

Terms & Conditions of Sale

1. General. The terms and conditions contained herein, together with any additional or different terms contained in CAIRE Medical Technology (Chengdu) Co., Ltd. ("CAIRE") proposal, if any, submitted to Buyer (which proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions) constitute the entire agreement between the parties with respect to the subject sale and supersedes all prior communications and agreements. Acceptance by CAIRE of Buyer's order, and/or Buyer's acceptance of CAIRE's proposal is expressly limited to and conditioned upon Buyer's acceptance of these terms and conditions which may not be changed or waived except in a writing signed by both parties. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents supplied by Buyer are hereby expressly rejected. Unless the context otherwise requires, the term "**Equipment**" as used herein includes all goods, equipment, parts, and accessories sold to Buyer by CAIRE. Unless the context otherwise indicates, the term "**Services**" mean labor, supervision and project engineering services provided by CAIRE. As used herein, the term "Buyer" shall include the initial end user of the Equipment and/or the Services.

2. Payment Terms. Unless a different payment schedule is agreed to in writing, Payments by Buyer for export sales shall be made in accordance with the following:

For the products made to stock, such as liquid containers: Full payment by T/T prior to shipment, or confirmed, irrevocable letter of credit established in favor of CAIRE on a Chinese bank to be designated by CAIRE.

In any quotation that CAIRE submits to Buyer with respect to the total purchase price and any other payment that is required to be made by Buyer to CAIRE, CAIRE will quote the total purchase price and such other payment in United States dollars. CAIRE will invoice Buyer in accordance with the payment schedules as set forth herein. If there is any adjustment in the exchange rate between Renminbi and United States dollar due to the Chinese government's action during the period from the quotation date to the invoicing date, Buyer shall bear the risk of any changes so adjusted in the exchange rate during this period unless otherwise agreed upon by CAIRE and Buyer. Notwithstanding any other provisions herein, for any payment hereunder made by Buyer to CAIRE, Buyer agrees that it shall make such payment in accordance with the amount as stated in an invoice issued by CAIRE to Buyer with respect to the Equipment and any other payment. The total purchase price for the Equipment or any other payment hereunder shall be paid in United States dollars. For any payment purpose, CAIRE and Buyer agree that they shall use the exchange rate between Renminbi and one United States dollar that is the medium rate of the interbank foreign exchange market published by the People's Bank of China on the date on which the relevant invoice is issued. Any charges for conversion of United States dollar payment into Renminbi shall be borne by the Buyer. Late payments are subject to a 1.5% late charge per month on the amount overdue. Costs associated with the letter of credit will be to Buyer's account. Performance and delivery schedules originate on receipt of the down payment.

3. Taxes. All taxes that may be imposed in China by the Chinese government authorities in connection with the transactions contemplated hereby shall be the sole responsibility of the party required by officially published laws and regulations of China to bear such taxes, and if one party has paid any taxes required to be paid by the other party according to such laws and regulations, the party required to pay such taxes shall promptly reimburse the other party after receipt of notice thereof from such party. State, local or value added taxes measured on the price of the Equipment are not included in the price.

4. Time Limit. All quotations are valid for a period of thirty calendar days unless otherwise stated.

5. Acceptance. Delivery and acceptance of the Equipment occurs at the point of manufacture.

6. Warranty. General. CAIRE warrants that all the Equipment manufactured by CAIRE shall be free from defects in material, workmanship and title; provided, however, that this warranty shall be limited to the Equipment found to be defective within a period of ninety (90) days from initial use or ninety (90) days from date of shipment, whichever expires first, except that parts sold as a spare or for replacement are warranted for one (1) year from the date of shipment or until the expiration of the recommended service period, whichever expires first. In the event the Equipment constitutes heat exchanger(s), then CAIRE also warrants the same to be new at the time of delivery and in accordance with CAIRE's applicable brazed aluminum heat exchanger specifications and drawings, which may have been submitted to and approved by Buyer. Resale products only carry the warranty offered by their original manufacturer. This warranty does not cover Buyer furnished designs, goods, equipment,

and/or materials. In no event shall CAIRE incur any obligation to repair or replace the Equipment which CAIRE determines to be defective due to customer misuse, abuse, neglect, operated outside the specified design and/or feed conditions, corrosion or erosion, or not used in accordance with normal operating and maintenance instructions. CAIRE shall not incur any warranty obligation hereunder with respect to the Equipment which is modified in any way by Buyer without CAIRE's prior written approval. Installation by Buyer at regular intervals of normal maintenance parts does not constitute modifications. Services . CAIRE warrants its Services against defects in workmanship for a period of ninety days from date of their completion. Detailed warranty statement is included in the instruction manual provided in each container packaging/boxing.

