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## **KARL STORZ STANDARD TERMS AND CONDITIONS**

Proprietary and Confidential

### **ORDERS**

Only the KARL STORZ Endoscopy Canada Ltd. ("KARL STORZ") Customer Service Department in Mississauga, Ontario ("Customer Service") is authorized to accept an order. The terms and conditions set forth herein (the "Terms") shall prevail over any conflicting terms and conditions on the customer's ("Customer") purchase order. KARL STORZ sells KARL STORZ-branded products and replacement parts ("Products") only to medical facilities, licensed providers of medical services, and governmental agencies operating medical facilities. All quotations, sales, services, deliveries, loans, samples, and transactions are subject to the Terms, and Customer hereby accepts and agrees to all of them. The Terms constitute the sole and entire Agreement between the parties.

### **PRICES**

The prices in effect at the time the purchase order is accepted will prevail. However, prices are subject to change without notice. Written quotations are valid for sixty (60) days unless otherwise noted. There is a \$100.00 minimum for all purchase orders. Changes or cancellations of any order by the Customer require the prior written consent of Customer Service and any associated costs will be borne by the customer. All applicable taxes and handling charges will be the responsibility of the Customer unless an acceptable tax exemption certificate is provided prior to purchase.

### **SHIPPING**

Products are shipped Freight On Board (FOB) to Customer's location. KARL STORZ reserves the right to make partial shipments on any order. Customer shall examine all goods immediately upon receipt. If any Products have been damaged, Customer must document the nature and extent of the damage, retain all packing materials and notify the carrier immediately, requesting an inspection. Customer Service must be notified within seven (7) days of delivery of any damages or shortages. KARL STORZ is not liable for damages caused by delays or non-delivery due to any cause.

### **INVOICING**

Credit references may be required for new accounts. Unless otherwise noted, invoices are due and payable Net Thirty (30) Days from invoice date. Unpaid balances over thirty (30) days incur interest charges at 19.56% per annum (compounded at 1.5% per month), or the maximum amount otherwise allowed by law, whichever is less. Collection expenses, including reasonable attorneys fees incurred by KARL STORZ will be borne by Customer.

### **GOVERNING LAW**

These Terms and all orders shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any and all disputes shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario, and the Customer hereby irrevocably attorns to such jurisdiction. The invalidity or unenforceability of any of the Terms will not affect the validity or enforceability of any other Term hereof.

### **SECURITY INTEREST**

In conjunction with this order and until Customer has paid KARL STORZ in full for Products, Customer hereby grants to KARL STORZ a security interest in all Products purchased from KARL STORZ, and in all proceeds therefrom (including those from an insurer) to secure payment of the purchase price. Customer agrees to execute and deliver such documents as required by KARL STORZ to perfect KARL STORZ's security interest(s) and Customer authorizes KARL STORZ to prepare, execute, deliver and file, on behalf of Customer, any and all documents required to protect, preserve and enforce KARL STORZ's security interest(s).

