

**WHEREAS** Seller is in the business of selling veterinary medical equipment, as well as providing veterinary practices with set-up, installation, and maintenance services;

**AND WHEREAS** Buyer desires to purchase from the Seller, and Seller desires to sell to Buyer, the Goods, as defined herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Sale of Goods. Seller shall sell to Buyer, and Buyer shall purchase from Seller, the goods set forth on Schedule "A" of this agreement (the "**Goods**") in the quantities and at the Prices (as defined in Section 8) and upon the terms and conditions set forth in this Agreement.
2. Delivery Date.
  - (a) The Goods will be delivered within a reasonable time after the Effective Date, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit. If there is damage on arrival of goods, buyer must sign shipment as damaged and report damage within 24 hours to be eligible for insurance.
  - (b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of the quantity purchased under this Agreement.
  - (c) If for any reason Buyer fails to accept delivery of any of the Goods as specified in the Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
3. Non-Delivery. The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within seven (7) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth on Exhibit A, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods at the price set forth in this Agreement, adjusted on a pro-rata basis.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. In accordance with and subject to Section 6 herein, the security interest granted under this provision constitutes a purchase-money security interest under the Ontario *Personal Property Security Act*.

6. Purchase-Money Security Interest. As collateral security for the payment of the purchase price of the Goods and performance in full of all the obligations of the Buyer under this Agreement, the Buyer hereby grants to the Seller, a security interest in and to all of the right, title and interest of the Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ontario *Personal Property Security Act*.

7. Inspection and Rejection of Non-Conforming or Damaged Goods.

- (a) Buyer shall inspect the Goods upon receipt thereof ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Non-Conforming Goods within 24 hours of receipt ("**Inspection Period**") and furnishes such written evidence or other documentation as reasonably required by Seller within the inspection period. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in this Agreement; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies Seller of any Non-Conforming or Damaged Goods, Seller shall, in its sole discretion, (i) replace such Goods, or (ii) credit or refund the Price for such Goods.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Non-conforming or damaged Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Payment Terms. Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by cheque or other payment method that the parties may agree in writing from time to time as the case may be, and all payments hereunder shall be made in Canadian dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 2.5% per month (or 30.0% per annum), calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, legal fees

Return of Goods and Restocking Fee. Buyer agrees that all sales are final (i.e. Goods are not returnable), with the exception of a prior written agreement between Buyer and Seller, made at the time of the sale of the Goods. If Seller agrees to a return of any Goods, Seller shall apply and Buyer agrees to pay a minimum 20% restocking fee per item of Goods at the time of the return (depending on the suppliers requirements)

9. No Set-Off. Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or Law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing ) to Seller or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or its affiliates, whether relating to Seller's or its affiliates' breach or non-performance of this Agreement or any other agreement between Buyer and Seller or any of its affiliates, or otherwise.

10. Warranties.

- (a) Buyer acknowledges that the only warranties available are those offered by the manufacturers. The Buyer further acknowledges that Buyer has satisfied itself with respect to any warranties offered by the manufacturer.
- (b) Seller makes no condition or warranty whatsoever with respect to the goods, including any (a) condition or warranty of merchantability; or (b) condition or warranty of fitness for a particular purpose; or (c) condition or warranty of title; or
- (c) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.
- (d) It is the Buyer's responsibility to seek warranty coverage from the Manufacturer- seller will assist with contacting and making arrangements and doing follow up with manufacturer
- (e) The remedies set forth in section 11 shall be the buyer's sole and exclusive remedy.

11. Limitation of Liability.

- (a) In no event shall seller be liable for any consequential, indirect, incidental, special, exemplary, punitive or aggravated damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of this agreement, whether or not the possibility of such damages has been disclosed in advance by buyer or could have been reasonably foreseen by seller, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- (b) Except where such limitation is prohibited by law, in no event shall seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to seller for the goods sold hereunder.

12. Compliance with Laws. Buyer is in compliance with and shall comply with all applicable laws, regulations, codes and ordinances. Buyer has and shall maintain in effect all the license permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

13. Indemnification. Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, parent company, affiliates, subsidiaries, successors and permitted assigns (collectively, the "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, arising out of or resulting from any claim of a third party arising out of or occurring in connection with the products purchased from Seller or Buyer's negligence, wilful misconduct or breach of this Agreement. Buyer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent.

14. Termination. In addition to any remedies that may be provided in this Agreement, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these terms of this Agreement, in whole or in part; or (iii) becomes insolvent, makes an assignment into bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, personal information, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section 17 shall not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non confidential basis from a third party.

16. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, conditions and warranties, both written and oral, regarding such subject matter.

17. Survival. Subject to the limitations, confidentiality, indemnification, and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

18. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other Party at its address that the receiving Party may designate from time to time in accordance with this Section. Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic delivery including email transmission.
19. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
20. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party.
21. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
22. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 7 and Section 12 are Buyer's exclusive remedies for the events specified therein.
23. Assignment. Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer or subcontract any or all of its rights or obligations under this Agreement without Buyer's prior written consent.
24. Successors and Assigns. This Agreement is binding on and enures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.
25. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement

and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

26. Choice of Law. This Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the Province of Ontario, and the federal laws of Canada applicable therein without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of Province of Ontario. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
27. Forum Selection. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than in the courts of the Province of Ontario, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such court and agrees to bring any such action, litigation or proceeding only in the courts of Province of Ontario. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by action on the judgment or in any other manner provided by law.
28. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 20, a signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
29. Force Majeure. Any delay or failure of Seller to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond the Seller's control, without the Seller's fault or negligence and that by its nature could not have been foreseen by the Seller or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labour stoppages or slowdowns or other industrial or technological disturbances, and shortage of adequate power or transportation facilities).
30. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.
31. Language. The parties have required that this Agreement and all documents and notices

resulting from it be drawn up in English. Les parties aux présents ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent ou qui en découleront soient rédigés en anglais.

***\*\*End of Agreement\*\****