

CAIRE INC.

U.S. CONSUMER TERMS & CONDITIONS OF SALE

1. **General.** ALL SALES OF EQUIPMENT BY CAIRE INC. (“**SELLER**”) TO U.S. CONSUMERS AND CONSUMERS’ USE THEREOF ARE EXPRESSLY CONDITIONED ON ACCEPTANCE OF THE FOLLOWING CAIRE U.S. CONSUMER TERMS & CONDITIONS OF SALE (“**TERMS & CONDITIONS OF SALE**” OR THIS “**AGREEMENT**”). “**PURCHASER**” AS USED HEREIN SHALL REFER TO THE ORIGINAL CONSUMER WHO IS PURCHASING THIS EQUIPMENT DIRECTLY FROM SELLER. IN THE EVENT THAT THE EQUIPMENT REQUIRES A PRESCRIPTION, THE TERM “**PURCHASER**” SHALL BE DEEMED TO BE THE ORIGINAL PRESCRIPTION HOLDER. These Terms & Conditions of Sale may not be changed or waived except in a writing signed by Seller. Seller may revise these Terms & Conditions of Sale at any time. Purchaser should visit Seller’s consumer website at <http://www.caireinc.com> from time to time to review the then current Terms & Conditions of Sale because they are binding on Purchaser. Any additional, inconsistent or different terms and conditions contained in Purchaser’s request, order, purchase order or any other documents supplied by Purchaser are hereby expressly rejected. By purchasing Equipment, Purchaser confirms the Terms & Conditions of Sale apply to the purchase of Equipment, regardless of form or terms of Purchaser’s order. Unless the context otherwise requires, the term “**Equipment**” as used herein shall mean all goods, equipment, parts, and accessories sold to Purchaser by Seller. Unless the context otherwise indicates, the term “**Services**” as used herein shall mean the instructions, repair and other services provided by Seller, if any. As used herein, the term “**Parties**” shall collectively mean Seller and Purchaser, and individually as a “**Party**.”

2. **Payment Terms, Pricing and Taxes.** Orders for Equipment sold by Seller may be placed with Seller through speaking with a CAIRE Customer Service Representative at 1-800-482-2473. The only form of payment accepted by Seller is credit card payments. Purchaser shall pay in full at the time of ordering Equipment and no order shall be binding upon Seller unless and until accepted by Seller under these Terms & Conditions of Sale, and Seller shall have no liability for orders that are not accepted. Purchasers shall only be able to purchase Equipment with a valid prescription from a physician licensed to practice medicine in the United States of America. Seller reserves the right to change pricing for any reason at any time without notice; however the prices in effect at the time of an order will prevail. Equipment will only be sold to consumers in the United States of America and all prices are stated in U.S. dollars. Any applicable sales taxes will be added to the total cost at the time of checkout and is due and payable by Purchaser. Seller reserves the right to make changes to Equipment without notice and to ship the most current Equipment, if available.

3. **Limited Warranty and Warranty Returns.** The Consumer Limited Warranty Statement to Equipment sold to consumers hereunder and any returns thereof (the “**Limited Warranty Statement**”) is available at www.caireinc.com/patients/legal-library/ or to Purchaser at any time upon request. By purchasing Equipment,

Purchaser expressly agrees to the terms of the Limited Warranty Statement, including, but not limited to, procedures for warranty returns, which are hereby incorporated into and made part of these Terms & Conditions of Sale. Please review the Limited Warranty Statement before making any purchase.