### **RETURN POLICY**

A return material authorization (RMA) must be obtained from KARL STORZ's Customer Service Department prior to returning any products. When phoning or writing KARL STORZ, for an RMA, the Customer Service Representative must be provided with: (a) Customer name and number, as it appears on the invoice; (b) the telephone number and the person to contact; (c) the applicable P.O. number; (d) the KARL STORZ catalog number and, if applicable, the serial number or batch code for each product; and, (e) the reason for the return. KARL STORZ reserves the right to refuse or return any products sent back to KARL STORZ without prior authorization of its Customer Service Department. Returns must be carefully packed and shipped pre-paid to KARL STORZ, Attn: RMA number. KARL STORZ's Customer Service Department will provide the return address and the RMA number. When returning products, Customer should include a copy of the original invoice or packing slip to ensure prompt issuing of credit. Full credit will only be issued for products that are returned and received by KARL STORZ within 30 days of date of shipment (Ship Date) so long as such items are unused, in resalable condition and in their original product packaging. If unopened products are received by KARL STORZ between 31-89 days after the Ship Date KARL STORZ may, in its sole and absolute discretion, either refuse acceptance of the returned products or, as a condition to authorizing a return, require payment of a restocking fee of 25% of the invoiced price of the product for items received between 31 and 60 days after the Ship Date; a restocking fee of 25% of the invoiced price. For items received upon or after 90 days from the date of invoice: Products are not eligible for return. The following products may not be returned for credit or exchange: (a) products held longer than 30 days from Ship Date (except provided above); (b) sterile packaged products where the package is opened and/or damaged; (c) discontinued products; (d) instruments that are etched or engraved by Customer; (e) products damaged by the Customer; (f) products purchased as is or as demo products; and, (g) used products. In order to prevent the transmission of disease to the medical facilities and/or KARL STORZ's personnel, all products must be cleaned and then sterilized and/or disinfected before returning such products to KARL STORZ which reserves the right to return unclean and contaminated products to Customer. Additionally, if any product becomes damaged and is not immediately returned for repair or exchange, KARL STORZ assumes no responsibility or liability for Customer's continued use of that damaged product. KARL STORZ does not guarantee the performance of, and may decline to repair or accept for repair/exchange, any product that has been repaired, modified and/or altered by any person or entity other than KARL STORZ or an authorized repair facility of KARL STORZ.

### **INSTALLATION, PREVENTATIVE MAINTENANCE, AND OTHER SERVICES**

Subject to resource availability, KARL STORZ may, in its sole discretion, (a) install and setup the product, perform preventative maintenance services, provide onsite or remote troubleshooting services and other services, (b) provide software updates and (c) provide loaners in case of back orders.

### **TRAINING**

To the extent reasonable as to the complexity and quantity of products, KARL STORZ will provide training regarding the proper use of products at or near the time of delivery or installation, as applicable. KARL STORZ may also provide additional training regarding the proper use of products upon Customer's request, in KARL STORZ's sole discretion and subject to availability of KARL STORZ personnel.

### **WARRANTY POLICY**

Except as otherwise provided herein and/or by the applicable written warranty for a specific Product, all Products are warranted to be free from defects in workmanship and materials relating to normal use for one (1) year from date of sale. During the applicable warranty period, defective Products will be replaced, or at the discretion of KARL STORZ, repaired at no charge. Subject to availability of product, KARL STORZ may, in its sole discretion, provide Customer with loaner product while the defective product is being replaced or repaired during warranty period. This warranty

does not apply to any products sold by KARL STORZ which are not branded with the KARL STORZ logo; such products are sold with their own warranties and any inquiries and/or claims regarding such products must be directed towards the original manufacturer in each case. KARL STORZ is not liable, directly or by way of indemnity, either expressly or impliedly, for

- (1) Any damages caused, whether by the Customer or any other users of the Products, as a result of, or connected with:
  - a) Misuse, mishandling, improper operation, or improper maintenance;
  - b) Repairs, servicing, modifications or alterations performed by any person or entity other than KARL STORZ or an authorized repair facility of KARL STORZ;
  - c) Use in combination with adapters and/or equipment from other manufacturers or,
  - d) Use in any manner or medical procedure, other than those for which such product is labeled, designed and is otherwise intended to be used;
  - e) Causes beyond the control of KARL STORZ, such as excessive voltage, mechanical shock, or water damage; and
- (2) Any special, incidental, consequential, punitive, exemplary or other damages, including but not limited to alleged damages for delayed shipment, Product failure, Product design or production, for loss of profits or future business, or from any other cause, whatsoever, whether based on breach of contract, warranty, tort, strict or product liability, infringement of patents, trade secrets, trademarks, copyrights, or other proprietary rights or legal theory, in connection with or arising from the purchase, sale, lease, rental, installation or use of Products or with respect to the Terms herein.

