



**WYTECH INDUSTRIES, LLC
TERMS AND CONDITIONS OF SALE**

1. CONTRACT TERMS. Wytech Industries LLC (“Wytech”) agrees to sell to Buyer the services, parts or products (collectively referred to as the “Products”) as set forth on Buyer’s purchase order (the “Order”). Wytech hereby expressly rejects any terms or conditions on the Order that are different from or in addition to the terms and conditions contained herein (the “Contract”). Neither Wytech’s delivery of the Products nor any other action, conduct or performance shall constitute acceptance of terms or conditions different from or in addition to the terms and conditions herein. Buyer shall be deemed to have accepted the terms and conditions herein by written acknowledgment of Wytech’s price quotation number (the “Quote”) or order acknowledgment on the Order or by other statement or email, act or course of conduct, dealing or performance constituting acceptance under applicable law, including failure to object in writing to the terms and conditions of this Contract within a reasonable time or by acceptance of the Products.

2. PRICE AND PAYMENT TERMS.

A. Prices and Adjustments. Unless otherwise agreed in writing by Wytech, the prices for the Products (“Purchase Price”) are effective only for Products scheduled for shipment within sixty (60) days after the date of the Quote.

B. Terms of Payment. Except as otherwise agreed in writing by Wytech, payment of the Purchase Price is due in full thirty (30) days from the invoice date. Except as provided below for “hold orders,” invoices shall be issued after delivery of Product to Buyer or Buyer’s agent of Common Carrier. Buyer agrees to pay invoices without right of setoff, whether for whole or partial shipments and regardless of disputes relating to other invoices.

C. Credit Terms and Credit Information. Wytech reserves the right to alter or revoke credit terms to Buyer at any time, withhold shipment of Products to Buyer or ship on a C.O.D. basis. Buyer agrees to promptly furnish credit standing information and credit references to Wytech from time to time upon Wytech’s request. Buyer hereby represents to Wytech that it is not insolvent (as that term is defined in § 1-201(23) of the Uniform Commercial Code). Buyer agrees to notify Wytech in writing if Buyer becomes insolvent prior to payment of the Purchase Price. Buyer’s acceptance of the Products shall constitute a written reaffirmation of Buyer’s solvency at the time of delivery.

D. Late Payment Fee. Any amounts not paid when due will be subject to a service charge of one and one-half percent (1.5%) of the amount due per month or the highest rate permitted under applicable law, whichever is less. Wytech reserves the right to withhold manufacturing and shipment of remaining Products until payment on this or any other purchase order is current.

E. Sales and Similar Taxes; Shipping Costs; Insurance. Unless otherwise mutually agreed to in writing, Buyer shall pay all sales, use, excise or similar taxes and any shipping, delivery and related insurance costs applicable to the Products. In lieu of certain tax payments, Buyer may provide Wytech with a tax exemption certificate acceptable to the taxing authorities. Buyer agrees to reimburse Wytech for any such amounts that Wytech incurs on behalf of Buyer.

F. Hold Orders. If Buyer requests Wytech to hold delivery of any Products, Wytech may at its option, invoice Buyer on the original date the Products were to be delivered, or invoice Buyer on the date such Products are actually shipped. Upon invoice Buyer agrees that ownership and liability transfers from Wytech to Buyer.



G. Cancellation. Buyer may cancel an Order, in whole or part, only if Buyer pays Wytech full price for all finished Products and also pays for any costs and expenses incurred by Wytech (e.g., raw materials, work in progress, finished goods inventory, un-amortized tooling, labor, handling, overhead and any other expense or cost incurred by Wytech related to the Order or Products), as reasonably determined by Wytech, plus a cancellation fee of fifteen percent (15%) of the canceled Order amount.

