

Terms and Conditions

The following Terms and Conditions apply between Winco Mfg., LLC or TransMotion Medical (Either or both entities referred to as SELLER herein) and entity issuing purchase order contract (BUYER).

1) PO Requirements:

- a. All of the terms described in this acknowledgment (the "goods") shall be sold only on the terms and conditions set forth in this acknowledgment. In case of any inconsistency between the terms of this acknowledgment and any purchase order for any of the goods, the terms of this acknowledgment shall govern unless otherwise agreed to in writing by both parties.
- b. If BUYER has issued a purchase order purporting to restrict SELLER's acceptance to BUYER's own terms, this acknowledgment shall be of no force or effect unless BUYER indicates its acceptance of the terms of this acknowledgment by signing and returning a copy hereof to SELLER within ten (10) days after the date hereof. This acknowledgment may be altered only in writing signed by both parties.
- c. All orders must include the following to expedite the order process: correct pricing, vinyl color, TB133 requirement confirmed or waived (for CA, IL, MA, MN), contact name/phone number/e-mail for ship to address, specific shipping requirements and special-order instructions. An updated PO may be required if any of the above information is missing, incomplete and/or incorrect.

2) Minimum Order

- a. Minimum order size is \$30. Orders under \$30 will be referred back to BUYER to request the addition of product or payment of a service fee to meet order minimum.

3) Order Cancellation:

- a. BUYER may cancel its order for the goods covered hereby at any time prior to the physical shipment of the goods by giving written notice to SELLER, and such cancellation shall be effective as of the date on which said notice is received by SELLER; but in any such case, BUYER shall be liable to SELLER for the sum of (i) that portion of the price quoted herein which represents the total cost of the work done and raw materials used up to the date on which cancellation notice was received by SELLER, without any deduction of the resale value of any unfinished goods that have been identified to the contract; (ii) any consequential or incidental damages suffered by SELLER as a result of such cancellation; and (iii) 15% of the full purchase price quoted as compensation for the loss of bargain and not as a penalty; provided however, that in no event shall this total sum exceed the full price quoted herein. Such sum shall be payable to SELLER within fifteen (15) days of such cancellation, and if overdue, shall be subject to a monthly late charge on any unpaid balance at the maximum legal rate.
- b. Custom Vinyl or Modified products in production cannot be cancelled and will be invoiced at 100%.

4) Shipping:

- a. All shipments to BUYER will be billed at acknowledgment price, plus any applicable freight escalated amount in effect on the day of shipment. Unless otherwise specifically stated, all prices are quoted, and will be Invoiced, F.O.B. common carrier delivery point, and do not include federal, state or local sales, use or excise taxes, or insurance, if any, which will be added to the price where applicable. All orders will be shipped Pre-pay and Add (freight charges will be added to the invoice total) unless otherwise indicated and agreed to in advance on the purchase order.
- b. Unless otherwise specified herein, SELLER will not be responsible for risk of loss or damage to the goods after delivery to its carrier. However, SELLER agrees to reasonably assist BUYER with any claim it may have for loss or damage to product during transit.
- c. The method of shipment will be selected by SELLER, unless otherwise requested by BUYER and accepted by SELLER. For domestic shipments, Insurance will be obtained only at BUYER's written direction and expense. For export shipments, SELLER reserves the right in its sole discretion to obtain insurance at BUYER's expense unless BUYER specifically directs otherwise in writing.
- d. Specific routing instructions must be indicated on each purchase order.
 - i. If a shipment cannot be received until a specific date ("Not before date"), this must be indicated on the purchase order.
- e. Freight promotional pricing – Where applicable, may be applied to one single order over \$6,000.00 net to SELLER, with one direct point destination within the continental U.S. only. Freight promotions do not apply to custom orders or any special freight services (such as lift-gate & inside delivery) and does not apply to TransMotion Medical Products (TMM) including Stretchair and S400 Transfer Cliner.
- f. SELLER will provide LTL freight charge estimates and volume freight charge estimates upon request.
- g. Any delivery to facilities without receiving dock will be assessed a mandatory lift-gate fee and potentially be subject to a redelivery fee, if the proper equipment needed was not on hand at time of delivery.
- h. BUYER will be responsible to pay SELLER additional freight charges incurred but not pre-authorized. SELLER reserves the right to bill BUYER, at any time, for the following: fuel surcharges, redelivery fees, re-consignment fees, any additional services performed at time of delivery that not initially requested on BUYER's purchase order, or incurred at time of delivery at BUYER's request without SELLER approval.
- i. A residential fee of \$75.00 will be applied for each applicable shipment.
- j. SELLER shall use reasonable efforts to meet BUYER's requested delivery date, but SELLER does not guarantee a specific delivery date.
- k. Title in the products will pass to BUYER only upon payment in full, and the risk of loss or damage to the products will pass to BUYER upon delivery in accordance with the contract.

