Terms and Conditions

General:

By submitting an invoice or purchase order or by taking delivery of Product, the Customer expressly accepts the terms set forth herein. Express acceptance of a purchase order by any means of acknowledgement or shipment of any Product hereunder constitutes acceptance by Scientia and you, the Customer, of the terms and conditions contained herein. No terms stated by Customer in placing, confirming, or acknowledging an order shall be binding upon Scientia if inconsistent with or in addition to the terms stated herein, unless such additional or contrary terms or conditions are expressly accepted in writing by Scientia. If, however, a written agreement is already in existence between Customer and Scientia covering the purchase of the Product, the terms of such agreement shall prevail to the extent that they are inconsistent with these terms.

Product Purchase and Prices:

The Products and prices are those stated in your invoice from Scientia at the prices indicated therein. Products are subject to availability, and Scientia shall be under no obligation whatsoever to accept an invoice or purchase order from Customer.

Delivery Terms:

Products will be shipped F.O.B. shipping point with freight prepaid. Risk of loss will pass to the Customer when the Products have been delivered by Scientia to a common carrier for delivery to Customer.

Term:

The term of this Agreement is twelve (12) months commencing on the signing of this Agreement by both parties (the “Term”). Either party may terminate this Contract, in whole or in part, at any time for any reason with thirty (30) days advanced written notice. This Agreement may be terminated by either party as a result of a material breach by the other party upon not less than thirty (3) days prior written notice thereof to the other party provided that such breach is no cured within the thirty (30) day period. In addition, the non-breaching party may pursue any and all additional remedies available to it in law and equity.
**Payment Terms:**

All amounts due under this Agreement will be invoiced and paid within thirty (30) days of the applicable invoice date. Prices quoted in this Agreement do not include applicable taxes, which will be invoiced separately.

**Force Majeure:**

Neither party shall be liable to the other party with respect to any delay or failure to perform that results from any event or cause that is beyond the reasonable control of the party obligated to perform, except that payment of any monies owed pursuant to this Agreement or any invoice or purchase order shall not be excused or delayed by conditions set forth in this paragraph.

**Return Policy:**

Product may be returned to Scientia in only the following circumstances:

(a) Product was shipped in error;

(b) Product was delivered after the Product’s expiration date;

(c) Product was improperly labeled or packaged by Scientia; or

(d) Product is one which Scientia specifically authorizes for return.

Should one or more of those circumstances apply, Scientia agrees to accept the return of the affected Product for full credit or replacement, the Product is returned to Scientia in its original packaging, unopened, sterile and undamaged. Products will not be accepted for replacement or credit if they have been in possession of the Customer for more than 30 days. Customer shall contact Scientia for instructions on how to return the Product. Returns based on a defect or malfunction of a Product will be handled in accordance with the applicable Product warranty.
Warranty:

The written product warranty or warranty disclaimer that accompanies each Product (or is available electronically) when delivered to Customer sets forth the entire warranty applicable to each Product. THE REPLACEMENT OR REFUND REMEDY SET FORTH HEREIN SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS. SCIENTIA MAKES NO WARRANTY, PROMISE, OR REPRESENTATION NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN DOCUMENTATION PROVIDED BY SCIENTIA WITH THE PRODUCT. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN AND THEREIN, SCIENTIA PROVIDES THE PRODUCTS TO CUSTOMER “AS IS” WITHOUT WARRANTY AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES THAT ARE INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER APPLICABLE LAW. THE TERM OF ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW IS LIMITED TO THE LESSER OF NINETY (90) DAYS AFTER DELIVERY TO THE CARRIER OR THE SHORTEST PERIOD THAT IS PERMITTED BY APPLICABLE LAW. CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF SCIENTIA’S WARRANTIES ARE SET FORTH IN THIS SECTION, WHICH PROVISIONS DEFINE A MUTUALLY AGREED UPON ALLOCATION OF RISKS, WHICH ALLOCATION IS REFLECTED IN THE PRICE OF PRODUCTS. SCIENTIA SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY ANY DELAY IN THE DELIVERY OF PRODUCTS. THE AGGREGATE LIABILITY THAT SCIENTIA SHALL HAVE WITH RESPECT TO PRODUCTS SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO SCIENTIA FOR THE PRODUCT THAT IS THE SUBJECT OF THE PARTICULAR CLAIM.