7. Exclusive Remedy. Equipment/Services Remedy. Should any failure to conform with the applicable warranties appear during the specified periods under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and if given prompt written notice by Buyer and CAIRE has been given ten (10) days to inspect the said Equipment (and provided Buyer has helped identify the problem and appropriately decontaminated the Equipment) before any corrective actions are taken, then CAIRE shall correct such nonconformity by, at its option, (1) repair or replacement of the nonconforming Equipment or parts thereof, or (2) in the case of nonconforming Services, provide equivalent Services at the job site or refund the price therefor. Repairs or replacements made pursuant to warranty shall not renew or extend the applicable original warranty period, provided however, that any such repairs or replacement of the Equipment or parts thereof shall be warranted for the time remaining in the original warranty period or thirty days, whichever is longer. CAIRE shall not be responsible for providing working access to the defect, including disassembly and reassembly of the Equipment or for providing transportation to and from CAIRE's repair or factory facility, all of which shall be at Buyer's risk and expense. These warranties shall also not apply to any Equipment or parts thereof which: (1) have been improperly repaired or altered; (2) have been subjected to misuse, excessive external forces, negligence or accident; (3) have been used/operated in a manner contrary to CAIRE's instructions, specifications and drawings; (4) are comprised of materials provided or a design stipulated by Buyer; (5) are used equipment; or (6) result from normal wear and tear. Any repair or alteration without CAIRE's written approval shall act to void any existing warranty. Buyer also agrees to defend, indemnify and hold CAIRE harmless from any third party claims arising out of Buyer's use, sale, or lease of the said furnished Equipment.

8. Disclaimer. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, PERFORMANCE AND DESIGNS, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXPRESSLY DISCLAIMED BY CAIRE AND ALL EQUIPMENT MANUFACTURERS.

9. Termination. No termination by Buyer for default shall be effective unless, within fifteen (15) days after receipt by CAIRE of Buyer's written notice specifying such default, CAIRE shall have failed to initiate and pursue correction of such specified default.

10. Excusable Delays. The schedule for shipment of the Equipment and/or performance of the Services will be modified for delays resulting from causes beyond CAIRE's reasonable control, including but not limited to, strikes, restrictions of the Chinese Government, or other governments having jurisdiction, delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities. The period allowed for the delays will be the period for continuing occurrence of such an event above plus the period that still remains on the original delivery schedule.

11. Shipment. Export shipments are **EXW** with responsibilities of each party as defined in INCOTERMS 2000 (International Chamber of Commerce Publication NO. 560). Buyer shall promptly take delivery made by CAIRE. If CAIRE agrees in writing to prepay transportation and insurance charges, then Buyer will be invoiced and agrees to pay the actual cost of the same in advance or with agreed payment terms. Claims for shortages in shipment shall be deemed waived unless made in a writing received by CAIRE within ten (10) days after delivery. Shipment dates quoted are based on CAIRE's best estimate of a realistic time when shipment will be made, and are subject to change due to prior sales. Shipment dates will be confirmed on CAIRE's acceptance of any resulting order. CAIRE may make early shipment or partial shipments and invoice Buyer accordingly.

12. Storage. CAIRE shall provide reasonable storage space for the finished Equipment prior to any shipment, and charges for the storages will be levied on Buyer starting from 90 days after completion of the Equipment. Such charges will be US\$200 each month. Buyer will be invoiced and agrees to pay such storage charges within

30 days upon invoicing.

13. Laws, Codes and Standards. Except as expressly stated herein, the price and schedule included herein are based on laws, regulations, and standards in effect as of the date of the subject sale. If such laws, regulations, and standards change and increase or decrease the cost of performing the work or impact the schedule, then CAIRE will advise Buyer of the same. Buyer and CAIRE shall promptly negotiate in good faith and mutually agree upon any modification to the order resulting from any such change.

14. Title and Risk of Loss or Damage. Despite any agreement with respect to delivery terms or prepayment of transportation or insurance charges, the risk of loss or damage shall pass to Buyer at the time of delivery and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of manufacture. Title to the Equipment sold shall remain in CAIRE until paid for in full.