3. SHIPMENT, DELIVERY, TITLE AND ACCEPTANCE.

A. Shipment. Unless otherwise mutually agreed to in writing, all sales and deliveries are FOB EX WORKS. Wytech will package the Products for bulk shipment in accordance with standard commercial practices unless the Buyer has provided Wytech with packaging and shipping specifications as part of the Buyer's request for a Quote and these specifications are agreed to by Wytech in writing. If Wytech is to arrange shipping, unless otherwise indicated on the Order: (i) Wytech may exercise its discretion in choosing a carrier; (ii) Wytech may, at its option, obtain insurance on the Products shipped; (iii) shipment insurance (if required) and related charges will be at Buyer's expense; (iv) the carrier shall be deemed to be Buyer's agent and Buyer shall make all claims with respect to damage in transit against the responsible carrier; and (v) title and risk of loss to the Products shall pass to Buyer as provided in Section 3D.

B. Delivery Schedule. The delivery schedule specified in this Contract is an estimate only based on prevailing conditions. Wytech's failure to meet the delivery schedule shall not be a breach of this Contract or give rise to any cause of action in favor of Buyer. Product completion dates are subject to timely receipt of order, down payment and complete information and are Wytech's best estimate.

C. Duties and Fees. Any applicable shipping costs, taxes and duties are billed to the recipient.

D. Title and Products, Risk of Loss. Title to and all risk of loss or damage concerning the Products shall pass to Buyer immediately upon the delivery of the Products to a common carrier or to any private carrier designated by Buyer or Wytech, at Wytech's facility for shipment to Buyer's designated point of delivery. Buyer's rejection of any Products purchased hereunder shall not shift any risk for those Products until they are returned to and received by Wytech, freight prepaid, pursuant to Wytech's written instructions.

E. Inspection and Acceptance. Buyer shall inspect all of the Products upon receipt. Buyer shall be deemed to have accepted all of the Products and to have waived and released all claims for shortages or other failure of the Products to conform to those ordered, unless Buyer provides written notice to Wytech itemizing any nonconformance, including, but not limited to, notification with respect to shortages, incorrect parts or inconsistencies between the shipment and the enclosed packing list or invoice, within thirty (30) days after delivery of the Products to Buyer or Buyer's agent. Acceptance shall be irrevocable and no attempted revocation shall have any effect whatsoever.

F. Lot Acceptance. Wytech reserves the right to combine manufacturing lots and/or material "heat" lots to satisfy a customer's order.

G. Equivalent Manufacturing Flexibility: Wytech reserves the right manufacture Products on equivalent manufacturing equipment provided that Wytech has completed qualification of equipment and demonstrated equivalent per Wytech's Quality Management System.



H. **Equivalent Material:** Unless a separate Quality Agreement has been agreed upon between the Parties, Wytech reserves the right to purchase raw material from any formally approved supplier in Wytech's Quality Management System, provided that the specifications of the purchased material meet the requirements of the Product.

I. **Cure of Imperfect Tender.** Buyer hereby grants Wytech the right to cure any imperfect tender of the Products within sixty (60) days from the date Buyer delivers written notice of such imperfect tender to Wytech. This right to cure shall be in addition to any other right to cure available to Wytech in law or equity.

J. **Force Majeure.** Wytech shall not be liable for any delay or non-delivery of any of the Products or other nonperformance caused in whole or part by any contingency or event beyond Wytech's reasonable control, including, without limitation, any act of God; acts of any government or any agency or subdivision thereof; fire; flood; embargo; pandemic; strikes; war; machinery breakage; failure of a communications or internet provider; transportation delays; shortage of or inability to secure labor, fuel, energy, materials or supplies at reasonable prices or from regular sources; riots or acts of a public enemy; terrorist acts; and any existing or future laws or regulations with which Wytech, in its judgment and discretion, deems it advisable to comply as its legal duty. Should any of the foregoing occur, Wytech may distribute its available Products among its customers on such a basis as it deems reasonable, without liability to Buyer.