This Warranty shall not apply if: (a) the Products are modified, tampered with or altered by anyone other than Scientia after leaving Scientia’s control, unless authorized by Scientia in writing; (b) Customer notifies Scientia in writing of the loss, claim or Product nonconformity more than 90 days after purchase; (c) the Products are not distributed or used in accordance with all applicable laws and standards; (d) the Products are subjected to abuse, accident, misuse, neglect, inadequate protection against shock, vibration, excessively high or low temperatures or overpressure, or unauthorized repair, testing, storage, shipping or handling; (e) the loss, claim or Product nonconformity is caused by a combination of the Product with any items not supplied by Scientia; or (f) the Products are beyond their expiration date.
Confidentiality:

Each party shall keep confidential and secret any and all Confidential Information disclosed to it by the other party or that may be otherwise received or accessed by a party in the course of performing this Agreement. “Confidential Information” shall include, but not be limited to, terms of sale including pricing, as well as any trade secrets or other information of the disclosing party that is not generally available to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, inventions, patents, design, copyrights, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and information related to any of them, whether registered or not as well as any other information relating to disclosing party’s technology, software, products, pricing, business agreements, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects or other affairs) that is disclosed to the receiving party during the term and that recipient knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party. Confidential Information also includes any information that has been made available to the disclosing party by third parties that are obligated to keep such information confidential. Confidential Information does not include any information that: (a) is or was acquired by the receiving party from a third party and is not subject to an unexpired obligation to such third party restricting recipient’s use or disclosure thereof; (b) is independently developed by receiving party without reliance upon or use of any of the Confidential Information; or (c) is or has become generally publicly available through no fault or action of receiving party. The parties expressly agree that each party shall (a) use such Confidential Information solely and exclusively in connection with the discharge of its obligations under this Agreement, including use of the Products, and (b) not disclose such Confidential Information to any other person without the disclosing party’s prior written consent. Notwithstanding the foregoing, the parties may share such information with their attorneys, auditors, accountants, and consultants (“Authorized Representatives”) solely for purposes relating to this Agreement and provided that such Authorized Representatives are subject to a valid, binding confidentiality agreement or ethical obligations whose terms are at least as restrictive as those described in this Agreement. The parties’ obligation not to disclose Confidential Information to third parties and otherwise not to use Confidential Information shall survive the termination of this Agreement. The parties acknowledge that, in the event of a breach of the provisions of this section, the non-breaching party shall suffer damages that are not easily determinable, and the non-breaching party shall be entitled to equitable relief, including, without limitation, an injunction or an order for specific
performance, in addition to all other remedies available to the parties at law or in equity. Notwithstanding the foregoing, if either party is legally obligated to disclose any Confidential Information received pursuant to this Agreement in order to comply with any applicable federal, state or local law, or pursuant to an order of a court of competent jurisdiction, such party shall promptly notify the disclosing party prior to any such disclosure, to enable the disclosing party to protect the Confidential Information. In such event, the receiving party shall only disclose such portion of the Confidential Information that it is legally required to disclose. Customer acknowledges that to comply with applicable disclosure laws, Scientia may be required to report to state and federal authorities’ pricing, payments and other economic benefits provided by Scientia to Customer under this Agreement, and Customer agrees that such disclosures may be made by Scientia without further notice to Customer.

**Limitation of Liability:**

In no event shall either party be liable to the other party for special, incidental, consequential, or indirect damages in connection with this Agreement or performance hereunder.

**Compliance with Laws:**

Each party shall comply with its obligations under federal, state or other applicable laws or regulations with respect to the performance of this Agreement.

**Miscellaneous:**

**Waiver:** No waiver by any party of any breach on the part of the other party will be a waiver of any subsequent breach.

**Access to Records:** During the term of this agreement, plus 4 years after the term, both parties will comply with all applicable requirements of 42 CFR Section 420.302, including without limitation: (i) retaining required documents, and (ii) giving the US Comptroller General, HHS, and their duly authorized representatives access to its contract, books, documents, and records related to the sale under this agreement and those of any organizations related to the parties.
**Assignment:** Neither party may assign this Agreement to a third party without the prior written consent of the other party, which shall not be unreasonably withheld, except that Scientia may assign this Agreement to an affiliate upon written notice to Customer.

**Independent Contractor Status of Parties:** The parties are entering into this Agreement as independent contractors and nothing herein will be deemed to create an employment relationship, an agency relationship, or a partnership or joint venture relationship between the parties. Customer does not have the authority to bind Scientia or to incur any liability for, or otherwise act on behalf of, Scientia.

No Third-Party Rights: Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.

**Governing Law, Construction and Venue:** This Agreement and all matters arising out of or relating to this Agreement and/or to the Products, including tort and statutory claims, are governed by the laws of Utah, including its statutes of limitations and choice of law, without giving effect to any conflict of laws or provisions thereof that would result in the application of the laws of a different jurisdiction. The federal or state courts, as appropriate, in Salt Lake County, State of Utah, shall have exclusive jurisdiction and be the exclusive venue for any suit, action, or proceeding arising out of or relating to this Agreement, and each party irrevocably submits to the exclusive jurisdiction of such courts in any legal suit, action, or proceeding.

**Notice:** Notices required or permitted under this Agreement shall be made to the contact person at the address identified in the customer’s profile. Notices may be provided by email, fax, or U.S. Postal Service and will be deemed received two (2) days after mailing if by U.S. mail or on the day sent if by fax (385-707-1574) or email to (sales@scientiavascular.com)

**Authority:** The parties represent that they have the authority to enter into this Agreement, and by placing an order Customer specifically represents that it agrees to be bound by this Agreement.

**Agreement:** The parties further represent that the terms of this Agreement are not inconsistent with any other contractual obligations, express or implied, that they may have.