4. **Thirty (30) Day Trial Period.** For new Equipment consisting of a U.S. consumer concentrator (“**Eligible CAIRE System**”) and parts and/or accessories purchased on the same order as such Eligible CAIRE System (collectively, the “**Eligible Accessories**”), Seller will provide to Purchaser a thirty (30) day trial period whereby Purchaser may return the Eligible CAIRE System and the Eligible Accessories whether or not there is defect in materials or workmanship for a full refund or credit (towards the purchase of different Equipment from Seller) of the original purchase price paid, less a restocking fee of \$75, subject to other conditions contained herein (the “**30 Day Trial**”). The 30 Day Trial shall commence on the date Purchaser purchases the Eligible CAIRE System and the Eligible Accessories. To return an Eligible Care System and Eligible Accessories pursuant to the 30 Day Trial, Purchaser must obtain a Return Materials Authorization (“**RMA**”) number and Seller must receive (at Seller’s address) prior to the expiration of the 30 Day Trial all items in their original condition, in the original packaging, and with all paperwork (including, but not limited to, the original invoice or packing slip) and accessories. The RMA number must be written on the documents enclosed and on the outside of the freight box. Upon Seller’s receipt (at Seller’s address) of the Eligible CAIRE System and Eligible Accessories, Seller will inspect all returned items to confirm Purchaser has returned all items in their original condition, in the original packaging, and with all paperwork (including, but not limited to, the original invoice or packing slip) and accessories. If any (i) returned item is not in its original packaging, (ii) original paperwork is missing (including, but not limited to, the original invoice or packing slip), (iii) accessory is missing, (iv) or some or all of the returned items are not in their original condition, a partial credit may be given. Such process may take up to ten (10) business days after the date Seller receives (at Seller’s address) the Eligible CAIRE System and the Eligible Accessories.

5. **Returns; Repairs or Replacements Under Warranty.** Equipment returns will not be accepted by Seller if Purchaser does not obtain a Return Material Authorization (“**RMA**”) number before the expiration of the 30 Day Trial. For defective Equipment reported after the expiration of the 30 Day Trial and prior to the expiration of the Warranty Period, the limited warranty set forth in the Limited Warranty Statement shall apply. For the return of defective Equipment during the Warranty Period, Purchaser must follow the return procedures set forth in the Limited Warranty Statement. Accessories are not eligible for return unless they are Eligible Accessories and returned in accordance with the provisions of this Agreement. Purchaser shall be responsible for (i) all expedited freight charges and (ii) all freight charges for shipping to a location into or outside of the 48 contiguous United States of America, for Equipment repaired or replaced under warranty.

6. **Repairs or Replacements Not Under Warranty:** For any Equipment returned for repair or replacement that is not covered under any warranty (including for preventative

maintenance, which shall be at Purchaser's sole expense) Purchaser shall contact a CAIRE Customer Service Representative at 1-800-482-2473 for instructions and assistance. Equipment may only be returned by Purchaser to a designated repair facility, when accompanied by an RMA number issued by Seller. Purchaser shall pay for all freight costs incurred for Equipment repaired or replaced not under warranty.

7. **Excusable Delays.** Purchaser understands and agrees that the schedule for delivery of Equipment and performance of Services may be modified for delays resulting from causes beyond Seller's reasonable control, including but not limited to, acts of God, war, terrorism, strikes, restrictions of the United States Government or other governments having jurisdiction, delays in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities.

8. **Delivery and Risk of Loss or Damage.** Seller shall provide standard ground transportation delivery within the 48 contiguous United States of America of Equipment classified as whole products (which are oxygen concentrators), but not for orders of parts or accessories only. At the time of checkout, Purchaser will have the option to select expedited freight for an additional fee. Risk of loss passes to Purchaser upon Seller's placing Equipment into the possession of a freight carrier at the place of shipment and any claims for losses or damage shall be made by Purchaser directly with freight carrier. Acceptance of Equipment occurs when delivered to Purchaser's address. Acceptance of any Services provided hereunder occurs at the time of completion. Notwithstanding anything to the contrary, all lead times quoted and accepted by Seller shall be from the date Seller accepts Purchaser's order. Purchaser shall indemnify, defend and hold Seller harmless from any claims by freight carriers for Purchaser's failure to pay freight charges. Delivery dates quoted are based on Seller's best estimate of a realistic time when shipment will be made, and are subject to change. Delivery dates will be confirmed on Seller's acceptance of any resulting order, and Seller will use its best efforts to meet such Delivery date.

