



## TERMS AND CONDITIONS OF SALE

### 1) Definitions.

"SynQor" means SynQor, Inc.; "Buyer" means the customer identified on SynQor's sales order acknowledgement; "Order" means the Buyer issued documentation for the procurement of SynQor goods; "Party" or "Parties" means " means SynQor and Buyer individually/collectively; "Products" or "Parts" mean the goods identified in SynQor's sales order acknowledgement; "SOA" means the SynQor sales order acknowledgement; "Terms and Conditions" means these Terms and Conditions of Sale that govern the sale of Products.

### 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 Order from the Buyer. Only upon issuing of an SOA by SynQor to Buyer shall these Terms and Conditions and the associated Order together become a binding contract between SynQor and Buyer, with enforceable rights and performance obligations.

### 3) Bulk Supplier.

Buyer acknowledges that SynQor is a bulk supplier of components and other Products.

### 4) Buyer's Assent.

Acceptance of this Order is expressly limited to Buyer's assent of the terms stated herein. Buyer's assent to these Terms and Conditions shall be conclusively evidenced by Buyer's taking possession of the Products, by Buyer's acceptance or deemed acceptance of the Products, by 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 SOA and, unless stated otherwise on the Order, 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 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 Buyer is not financially sound.

### 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 Buyer shall be the responsibility of Buyer, and SynQor may invoice Buyer therefor as SynQor may determine.

### 7) Shipment and Delivery.

Unless a different shipping or freight term is expressly stated in the 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 ("Delivery"), 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. Title to Products shall pass to the Buyer upon Delivery. 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 contained 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 earlier than the date listed in the SOA. Buyer assumes all risks of failure of SynQor's performance as a result of action or inaction (including failure to grant an export license or revocation of an existing license) by governmental authority or strikes, accidents, acts, omissions, fire, flood, severe weather conditions, acts of God, pandemics, delays of subcontractors, suppliers, or common carriers, force majeure, acts of terrorism or other causes beyond SynQor's reasonable control or within Buyer's reasonable control. The shipment schedule

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specified in the SOA shall be extended by the amount of any delay resulting from any such event. SynQor reserves the right to deliver to Buyer in installments, based on Product availability. 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.

**8) Inspection, Acceptance, Rejection.**

Buyer agrees to exercise, as its sole and exclusive remedy, within three (3) days following Delivery, its right of rejection as to any non-conforming Products delivered to Buyer by written notice to SynQor that states, with particularity, the nonconformity to the relevant SynQor product datasheet 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 Massachusetts Uniform Commercial Code may impose, 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) Warranty.**

Unless otherwise stated on published documentation, SynQor warrants that its Products will be new, and free from defects in materials and workmanship for one (1) year from the date of Delivery, or in the case of batteries, for the earlier of one (1) year from the date of Delivery or three-hundred (300) charge-discharge cycles. If Buyer has purchased an extended warranty from Seller, the Products (with the exception of Battery Packs) shall be warranted for the extended term under the same terms and conditions that apply to the original warranty. 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 SynQor 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 Products are defective as provided in the foregoing paragraph, SynQor will, at its option, repair or replace the Products or refund all or part of the purchase price therefor. Replacement Products may be new or refurbished equipment. To obtain replacement or repaired Products under this warranty, Buyer must contact SynQor within the warranty period to obtain a Return Material Authorization and shipping instructions. Buyer must return the Products in the original packaging and pay all charges incurred in shipping the Products back to Seller. In shipping the Products back to Seller, Buyer assumes all risk of damage or loss in transit. If Seller determines that the Products are defective, Seller will pay any shipping charges in sending the replacement or repaired Products to 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

**11) Limitation of Liability and Remedy.**

Notwithstanding any other provision of this agreement, 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. Notwithstanding any other provision of this agreement, 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.

**12) 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,

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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 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. Buyer shall have no authority to settle any claim without written approval from SynQor.

**13) 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 human 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 unauthorized activity.

**14) Compliance with Law: Export Control.**

SynQor certifies that it shall, at all times, comply with the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR"), sanctions issued by the Office of Foreign Assets Control ("OFAC"), and other applicable U.S. export control laws (collectively, "Export Control Laws").

Buyer certifies that it shall, at all times, comply with all laws, ordinances, rules and regulations applicable to Buyer in connection with this transaction. Buyer agrees not to, without prior government authorization, export, re-export, or transfer the Products, separately or as a part of a system, without compliance with applicable 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 end uses. Buyer shall comply with any and all Export and Sanctions Laws and Regulations, and any authorization(s) issued thereunder. Buyer will indemnify and hold SynQor harmless from any loss, cost or damage resulting from Buyer's or Buyer's customer's violation of Export Control Laws.

**15) 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, and all disputes will be governed by, the laws of the Commonwealth of Massachusetts and the United States of America without regard to the conflict of law provisions thereof.
- d) Buyer irrevocably consents to the personal jurisdiction of the state and federal courts in and for Middlesex County, Massachusetts, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.
- e) The United Nations Convention on Contracts for the International Sale of Goods of 1980 (and any amendments or successors thereto) is expressly excluded.
- f) The descriptive headings used in this Purchase Order are for the convenience of reference only and shall in no way define, limit, or describe the scope or intent of this Purchase Order.
- g) Any notice to be given under the Order will be in writing and addressed to the Party at the address stated on the front of the Order, attention "Legal Department." Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by a delivery service with tracking capabilities, upon receipt; (iii) if sent by electronic mail, at such time as the Party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- h) If any court of competent jurisdiction holds that any provision of the Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Order will not be affected or impaired, and all remaining terms of this Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.