

VAPOTHERM TERMS AND CONDITIONS

(US HOSPITAL PRODUCTS)

All acquisitions of Products by sale or other form of distribution are subject to and expressly conditioned upon these terms and conditions of sale (these “Terms and Conditions”), which are accepted by, and shall be deemed binding on, the Customer upon placing an order for Product(s) (as hereinafter defined). These Terms and Conditions, as amended from time to time, are available on Vapotherm’s website, <https://vapotherm.com/support/> which is accessible by Customer. Vapotherm reserves the right at any time to change these Terms and Conditions without notice. Vapotherm will update its website as these Terms and Conditions are changed; such changes shall become effective immediately upon posting of the modified Terms and Conditions. It is Customer’s responsibility to review the latest version of the Terms and Conditions prior to submitting an order. Any orders placed after the Terms and Conditions are changed shall be subject to such amended Terms and Conditions.

1. DEFINITIONS.

The following definitions apply to these Terms and Conditions:

- 1.1 Agreement means an agreement separate from these Terms and Conditions that has been negotiated and executed between Vapotherm and Customer for the acquisition of Products sold or otherwise supplied by Vapotherm.
- 1.2 Customer means a person or entity located within the United States and District of Columbia who either purchases Products directly from Vapotherm or from a Vapotherm-authorized distributor.
- 1.3 Product(s) means any product that is sold or otherwise supplied by Vapotherm.
- 1.4 Expedited Orders means a written request from a Customer that indicates expedited shipping (method other than standard ground). Request can be indicated on the Purchase Order or through email to Customer Service.
- 1.5 Return Goods Policy shall mean Vapotherm’s Return Goods Policy, which can be viewed on-line at: <https://vapotherm.com/support/>
- 1.6 Terms and Conditions shall mean these Terms and Conditions of Purchase.

2. WARRANTIES AND LIMITATION OF LIABILITY.

2.1 Product Warranty and Remedy.

- 2.1.1 Product warranties shall be extended only to the original Customer and are not assignable or transferable by Customer. Warranty details are captured in respective product instructions for use.
- 2.1.2 Vapotherm cannot guarantee the Product shelf-life dating on any Products upon delivery. Specific dating needs may be discussed with Vapotherm’s Customer Service department at the time of order placement.

3. INDEMNIFICATION. Customer hereby agrees to indemnify, defend, and hold harmless Vapotherm, its affiliates and subsidiaries, and the officers, directors, employees, agents and insurers of each of them (individually and/or collectively, “**Vapotherm Indemnitees**”), from and against any and all third-party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys’ fees and investigative costs) which may be sustained or incurred by Vapotherm Indemnitees, arising from, in connection with or as a consequence of (i) any negligent or wrongful act or omission by Customer; (ii) Customer’s use or sale of the Products, except to the extent that such suit or demand arises out of: (a) the failure of the respective Products to conform to the applicable warranty, or (b) the infringement of a third-party’s intellectual-property right by the respective Product(s), as supplied by Vapotherm and exclusive of

any other product(s) supplied by a party other than Vapotherm; and/or (iii) Customer's improper handling or storage of Product(s). Customer will provide Vapotherm with the opportunity to participate in the defense and settlement of such claim. No settlement of such claim shall be made unless such settlement provides a complete and unconditional release of Vapotherm. Vapotherm has the right to approve counsel or be represented by independent counsel of its own selection.

4. ORDERING INFORMATION.

4.1 Vapotherm requires that Customer submit all orders to Vapotherm electronically under a purchase order, with the exception of warranty replacement orders. Vapotherm currently supports purchase order submissions via email, fax, and through Global Healthcare Exchange (GHX).

4.1.1 Any purchase order terms and conditions, and/or modifications regarding pricing, payment terms, or general ordering information, contained in such purchase orders shall have no effect. Customer acknowledges and agrees that these Vapotherm Terms and Conditions supersede the terms and conditions of any purchase order or other documentation used by Customer, even if such other purchase order and other documentation states that the terms and conditions therein control, and, except for delivery and billing addresses, and types and quantities of items ordered, any conflicting or additional terms are void and have no effect. Customer's purchase or other acquisition of the Products is expressly conditioned upon acceptance of these Terms and Conditions.

4.1.2 The following information is required by Customer on every purchase order:

- Facility name
- Complete delivery address
- Complete billing address
- Purchase order number
- Product SKU or Part Number
- Quantity, with correct UOM
- Price*
- Payment terms*

*Must comply with an active agreement or current year standard price and Net 30.

4.1.3 When using a purchase order form, only the information set forth in Section 5.1.2 shall apply to Vapotherm.

4.1.4 When placing a phone order, an electronic copy of the purchase order is required for order totals over \$3,000. If paying via an approved credit card, card information must be provided at time order is placed.

4.1.5 To onboard with Vapotherm's EDI platform Global Healthcare Exchange (GHX), Customer will need to obtain their current account number from Vapotherm Customer Service and then send an onboarding request directly in GHX.

4.1.6 Vapotherm reserves the right to decline an onboarding request or deactivate an existing account from submitting orders through GHX.