9. **Laws, Codes and Standards.** Price and Delivery schedules are based on the applicable laws, codes, and standards stated in Equipment specifications in effect as of the date of Seller's acceptance of the purchase order. If such laws, codes, and standards change and such change increases or decreases the cost of performing the work or impacts the Delivery schedule, then Seller will advise Purchaser of the same, and the Parties shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change.

10. **Title.** Seller shall retain legal and equitable title to Equipment until Equipment is placed into the possession of a freight carrier at the place of shipment. In the event Equipment is sent in for replacement or refund, title shall transfer to Seller upon delivery at Seller's address. In the event Equipment is sent in for repair, title at all times shall remain with Purchaser.

11. **Cancellation or Change.** Cancellation or change of any purchase order may be granted at Seller's sole discretion and must be made by prompt written notice to Seller before such order is processed and may be subject to Seller's restocking fee of \$75.

12. **Intellectual Property.** Purchaser acknowledges and agrees that, as between Purchaser and Seller, Seller is and will remain the sole and exclusive owner of all right, title and interest in and to all intellectual property rights used to create, embodied in, used in and otherwise related to Equipment, its component parts and all related instructions, manuals, designs, reports, plans, drawings, standards, specifications or other information submitted to Purchaser by Seller ("**Seller Documents**"), including, but not limited to, all related copyrights, patents, trademarks, trade names, trade secrets, and any associated goodwill (the "**Intellectual Property Rights**"). All right, title and interest in any inventions, developments, improvements or modifications of Equipment made by Purchaser or Seller shall exclusively remain with Seller. If Purchaser acquires any Intellectual Property Rights in or relating to any Equipment purchased under this Agreement (including any rights in any trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller without further action by either Party. Without the express prior written consent of Seller, Purchaser shall not copy or disclose Seller Documents to any third party, and shall not use them for any purpose other than to install, own, operate, and maintain Equipment.

13. **Assignment.** This Agreement and the Limited Warranty Statement may not be transferred or assigned by Purchaser by operation of law, resale, title transfer, or otherwise without the prior express written consent of Seller. Any transfer or assignment by Purchaser of any rights, duties or obligations without Seller's consent shall be void.

14. **Limitation of Liability.** *NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL SELLER, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO PURCHASER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, COST OF DELAYS, OR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT FOR ANY CLAIMS WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, INDEMNIFICATION OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF EQUIPMENT OR PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID TO SELLER BY PURCHASER FOR THE SPECIFIC EQUIPMENT OR PART THEREOF OR FOR THE SERVICES GIVING RISE TO THE CLAIM. SOME STATES, INCLUDING NEW JERSEY, DO NOT ALLOW LIMITATIONS OF LIABILITY OR DAMAGES IN*

WHICH CASE (OR IF PURCHASER LIVES IN THOSE STATES), THE ABOVE LIMITATIONS DO NOT APPLY TO PURCHASER.

15. Export Sales and Compliance with Trade Laws. In no event shall Seller be required to export or deliver any technical information, data or Equipment if such export or Delivery is then prohibited or restricted by any law or regulation of the U.S. Government, including departments, agencies and sub-divisions thereof or of any other applicable governmental agency of any country having jurisdiction, including the country in which Equipment or Services to be sold will be installed, used, or performed ("Applicable Law"). Should Seller's performance of its obligations hereunder be prohibited by Applicable Law, in whole or in part, or if the exportation or importation of Equipment which is the subject of this Agreement be precluded because of the inability to obtain an export or import license within a reasonable time, as appropriate, then Seller's obligations hereunder shall be terminated at Seller's option, and Seller shall be entitled to a \$75 restocking fee. Purchaser agrees not to export, re-export or import any Equipment, technical information or data of Seller without full compliance with Applicable Laws and shall cause any end user of Equipment or Services, if different from Purchaser, to comply with such Applicable Laws. Purchaser agrees not to export, re-export, sell or lease any Equipment or components thereof or technical data supplied by Seller to a prohibited person, to a prohibited country, or for a prohibited use under Applicable Laws. Purchaser agrees to indemnify and hold Seller harmless from and against any and all damages and expenses (including attorneys' fees) resulting from a violation of Applicable Laws by Purchaser or any end user, if different from Purchaser.

