

**KARL STORZ Endoscopy—America, Inc.
TERMS AND CONDITIONS**

The following terms and conditions (“Terms”) apply to the acquisition of KARL STORZ products.

1. ORDERS. Orders are to be placed with the Customer Support Department or sales force of KARL STORZ Endoscopy-America, Inc. (“KARL STORZ”); however, orders will only be accepted by KARL STORZ’s Customer Support Department located in California or Massachusetts. In the event of any conflicting, inconsistent and/or additional provisions in a customer purchase order or other document, these Terms will supersede and prevail and such conflicting, inconsistent and/or additional provisions shall be of no force or effect; KARL STORZ hereby objects to such other provisions or terms proposed by customer. By accepting delivery of products from, and/or the performance of services by KARL STORZ and/or by paying for same, customer accepts and agrees to these Terms, all of which constitute the sole and entire agreement between KARL STORZ and customer.

2. PRICES. Prices are subject to change without notice. Nevertheless, prices in effect at the time that an order is accepted will prevail; provided, however, that quotations, including pricing therein, are valid until the expiration date reflected on the quotation. All applicable taxes, shipping and/or handling charges, will be added to the invoice. If customer is tax exempt, customer shall provide a tax exemption certificate for the “sold to” entity at the time of issuance of the purchase order under these Terms.

3. SHIPPING. Shipments are F.O.B. shipping point, shipping and handling prepaid by KARL STORZ and added to the invoice. However, KARL STORZ will utilize customer-designated third party freight programs for shipment and payment when requested by customer. In such case, customer is solely responsible for all third party freight charges, KARL STORZ handling charges and any loss or damage to products during shipment. If use of a customer-designated third party freight program is not requested by customer, and any loss or damage to products occurs during shipment, KARL STORZ will replace such products at no additional cost. All shipments should be carefully examined upon receipt and, if a product is damaged, customer must promptly notify KARL STORZ of the nature and extent of the damage and return such product to KARL STORZ in accordance with the “Return Policy” below. If shipments are received short, customer must promptly contact KARL STORZ’s Customer Support Department. KARL STORZ may make partial shipments on any order with customer’s authorization.

4. PAYMENT. Invoices are due and payable upon receipt, net 30 days from date of invoice, which shall not be earlier than the date of shipment. Invoices will be issued on authorized partial shipments and are payable as set forth in this section. A finance charge equal to 1-1/2% per month or the maximum amount allowed by law, whichever is less, may be assessed on all balances outstanding for more than 30 days. Any and all collection expenses, including reasonable attorneys’ fees, incurred by KARL STORZ to secure payment of any sums due from customer and/or to effectuate repossession of products purchased from KARL STORZ but not paid for will be borne by customer. Amounts payable to KARL STORZ for the purchase, lease or rental of products and/or the provision of services are not subject to withholding, set-off or counter-claim under any circumstances without the prior written consent of KARL STORZ.

5. SECURITY INTEREST. Until customer has paid KARL STORZ in full for all products purchased pursuant to an order, KARL STORZ shall have, and customer hereby grants to KARL STORZ, a security interest in all products purchased pursuant to such order to secure payment of the entire purchase price for all products sold, shipped and delivered to customer pursuant to such order and all costs, expenses or other charges relating thereto which are payable by customer to KARL STORZ.

6. RETURN MERCHANDISE AUTHORIZATION PROCESS. A return merchandise authorization (“RMA”) must be obtained from KARL STORZ’s Customer Support Department prior to sending any products to KARL STORZ for any reason. When contacting KARL STORZ for an RMA, the Customer Support Representative must be provided with: (a) the applicable P.O. number; (b) the KARL STORZ catalog number and, if applicable, the serial number for each product; and (c) the reason for the return. KARL STORZ will not be responsible for products returned without an RMA. Returns must be carefully packed and shipped pre-paid to KARL STORZ, Attn: RMA number. KARL STORZ’s Customer Support Department will provide the return address and the RMA number. In order to prevent the transmission of disease to the medical facilities’ and/or KARL STORZ’s personnel, all opened products must be cleaned and then sterilized and/or disinfected before sending 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 a KARL STORZ authorized repair facility.

7. RETURN POLICY. Full credit will only be issued for products that are received by KARL STORZ within 120 days of date of shipment (“Ship Date”) so long as such items are unused and in resalable condition. If products are received by KARL STORZ more than 120 days after the Ship Date, KARL STORZ may, in its sole and absolute discretion, either refuse acceptance of the returned products or require payment of an inspection fee of up to 25% of the invoiced price of the product, which will require a separate P.O. number. Shipping charges will be reimbursed, inspection fees will not be charged and full credit will be given if the return was due to a shipping error on the part of KARL STORZ. Customer must follow the RMA procedure set forth in the “Return Merchandise Authorization Process” above to return products for credit. The following products may not be returned for credit or exchange: (a) products held longer than 120 days from Ship Date (except as provided above); (b) sterile packaged products where the package is opened and/or damaged; (c) products identified and purchased as discontinued products; (d) instruments that are etched or engraved by customer; (e) products damaged by customer; and (f) used products.