15. Installation. Installation of the Equipment furnished hereunder shall be by Buyer, unless otherwise agreed to in a writing signed by CAIRE's duly authorized representative.

16. Field Service. Field service will be provided on a per diem basis upon written authorization by Buyer and at CAIRE's rates in effect when such Services are provided.

17. Cancellation. Cancellation of any order must be by a 15-day prior written notice to CAIRE [before the shipment] and will be subject to CAIRE's cancellation charges of 15% of the order value plus actual costs incurred for made to order products

18. Intellectual Property. Buyer shall defend, indemnify and hold CAIRE harmless from all expenses, losses and other damages resulting from any actual or alleged infringement of patents, copyrights or trademarks arising from CAIRE's compliance with Buyer's designs, specifications or instructions. Unless otherwise agreed to in a writing signed by CAIRE's duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Equipment and the Services made by CAIRE or Buyer shall exclusively remain with CAIRE. Any design, manufacturing drawings or other information submitted to Buyer shall remain the exclusive property of CAIRE. Buyer shall not, without CAIRE's prior written consent, copy nor disclose such information to any person. The information, drawings, plans, standards, and specifications furnished by CAIRE were developed at CAIRE's expense and may not, without CAIRE's prior written consent, be used nor disclosed by Buyer for any purpose other than to install, own, operate, and maintain the subject Equipment. If CAIRE's Equipment is held to infringe a Chinese patent in effect as of the date of this agreement, then CAIRE may at its option procure for Buyer the right to use the Equipment; modify or replace it with non-infringing Equipment; refund the purchase price allocable to the infringing Equipment, or settle or otherwise terminate said actions on behalf of Buyer. The foregoing is CAIRE's entire liability on patent infringements.

19. Assignment. This agreement may not be transferred or assigned by operation of law or otherwise, without the prior express written consent of CAIRE. Any transfer or assignment of any rights, duties or obligations without CAIRE's consent shall be void.

20. Limitation of Liability. *In no event shall CAIRE, ITS AFFILIATES, suppliers and subcontractors be liable to Buyer nor to any third party for any special, indirect, incidental or consequential damages, including but not limited to loss of profits, loss of use, cost of capital, cost of substitute the Equipment, downtime costs, delays NOR FOR ANY PENALTIES, whether any such claim FOR THE same is based on contract, warranty, tort, negligence, strict liability or otherwise. CAIRE's liability for any such claims whether in contract, warranty, negligence, tort, strict liability, 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 the Equipment or performance of ANY services covered by this agreement, shall in no event exceed the PURCHASE price paid to CAIRE by Buyer for the specific Equipment OR PART THEREOF or for the Services giving rise to THE CLAIM.*

21. Export Sales. In no event shall CAIRE be required to export or deliver any technical information, data and/or the Equipment if such export or delivery is then prohibited or restricted by any law or regulation of the Chinese or

U.S. Government. Buyer shall be responsible for securing all licenses. Upon a request by Buyer, CAIRE may render its assistance to Buyer in obtaining licenses required by the Chinese authorities for a foreign Buyer, and all charges in connection therewith shall be borne by Buyer.

22. Governing Law. This agreement is exclusively governed by the laws of P. R. China, excluding its conflicts of laws. Buyer agrees all causes of action under this agreement shall expire unless brought in a People's Court with jurisdiction located in Jiangsu Province, P. R. China, to which Buyer does hereby consent to the jurisdiction of the same, within one year of the date of the occurrence of the event giving rise to any such claim.

23. Headings. The headings used throughout are for convenience only and shall be given no legal effect. Fax copies shall be given the full force and effect as an original.

24. Entire Agreement. These terms and conditions, together with any additional or different terms contained in CAIRE's proposal, if any, submitted to Buyer (which proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions), constitute the complete and exclusive agreement between CAIRE and Buyer and there are no agreements, understandings, restrictions, warranties, or representations between CAIRE and Buyer other than those set forth herein and in the above CAIRE's proposal.

25. Notice. Notices or other communications required to be given by either party pursuant to this agreement shall be written in English for export sales and in Chinese for domestic sales and delivered in person or sent in letter form or by facsimile to the address of the other party first above written, or to such other address as may from time to time be designated by the other party through notification to such party.

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