5) Shipping Damage:

- a. BUYER shall **not** sign a "free-and-clear" delivery receipt if the packaging indicates potential damage to the product. BUYERs should photograph condition of box and shall immediately un-box and thoroughly inspect shipment upon delivery. Damaged shipments should be signed for as damaged or they should be refused depending upon the condition of the product(s) and/or shipment.
- b. BUYER shall save all packaging materials and photos for inspection by freight carrier if there is damage or shortages.
- c. Failure to notify SELLER and freight carrier of shipment damages/shortages within FOUR (4) days of receipt constitutes proof that the product(s) were accepted without fault. SELLER will not be held responsible for additional costs associated with damage if notification does not take place in the allotted time frame and the above instructions are not followed.
- d. Photographs of product(s) received damaged must be sent to SELLER within FOUR (4) days of date of delivery in order for SELLER to assist BUYER with its claim for freight damage against carrier(s).
- e. NOTE: ALL GROUND SHIPMENTS WILL BE EXCLUSIVELY VIA FEDEX. SELLER will not ship any finished product via UPS ground on BUYER accounts without a signed waiver by purchaser. Waiver releases SELLER of any freight damage claims or replacement costs if UPS is selected.
- f. NOTE: If BUYER has arranged freight and logistics for shipment, BUYER is to notify BUYER's carrier of damages. SELLER will make every attempt to assist BUYER with any freight claims, however SELLER is released of any liabilities as a result of freight damages.

6) Returns:

- a. All returns or exchanges must be pre-approved by SELLER.
- b. Products must be returned by BUYER within THIRTY (30) days, unused, in their original packaging clearly marked with the return authorization (RMA) number provided by SELLER.
- c. Freight damaged product and/or incorrect product as a result of a SELLER error, may be returned and may not be subject to restocking or freight charges.
- d. Return orders NOT received at SELLERS dock within 60 days of RMA Issuance will be cancelled after and no credits will be provided.
- e. A 30% restocking fee will be applied on all returns not due to SELLER error.
- f. For all reasons other than SELLER error, the BUYER is responsible for all return freight charges and logistics without exception.
- g. Returned product that has been removed from its original crate/box will be handled on an individual basis however a minimum restocking charge of 30% plus costs of any required packaging for reshipment and return freight charges will apply. In addition, Product removed from original packaging may be subject to:
 - i. Replacement cost of cushions...once un-crated, cushion(s) are considered used.
 - ii. Replacement parts cost as specified in the inspection report
- h. **Non-Returnable Product(s):**
 - i. Custom/modified products, upholstered replacement parts and custom vinyl orders are not returnable under any circumstances.
 - ii. Clearance items and demonstration equipment purchases are not returnable.

7) Payment Terms

- a. All non-disputed invoices on open account are due and payable as provided herein unless and until SELLER notifies BUYER of a change in its credit policy. If in SELLER's judgment, the creditworthiness or future performance of BUYER is impaired, SELLER may suspend performance under the Contract and/or require prepayment by Positive Electronic Funds payment (wire transfer, ACH, etc.) prior to any shipment of product. Prorated payments shall be due for partial shipments. Promptness of payments at the times they respectively fall due is of the essence of this contract and any failure or substantial delay in making any such payment shall constitute a material breach of contract, entitling SELLER at its sole option to any or all remedies for breach. Overdue accounts shall be subject to a monthly late charge on the unpaid balance at the maximum legal rate. Legal and collection fees incurred by SELLER for collection of any past due invoice are the responsibility of the BUYER.
- b. If in SELLER's sole opinion, BUYER becomes insolvent, its credit becomes impaired or it is unable to pay its debts as they become due, or if BUYER makes an assignment for the benefit of creditors, or if a receiver is appointed for BUYER or its property, or if SELLER reserves the right to accelerate the due date for any payment by BUYER hereunder or under any other contract with SELLER and to enforce any rights made available to creditors under applicable law, including, without limitation, the right to retake possession of the goods or to stop goods in transit and demand payment before delivery.
- c. Any shipment date specified herein is based on SELLER's best estimate and will not operate to bind SELLER to ship or guarantee deliveries on such date. Unless otherwise agreed in writing SELLER reserves the right to make partial shipment. Claims for shortage in quantity or damage in shipment shall be deemed waived unless presented in writing to SELLER within FOUR (4) days after delivery.