8. WARRANTY POLICY. This section (“Warranty Policy”) applies to all warranty repairs and exchanges. All products are warranted to be in good working order and free from defects in workmanship and materials on the date of shipment and continuing for a period of one (1) year thereafter, unless otherwise specified in a quotation or product specific literature. All repairs made under this Warranty Policy shall be free from defects in materials and workmanship for the remainder of the original warranty period (if any) or 90 days, whichever is longer. To submit a warranty claim, customer must follow the RMA procedure set forth in the “Return Merchandise Authorization Process” above. Customer must return the defective product within 30 days of issuance of the RMA.

For all warranty claims submitted within the first 30 days of the applicable warranty period (“Advance Replacement Period”), a replacement product will be provided to the customer prior to receipt of the product subject to such warranty claim. KARL STORZ will notify customer if the warranty claim is not valid. In such event, customer must submit a purchase order for the replacement product including any shipping and handling costs. Some limited product categories may qualify for a longer Advance Replacement Period to be confirmed by KARL STORZ’s Customer Support Department at the time of issuance of the RMA. For all warranty claims submitted after the Advance Replacement Period, KARL STORZ shall evaluate the warranty claim following receipt of the product from customer and, if valid, shall at its sole discretion either repair or replace the product at no charge to the customer. KARL STORZ will notify customer if such warranty claim is not valid and provide an estimate of the repair cost. In such event, customer must submit a purchase order for the repair.

Damage which might arise or be caused, whether by customer or by any of the users of the products provided by KARL STORZ, as a result of, in connection with, or otherwise attributable to the following is excluded from all product and service warranty coverage: (a) misuse, abuse, mishandling and/or improper operation and/or storage; (b) repairs, servicing, modifications and/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 adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by KARL STORZ; (d) use in any manner other than those for which such products are designed and

are otherwise intended to be used; or (e) a failure to comply with power and grounding specifications provided by KARL STORZ. THE WARRANTIES SET FORTH HEREIN ARE 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 AND/OR SERVICES. 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 STATUTE, LAW, COMMERCIAL USAGE, CUSTOM, TRADE OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. Any contrary course of performance by and between the parties will not modify any representations and/or warranties set forth herein. KARL STORZ neither assumes nor authorizes any person to assume for it any other liabilities in conjunction with and/or related to the sale and/or use of KARL STORZ products or provision of services. To ensure proper use, handling and care of KARL STORZ products, customer should consult the product-specific literature, instruction manual and/or labeling included with the product or otherwise available. Repair, modification or alteration of KARL STORZ products performed by any person or entity other than by KARL STORZ or an authorized repair facility of KARL STORZ nullifies and otherwise voids all applicable KARL STORZ warranties. Repair or replacement of a KARL STORZ product shall not extend the term of any applicable warranty. The remedies provided herein are customer's exclusive remedies under this Warranty Policy.

9. REPAIR PROGRAM. This section ("Repair Program") applies to all repairs and exchanges not covered under the Warranty Policy. If such repairs or exchanges become necessary, customer must follow the RMA procedure set forth in the "Return Merchandise Authorization Process" above. All repairs and exchanges shall be subject to KARL STORZ's applicable standard repair or exchange charges. Customer will be advised of the estimated cost of the repair work or a product exchange before it is undertaken. All repairs under this Repair Program carry a 90 day warranty. Any exchange product provided under this Repair Program carries the applicable KARL STORZ new product warranty. If an exchange product is provided and the damaged product is not returned within 30 days of receipt of the exchange product, Customer will be invoiced for the applicable contracted price or the full list price of the exchange product. Subject to the availability of product, KARL STORZ may, provide customer with loaner product while repairs are being made.