4.1.7 Customer is responsible to contact Vapotherm Customer Service to report discrepancies within 24 hours of receiving EDI documents. Documents are provided via GHX and include Sales Order Acknowledgements (855), Advanced Shipping Notifications (856), and Invoices (810). Failure to notify Vapotherm of document discrepancies is the Customer's acceptance that all aspects of the order are accurate, and full payment will be made within the required terms.

4.1.8 All orders are subject to credit approval and acceptance by Vapotherm.

5. SHIPPING INFORMATION.

- 5.1 **Scheduled Delivery Dates/Delivery Delays.** Shipping dates that VapoTherm may provide to Customer are approximate only and are estimated from the date of receipt of order and are often based on the information provided by the carrier. VapoTherm shall use its reasonable commercial efforts to fill, and ship accepted orders on or before the estimated shipping date. VapoTherm reserves the right to revise shipping estimates to reflect conditions in effect on or before the date on which an order is scheduled to be shipped.
- 5.2 **Nonperformance.** Without limiting the foregoing, Customer agrees that VapoTherm will not be liable for any loss or damages that may result from nonperformance caused by the discontinuation of a Product (or component thereof), acts of Customer, and/or by reason of any “Force Majeure Event” as more particularly described and defined in Section 8 of these Terms and Conditions. Customer agrees and understands that under any such circumstances, VapoTherm may, in its sole discretion and without liability to Customer, allocate any available, or in-production Products among all its Customers.
- 5.3 **Shipping and Handling Charges.** Customer is responsible for freight charges on all orders unless VapoTherm has agreed in writing to assume shipping costs. If a valid shipping account is not provided on the purchase order, VapoTherm will prepay for shipping and add shipping charges to the invoice associated with that purchase order.
- 5.3.1 If Customer pays for an order in advance of shipment, applicable shipping charges must be included in payment, and any balance not covered by Customer’s prepayment shall be invoiced to Customer.
- 5.4 VapoTherm will attempt to ship all accepted Expedited Orders to Customer, however, VapoTherm will not be liable for any loss or damage arising out of delay or failure of shipment or delivery.
- 5.5 **Shipping Terms/Risk of Loss.** Except as otherwise permitted herein, Product is shipped FOB Origin, and the risk of loss on any Product shall pass to Customer when product is picked up at VapoTherm by shipping carrier.
- 5.6 **Title.** Title to all purchased Products shall pass to Customer upon receipt by Customer.
- 5.7 **Proof of Shipment/Delivery.** Customer must maintain VapoTherm’s invoice and packing list as its proof of shipment and delivery. Customer must request proof of delivery from VapoTherm’s Customer Service Department within 30 days of receipt in order to obtain clear documentation from the carrier.
- 5.8 **Inspection and Acceptance of Product at Delivery.** Customer shall notify VapoTherm’s Customer Service Department of any delivery exceptions (e.g., shortage, damage, picking error, warehouse error, Customer error, overage, labeling error, and order entry error) within five (5) business days after delivery for credit eligibility consideration in accordance with VapoTherm’s Return Goods Policy.
6. **Return Policy.** VapoTherm’s Return Policy, located at: <https://vapoTherm.com/support/> is incorporated herein as part of these Terms and Conditions. The Return Policy applies only to purchases of Products made directly from VapoTherm and does not apply to purchases of Products made through a distributor.
7. **Product Recall.** VapoTherm will notify Customer promptly upon the occurrence of a Recall for any Products purchased by Customer directly from VapoTherm. VapoTherm shall be responsible for implementing the Recall and upon VapoTherm’s reasonable request, Customer shall fully cooperate with VapoTherm to implement the Recall. “**Recall**” shall mean any action by VapoTherm or any governmental authority whether voluntary or involuntary, to recover title to or possession of Product sold or shipped, including Product recalls, market withdrawals, and field corrective actions.

8. BILLING AND PAYMENT INFORMATION.

- 8.1 **Prices.** Products are priced at the amount indicated on an active agreement or non-contracted, current year standard price. Prices are for the selling unit of measure.
- 8.2 **Taxes.** Customer shall be responsible for payment of all applicable state and/or local sales, use, and/or gross receipts tax receipts resulting from its transactions with Vapotherm. Customers claiming an exemption from taxation are required to provide valid certification to Vapotherm's Customer Service Department supporting its claim of exemption.
- 8.3 **Invoices.** Product is invoiced after it is shipped to Customer. Notwithstanding the foregoing, Vapotherm reserves the right to require payment before shipping Product. Questions regarding invoices should be directed to Vapotherm's Accounts Receivable Department. Vapotherm shall send all invoices electronically and Customer must have the capability to receive invoices electronically.
- 8.4 **Payment Terms.** Except as otherwise permitted herein, payment terms are Net 30 days from date of invoice ("Due Date"). Vapotherm must receive payment at the "Remit To" address listed on the invoice on or before the Due Date to be considered as received on time. Additionally, Vapotherm reserves the right to require payment in advance of shipment.
- 8.5 **Disputes Regarding Invoices.** Disputes regarding invoiced charges must be submitted to Vapotherm's Customer Service Department within 10 days after the date of invoice.
- 8.6 **eCommerce Billing & Payment Process.** In order to implement electronic invoicing and payment, Customer may contact Vapotherm's Accounts Receivable Department.