This warranty is in lieu of all other warranties, express, implied, and/or statutory, including, but not limited to, warranties of merchantability, fitness and/or of suitability for a particular purpose, with respect to all KARL STORZ products or services, including any patents or technology relative thereto. Any and all other warranties, representations, and/or guarantees, of any type, nature or extent, be it implied, express and/or whether arising under or as a result of any other person purporting to act on KARL STORZ's behalf, or any statute, law, commercial usage, Custom, trade or otherwise, are hereby expressly excluded and disclaimed. KARL STORZ neither assumes, nor authorizes any person to assume for it, any other liabilities in connection with its Products. To insure proper use, handling and care of Products, the Customer should consult the applicable product literature, which is included with the Product or otherwise available from KARL STORZ at no charge. Repairs, modifications or alterations of Products, performed by any person or entity other than KARL STORZ or an authorized repair facility of KARL STORZ, nullifies and voids all applicable KARL STORZ warranties. This Warranty Policy is only for the benefit of the original Customer and is not transferable or assignable by Customer.

#### **REPAIR/EXCHANGE POLICY**

KARL STORZ maintains a Repair/Exchange inventory in order to assist Customers with Product replacements, such to be provided at the discretion of KARL STORZ. Subject to the availability of product, KARL STORZ may, in its sole discretion, provide Customer with loaner product while non-warranty repairs are being made. Subject to resource availability, KARL STORZ may, in its sole discretion, perform minor non-warranty repairs without charge. Customers are invited to request a written copy of the Repair/Exchange Policy, and if they thereafter choose to participate in the Repair/Exchange program, they may do so on the basis of the terms and conditions of that policy.

#### **SOFTWARE OWNERSHIP AND LICENSING**

KARL STORZ grants to Customer a non-exclusive, limited, non-transferable license ("License") to use any software component ("Software") supplied by KARL STORZ in a Product, and this License grant does not include the Source Code. Customer may use the Software only for Products (and not for other products). The Software, and all modifications, enhancements and upgrades thereto, will remain the property of KARL STORZ. Customer may not duplicate, modify, reverse-engineer, de-compile, or create derivatives of the Software or the Source Code. Any modifications or enhancements to the Software by Customer, in contravention of this License, will immediately become the sole property of KARL STORZ. In the event of a failure of Customer or its agents or employees to comply with any terms and conditions of the License, the License will, without any further action by KARL STORZ, immediately terminate.

**LIMITATION OF LIABILITY**

KARL STORZ is not liable either directly or by way of indemnity, either expressly or impliedly, for any special, incidental, consequential, punitive, exemplary or indirect damages, including but not limited to alleged damages for delayed shipment, non-delivery, product failure, product design or production, inability to use such products or services, loss of future business, or from any other cause whatsoever in connection with or arising from the purchase, sale, lease, rental, installation or use of any Products or the provision by KARL STORZ of Services, even if KARL STORZ has been advised of the possibility of such damages. Some jurisdictions do not allow exclusions and disclaimers of certain warranties or limitations of liability, so the limitations and/or exclusions, set forth in this agreement, may not apply. In that event, KARL STORZs liability will be limited to the greatest extent permitted by law in the subject jurisdiction.

**FORCE MAJEURE**

No failure or omission by a party to this Agreement to carry out or observe any of the terms or conditions of this Agreement shall give rise to any claim or be deemed a breach of this Agreement if such failure or omission arises from war, riot, acts of terrorism, natural disaster, pandemic, endemic, act of god, unavailability of materials, delays caused by regulatory agencies, or any other cause reasonably beyond the control of a party to this Agreement. In the event that a party to this Agreement is, wholly or in part, prevented from or hindered in carrying out or observing any of the terms or conditions of this Agreement for any cause set forth above, such party shall give a written notice to the other as soon as possible after the occurrence of the cause relied on, giving full particulars of the reason for such prevention or hindrance, and the parties shall in good faith consult with each other and take necessary measures for the resolution of the matters so prevented or hindered.