16. Compliance with Laws; Notice of Adverse Events. Purchaser agrees to comply with the laws that apply to the purchase and use of Equipment and Services, including but not limited to any laws related to government or insurance company reimbursement, if applicable. Purchaser shall promptly notify Seller of any adverse events or injuries that may have been attributed to the use of Equipment (or, if such event was repeated, may cause injury), after Purchaser has sought medical attention, if necessary.

17. Governing Law and Arbitration. Any and all disputes arising out of or relating to Purchaser's purchase from Seller, any Equipment or Services sold or distributed by Seller or this Agreement shall be resolved exclusively (except as otherwise set forth herein) by binding arbitration in accordance with the provisions of this Section (this "***Arbitration Agreement***"). BY PLACING AN ORDER WITH SELLER AND AGREEING TO ARBITRATION PURCHASER UNDERSTANDS AND AGREES THAT PURCHASER IS WAIVING PURCHASER'S RIGHT TO SUE OR GO TO COURT TO ASSERT OR DEFEND PURCHASER'S RIGHTS UNDER THIS AGREEMENT. Purchaser and Seller expressly delegate to the arbitrator the authority to determine the arbitrability of any dispute, including the scope, applicability, validity, and enforceability of this arbitration provision. Purchaser acknowledges and agrees that all decisions made by the arbitrator are final and binding.

Purchaser shall begin an arbitration proceeding by sending a letter requesting arbitration to CAIRE Inc., Attn: General Counsel, 2200 Airport Industrial Drive, Suite 500, Ball Ground, Georgia 30107. Purchaser agrees that the arbitration shall be conducted by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules ("AAA Rules"), as modified by this Arbitration Agreement. The AAA Rules are available on the AAA's website www.adr.org, or by calling the AAA at (800) 778-7879. In the event the AAA is unavailable or unwilling to hear the Dispute, the parties shall agree to another arbitration provider. Payment of all filing, administration and arbitrator fees will be governed by the AAA's applicable rules. For claims totaling less than \$10,000, Seller will reimburse Purchaser the lesser of (i) \$5,000 in the aggregate amount for filing, administrative and arbitrator fees or (ii) the actual cost of such fees. For claims totaling more than \$10,000, Purchaser and Seller agree to split the filing, administrative, and arbitrator fees equally, provided, however, Purchaser's portion of such fees shall at no time exceed \$10,000 in the aggregate amount. Seller waives its right to seek attorneys' fees and costs in arbitration. Purchaser may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where Purchaser lives or at another mutually agreed location.

In lieu of binding arbitration, either Purchaser or Seller may bring any individual claim in small claims court consistent with the jurisdictional and dollar limits that may apply, as long as it is brought and maintained as an individual claim.

Waiver of Right to Bring Class Actions and Representative Claims. All arbitrations shall proceed on an individual basis. The arbitrator is empowered to resolve the dispute with the same remedies available in court, however, any relief must be individualized to Purchaser and shall not affect any other customer. Purchaser and Seller agree that each may bring claims against the other in arbitration only in their respective individual capacities and in so doing Purchaser and Seller hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration (either as a named-plaintiff or class member), and to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular cause of action, then that cause of action (and only that cause of action) must remain in court and be severed from any arbitration.