9. **ARBITRATION.** Any and all disputes, claims or controversies ("disputes") arising out of or relating to this Agreement, including without limitation, any dispute as to the existence, validity, performance, breach or termination of this Agreement, shall be resolved in the following manner. A party must first send written notice of the dispute to the other party for attempted resolution by negotiation between executives who have authority to settle the controversy. Negotiations must be commenced within 14 days after such notice is received (all references to "days" in this provision are to calendar days), and completed in a commercially-reasonable period of time thereafter. If the mediation fails to resolve all disputes, either party may initiate arbitration with respect to the matters submitted to negotiation and mediation by filing a written demand for arbitration. Disputes shall be settled by final and binding arbitration administered by the International Institute for Conflict Prevention & Resolution (CPR) in accordance with its arbitration rules ("Rules"), applying Delaware law. The place of arbitration shall be Exeter, NH. Fees and expenses shall be allocated in a way that bears a reasonable relationship to the ruling. The arbitration ruling and the allocation of fees and expenses shall be binding, and non-reviewable, and may be entered as a final judgment in any court having jurisdiction. Notwithstanding the foregoing, to the extent a party is seeking injunctive relief either party may immediately bring a proceeding seeking preliminary injunctive relief in a court having jurisdiction, and this relief shall remain in effect until the parties reach a resolution or so long as the arbitrator(s) feel as appropriate.

10. **DEBARMENT.** To the best of Vapotherm's knowledge, neither Vapotherm nor any of its officers, U.S. employees, or directors are: (i) currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 USC § 1320a-7b(f) (the "Federal Healthcare Programs"); (ii) has been convicted of a criminal offense related to the provision of healthcare items or services during the last five years; or (iii) has been excluded, debarred or otherwise declared ineligible to participate, during the last five years, in the Federal Healthcare Programs. Vapotherm will take prompt steps to correct any known non-compliance with any exclusion law or regulation and will notify Customer if it becomes aware of any such exclusion that likely will impact Customer's reimbursement from the federal government. If Vapotherm becomes excluded from participating in the federal health care programs, this will be considered a material breach of this Agreement.

11. ADDITIONAL OBLIGATIONS OF CUSTOMER.

- 11.1 **Safe Medical Devices Act.** If any of the Products purchased by Customer are medical devices, Customer acknowledges that it is familiar with the Safe Medical Devices Act of 1990 (the "Medical

Devices Act”) and the reporting obligations imposed on device users thereunder. Customer will notify Vapotherm immediately of the occurrence of any event identified in the Medical Devices Act, which imposes a reporting obligation on Customer and/or Vapotherm. Customer will maintain adequate tracking for the Products to enable Vapotherm to meet FDA requirements applicable to the tracking of medical devices.

- 11.2 **No Export or Transfer.** Customer will not export, re-export or otherwise transfer, directly or indirectly, any Products except as authorized by United States law. In particular, but without limitation, Products may not be exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals (SDN), the U.S. Department of Commerce Denied Person’s List or Entity List (DPL), or the U.S. Department of Health and Human Services List of Excluded Individuals and Entities (LEIE). Customer also represents and warrants that it is not listed on the SDN, DPL or LEIE or any other similar prohibited/restricted list issued by the US or other governmental entity and will not use the Products for any purposes prohibited by applicable law.
12. **CONFIDENTIALITY.** Except as may be required by law, Customer shall not, for a period of 3 years after the termination of this Agreement use, publish or disclose any confidential or proprietary information disclosed by Vapotherm in connection with this Agreement. “Confidential Information” means any and all information of Vapotherm or any of its customers that is not generally known by others, including, without limitation, such information relating to (i) the Product(s), product research, development, testing, and marketing, (ii) the manner in which Vapotherm operates its business, (iii) the financial activities, financial performance and strategic plans of Vapotherm, including any pricing of the Product(s), and any entity or person with whom Vapotherm has a business relationships and the nature and terms of those relationships. Notwithstanding the foregoing, the Customer may use or disclose Confidential Information as reasonably required to conduct its business provided that any affiliated party receiving the Confidential Information is bound by confidentiality provisions as least as strong as those in this Agreement. The foregoing confidentiality obligations shall not apply to any information which: (i) was in the public domain, in its entirety in a unified form, at the time of disclosure to Customer; (ii) was known to Customer prior to its disclosure by Vapotherm, such prior knowledge to be demonstrated by Customer’s records prepared before the date the date of disclosure by Vapotherm; (iii) becomes part of the public domain after the date of disclosure by Vapotherm through no fault of Customer; (iv) is disclosed by a third party to Customer after the date of disclosure by Vapotherm, where the third party did not require Customer to hold such information in confidence and did not acquire such information directly or indirectly from Vapotherm.
13. **RELIANCE; WAIVER.** Each Party expressly disclaims reliance on any representation, inducement or promise not set forth herein or in another signed agreement between the Parties. Any waiver of any of the provisions of this Agreement shall not constitute a waiver of any other provision, nor shall it constitute a continuing waiver.