10. SOFTWARE OWNERSHIP AND LICENSING. Subject to annual license fees, as applicable, set forth in the applicable quotation, KARL STORZ grants to customer a non-exclusive, limited, non-transferable (except in connection with a transfer of a product), non-sublicensable and irrevocable (except as provided herein) license ("License") to use software (including, but not limited to, programmed logic, computer programs and/or operating information) programmed into and/or embedded in products provided by KARL STORZ or separately provided by KARL STORZ. Such licensed software may be developed by or on behalf of (a) KARL STORZ ("KARL STORZ Software") and/or (b) third party developers (all of whom are considered third party beneficiaries of this section) ("Third Party Software") ("KARL STORZ Software" and "Third Party Software" are referred to collectively as "Software"). The Software is licensed only in the form in which delivered to customer and only for use in accordance with KARL STORZ's written instructions for the Software or the product in which the Software is embedded or to which the Software relates and may be subject to annual license fees as set forth in the applicable quotation. The Software, and all modifications, updates, enhancements and upgrades provided by KARL STORZ, will, at all times, remain the property of KARL STORZ or the applicable third party developer. Customer may not (a) duplicate, copy, reverse-engineer, create, re-create, de-compile or disassemble the Software (or the source code of the Software), (b) create derivatives of the Software, or (c) unless authorized by KARL STORZ in advance, modify or customize the Software. Any and all duplicates, copies and derivatives of the Software, and any and all unauthorized modifications to, or customizations of, the Software will immediately become the sole property of KARL STORZ. Customer acknowledges and agrees that (a) neither the licensing of Software to customer, nor the purchase, lease or other acquisition of products by customer constitutes a transfer of the Software, (b) the Software is the property of KARL STORZ or the applicable third party developer, (c) customer neither owns nor acquires any interest in any copyright, patent or other intellectual property right in or to the Software as a result of the License granted herein or the purchase, lease or other acquisition of any product, and (d) KARL STORZ, or the applicable third party developer, retains and owns all right, title, and interest in and to the Software and the ownership rights therein, at all times, regardless of the form or media in or on which the original or any copy of the Software may exist. In the event of a failure of customer or its agents, employees or representatives to comply with any terms and conditions of the License granted herein, the License will, without any further action by KARL STORZ or any other party, immediately terminate.

11. SOFTWARE AND SECURITY SERVICES. Solely with respect to products for which customer has purchased software licenses and security services, KARL STORZ shall: (a) install security patches for such products connected to customer's network; (b) provide software updates to address bug fixes; (c) provide remote troubleshooting and related services; and (d) provide software upgrades including new features (excluding EHR implementation and interfacing, and hardware upgrades). KARL STORZ shall provide the foregoing services at times and frequency, and in the manner, determined solely by KARL STORZ based upon the critical or non-critical nature of such software patches, updates and upgrades. The services provided by KARL STORZ pursuant to this section do not apply to any related hardware issues, and do not carry a repair warranty or otherwise affect any warranty provided under these Terms. KARL STORZ does not warrant or represent that use of the software application will be uninterrupted or error-free.

12. DISPUTES. All controversies, disputes and claims, shall be adjudicated by a court of competent jurisdiction within the County of Los Angeles, State of California or the United States District Court, Central District of California, which courts shall have exclusive jurisdiction over such matters. All transactions by and between customer and KARL STORZ shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. The invalidity or unenforceability of any of the within Terms will not affect the validity or enforceability of any other or remaining term or condition hereof.

13. LIMITATION OF LIABILITY. KARL STORZ is not liable for any special, incidental, consequential, punitive, exemplary or indirect damages, from any cause whatsoever in connection with or arising from the purchase, sale, lease, rental, installation, performance or use of KARL STORZ products or 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 THESE TERMS MAY NOT APPLY. IN THAT EVENT, KARL STORZ'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE SUBJECT JURISDICTION.

14. COMPLIANCE WITH LAWS; DISCOUNT EXCEPTION AND SAFE HARBOR. Customer shall comply with all applicable laws and regulations, including but not limited to the federal health care program anti-kickback statute, 42 U.S.C. § 1320a-7b(b) ("AKS"). Customer acknowledges its obligations to fully and accurately report the discounts, rebates, credits, product replacements (including those related to a warranty, service, or otherwise) and/or other price reductions (collectively "Discounts"), if any, it receives from KARL STORZ, under all applicable laws and regulations, including but not limited to the AKS, the Discount Exception and the Discount Safe Harbor. Customer may be obligated to report and/or provide information concerning any such Discounts provided by KARL STORZ pursuant to 42 U.S.C. § 1320a-7b(b)(3)(A) (the "Discount Exception") and/or 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor"), other federal or state laws, or agreement with third party payers. Customer should retain documentation of Discounts and make such information available to federal or state health care programs, applicable federal and/or state agencies, and/or third party payors, upon request. KARL STORZ will provide to customer invoices related to purchases, and other reports/documentation as applicable, documenting any Discounts for such products and/or services. Customer is responsible for appropriate allocation and/or apportionment of any Discounts among products and/or services purchased. Customer acknowledges that this section has put customer on notice of its obligations under the AKS, Discount Exception and Discount Safe Harbor and all other applicable laws and regulations.