Other Terms. This Agreement and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the Parties, and the interpretation and enforcement of the rights and duties of the Parties is exclusively governed by the laws of the State of Georgia, excluding its conflicts of law principles. The terms of this Arbitration Agreement provisions shall survive after this Agreement terminates or Purchaser's relationship with Seller and/or use of Seller's Equipment or Services ends. Except as set forth above, if any portion of this Arbitration Agreement is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Agreement.

18. Miscellaneous. This Agreement constitutes the complete and exclusive agreement between Seller and Purchaser and there are no agreements, understandings, restrictions, warranties, or representations between Seller and Purchaser other than those set forth herein. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then such provision shall be deemed revised and applied to the maximum extent allowed by applicable law, and such invalidity or unenforceability shall not affect the remainder of such provision or any other provision here which shall remain in full force and effect. All obligations herein shall survive termination, expiration or completion of this Agreement. No term or condition is intended for the benefit of any third party, and Seller and Purchaser do not intend any term or condition to be enforceable by any third party, including any end user of Equipment or Services, if different from Purchaser. Seller's failure on any occasion to insist on strict performance of any term or condition hereof shall not constitute a waiver of compliance with such term or condition on any other occasion or a waiver of any default. References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time-to-time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it. The headings used throughout are for convenience only and shall be given no legal effect. Fax copies and portable document format (.pdf) electronic transmissions shall be given the full force and effect as the original. When Seller has entered into a separate agreement with a distributor, customer, or reseller ("**Reseller**") for the sale of Equipment that was sold to Purchaser, the terms of that Reseller agreement will supersede these Terms & Conditions of Sale, and Purchaser will look exclusively to the terms that he or she has directly with such Reseller for the terms of their purchase.

19. Use of Equipment; Resale Prohibited. Purchaser agrees that Equipment is for use by Purchaser only. Purchaser acknowledges that Equipment is a medical device regulated by the Food and Drug Administration. The sale of Equipment in the United States requires a medical prescription from an authorized medical authority. Purchaser agrees that Equipment will be used only by Purchaser in accordance with the applicable medical prescription, and agrees not sell or transfer Equipment to any other person. Purchaser agrees to (i) read all manuals, warnings, and other Equipment literature provided by Seller and (ii) use the Equipment in accordance with all such manuals, videos, warnings, and/or other Equipment literature, including but not limited to, ensuring all required preventative maintenance is performed.

20. Termination. Seller may terminate or cancel any order, for any reason or for no reason. Seller reserves the right to change, suspend, or discontinue all or any aspect of Seller's consumer website at any time with or without notice.

21. Purchaser Consent. Purchaser is communicating with Seller electronically every time Purchaser uses Seller's consumer website, Seller's servers, or sends to Seller emails, text messages,

and other communications from Purchaser's computer or mobile device. Purchaser consents to receive electronic communications from Seller relating to Purchaser's order, such as e-mails, text messages, mobile push notices, or notices and messages on Seller's consumer website, and Purchaser can retain copies of these communications for Purchaser's records.

22. Shipping and Return Policies. All purchases are subject to additional terms and conditions relating to shipping and returns (collectively, "**Shipping & Return Policies**"). The Shipping & Return Policies are available at www.caireinc.com/patients/legal-library/ or to Purchaser at any time upon request, and are hereby incorporated into and made part of these Terms & Conditions of Sale. Please review the Shipping & Return Policies before making any purchase. By submitting payment information in connection with any purchase, Purchaser agrees to Seller's Shipping & Return Policies.

23. Indemnification. Unless proximately caused by the sole gross negligence or willful misconduct of Seller, Purchaser agrees to release, defend, indemnify and hold Seller harmless from any third party claims arising out of the use, sale, or lease of Equipment or Services and from all expenses, losses and other damages in connection with any claims, suits or proceedings arising out of or relating to (1) Purchaser's breach of any of the Terms and Conditions or (2) the use or other exploitation of the Equipment.