 12 months from delivery and reusable products shall perform as intended under normal use and service when operated in accordance with D. A. Surgical's operating instruction. D. A. Surgical's obligation and Customer's remedy under the Warranty shall be, at D. A. Surgical's option, the repair or replacement of the nonconforming warranted Product, or any part thereof, FOB origin.

The warranty does not apply to consumable items such as foam pillows and like items. Consumable Products manufactured by D. A. Surgical shall be free from defects, including latent defects, in material and workmanship under normal storage and handling conditions for 12 months from manufacture date of products as indicated on the labeling. D. A. Surgical's obligation and Customer's remedy shall be, at D. A. Surgical's option, the destruction or replacement of the nonconforming consumable Product, or any part thereof, FOB origin.

Customer shall provide written or verbal notice of the Product's failure within the Warranty period, to D. A. Surgical Customer Service. If requested, and provided a Return Materials Authorization (RMA) Customers will ensure the failed Product is packed and returned to D. A. Surgical with transportation and insurance prepaid by D. A. Surgical.