8) Sales Tax

- a. SELLER (Winco Mfg., LLC) is required by law to collect and remit state sales tax on any products for all non-tax-exempt BUYERs for the **Ship to** address. However, BUYER is responsible for any use tax due to the state in which they reside. Proof of valid Tax exempt and resale certificates will be required annually, at expiration, or as updated for each state to which product ships. Please contact your local taxing authority for any tax specific questions

9) Miscellaneous

- a. If the performance by SELLER or any of its obligations hereunder is interrupted or prevented by riot, war or hostilities between nations; statute, order, regulation or other governmental action; court injunction or decree; accident, act of God, fire or other casualty; strike, differences or disputes with workers, or other labor disturbances; delay of carriers; lack of or inability to obtain transportation facilities, raw materials, labor, fuel or supplies; curtailment of or failure to obtain sufficient electrical power; or any other similar or different contingency within or without the United States which is beyond the reasonable control of SELLER, SELLER shall be excused from the performance of such obligations to the extent that its performance is interrupted or prevented by one or more such causes. In the event that SELLER is prevented by any of the foregoing contingencies from supplying the full quantity of its goods to its BUYERs required under any accepted order or contract. SELLER shall have the right to prorate among BUYER and other BUYERs of SELLER, as well as among internal units of SELLER, such quantity of goods as may be available and SELLER agrees to promptly notify BUYER of any such proration of goods.
- b. SELLER warrants that any goods normally produced by it and offered for sales to the general trade shall be free from defects in material and workmanship at the time of shipment. SELLER further warrants that all such products will conform to current industry standards at time of shipment. Any item found to be defective by SELLER will be replaced or repaired, provided that SELLER is notified in writing of the defect promptly upon BUYER's receipt of the goods. If so requested by SELLER, the item shall be returned promptly to SELLER, freight prepaid, for examination. The aforesaid warranty shall apply only if, in SELLER's exclusive judgment (i) the goods are used for their intended purpose and solely under the conditions and in the manner recommended in SELLER's specifications or other instructions and (ii) the goods have not been misused or abused in any manner, or repairs attempted thereon anyone other than SELLER or its authorized representative, unless specifically approved in writing by SELLER. In no event shall SELLER's liability for defects in any goods exceed its invoice price or replacement cost, whichever is lower, or include any labor charges arising from such replacement unless specifically authorized in writing by SELLER.
- c. The warranties stated above are exclusive. SELLER MAKES NO OTHER WARRANTIES, COVENANTS OR REPRESENTATIONS, EITHER EXPRESSED OR IMPLIED, BEYOND THOSE SET FORTH HEREIN. THERE IS NO WARRANTY OF MERCHANTABILITY AND THERE ARE NO WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE. In no event shall SELLER be liable for incidental or consequential damages, or for damages or injuries to BUYER or its customers, or any subsequent purchaser of any goods, or the agents or employees of any of them. BUYER agrees to indemnify and hold harmless SELLER, its employees or agents ("Indemnitees") against any claims, actions, losses, suits, judgments, awards, and reasonable expenses associated thereto (hereinafter "Claims") for personal injury, property damage or death to any third party, made or instituted by a third party against Indemnitees to the extent said Claims are caused solely by the negligence of BUYER. SELLER agrees to indemnify and hold harmless BUYER, its employees or agents ("Indemnitees") against any claims, actions, losses, suits, judgments, awards, and reasonable expenses associated thereto (hereinafter "Claims") for personal injury, property damage or death to any third party, made or instituted by a third party against Indemnitees to the extent said Claims are caused solely by the negligence of SELLER. Except for goods warranted for more than two (2) years, any action by BUYER for breach of warranty or other cause hereunder must be commenced within two (2) years after delivery of the goods to BUYER or such action shall be barred thereafter for all purposes. In no event shall SELLER be liable under the above warranties to anyone other than the original BUYER.
- d. In regard to any specifications or materials that may be provided by BUYER for SELLER's use hereunder. BUYER warrants that such specifications or materials do not infringe any patent, trademark, copyright or other proprietary right of third parties. BUYER shall indemnify and hold SELLER and its successors and assigns harmless from any and all actions, claims, liability, damage or expense, including, but not limited to, attorneys' fees and other expenses of defense, with respect to any claim of patent, trademark, or copyright infringement or the violation of any proprietary right of third parties arising out of the manufacture, use or sale of the goods.

10) SPECIFICATIONS SUBJECT TO CHANGE

- a. While we endeavor to maintain stable pricing and consistent products, due to conditions beyond our control, prices, and specifications are subject to change without notice. We reserve the right to add or delete products at any time and without prior notice. Always check with your representative for the latest specifications, features and product availability prior to order.

11) GOVERNING LAW; VENUE/JURISDICTION

- a. The Contract and its execution, performance, interpretation, construction, and enforcement shall be governed by the law, both procedural and substantive, of the State of Florida, without regard to its conflicts of law rules. Any action or proceeding between BUYER and SELLER relating to the Contract shall be commenced and maintained exclusively in the State or federal courts in Marion County, Florida, and BUYER submits itself unconditionally and irrevocably to the personal jurisdiction of such courts.

12) COMPLIANCE WITH LAW

- a. BUYER shall comply with all applicable laws in its performance of the Contract and shall neither take nor refrain from taking any action that could result in liability for either BUYER or SELLER under applicable law.