4. **BUYER WARRANTIES.** For Buyer furnished materials, design and/or specifications for the Products, Buyer represents and warrants that (i) it has all intellectual property rights necessary or appropriate for the contemplated use of all designs, materials, parts and components that Buyer supplies to Wytech, (ii) it has conducted such testing as it has felt necessary and prudent to ensure that the Products to be produced from the materials and Specifications will fulfill their intended purposes, and (iii) all materials furnished by Buyer will be of suitable quality to facilitate efficient production of the Products. Buyer is solely responsible for undertaking its own clinical tests and other studies to determine the safety and efficacy of the Products and their appropriateness for use in their specific medical application, and shall make its own independent evaluation and judgment of said clinical tests and studies concerning the safety and efficacy of the Products. Buyer is solely responsible for establishing that the Products are suitable for the intended use in the Buyer's finished medical device and for obtaining any regulatory approvals required in the markets in which the Buyer's medical device will be sold or used, including without limitation: (a) ensuring that the product meets relevant biocompatibility requirements and is otherwise safe for the intended end-use; (b) functions as intended by the device manufacturer; (c) is suitable for the intended end-use; and (d) complies with all applicable regulatory requirements for the jurisdiction in which it is placed on the market, including without limitation, the U.S. Food and Drug Administration.

5. **WYTECH LIMITED WARRANTY, DISCLAIMER OF WARRANTY AND LIMITATION OF DAMAGES FOR BREACH OF WARRANTY.**

A. **Limited Warranty to Buyer.** Wytech warrants to Buyer that each Product shall comply as of the date of manufacture with written plans, designs and specifications agreed to by Wytech and Buyer ("Specifications") and any certificate of compliance delivered with any Products; provided, however, this warranty shall not apply if failure of Products to meet Specifications is not due to the acts or omissions of Wytech, including, without limitation, any problems caused in whole or in part by: (i) use, handling, shipment, operation, alteration, maintenance, assembly, or storage by any party other than Wytech; (ii) negligence by any party other than Wytech; (iii) repair or modifications performed by anyone other than Wytech or a party authorized in writing by Wytech; (iv) use in any manner or procedure other than that for which the Product is intended, including without limitation, surgical implantation into the body, or for other products for which a Product failure could cause personal injury or death; and (v) use



by any person other than trained medical personnel under order of a physician. An alleged breach of this limited warranty must be promptly reported to Wytech consistent with the requirements of Section 10A or shall be forever waived. Buyer agrees to undertake its own clinical tests and other studies to determine the safety and efficacy of the Products and shall make its own independent evaluation of such clinical tests.

B. Buyer's Limited Warranty Remedy. The parties agree that, if any Product fails to meet the warranty described in Section 5A Wytech will repair or replace, at Wytech's option, any defective part in the product for a period of ninety (90) days from the date of delivery. This remedy is intended to be the sole and exclusive remedy of the Buyer under this Contract. The parties also agree that, regardless of the failure of the sole and exclusive remedy, Wytech will not be liable for any consequential damages of whatsoever kind or nature. The parties intend the exclusion of consequential damages as an independent agreement apart from the sole and exclusive remedy herein.

C. DISCLAIMER OF WARRANTIES. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 5A ABOVE, WYTECH MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF NON-INFRINGEMENT AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

6. INDEMNIFICATION. Buyer agrees to indemnify, defend, and hold Wytech, its officers, directors, employees, independent contractors, representatives and agents, harmless for (a) any alleged or actual infringement of any third party's intellectual property rights and for any loss, liability, damage, debt, cost or expense (including legal and accounting fees and disbursements) arising out of, or as a result of or relating to any infringement claim, (b) misuse of any design, materials, part, component or Product (collectively, the "Components") or the Components' failure to perform as intended, including any Components that do not meet the Specification therefor, either by notification from Wytech or from any other source, and Buyer decides to use them as is, and (iii) any personal injury (including death) or damage to property resulting from the use of the Products. Except for Wytech's liability under this Contract for matters covered under Wytech's warranty in Section 5A, Buyer shall be fully and solely responsible for the Product and the consequences of any implementation, sale, or use by Buyer or others of the Product, including without limitation, compliance with applicable laws and regulations and claims of third parties arising from such implementation, sale or use. All indemnification obligations of Buyer hereunder shall survive delivery of the Products, payment of the Purchase Price therefor and termination of this Contract.

7. DEFAULT. Buyer will be in default of these terms and conditions if Buyer (i) fails to pay any amount when due or Wytech becomes aware of any fact or event which gives Wytech reasonable grounds to doubt Buyer's financial ability to satisfy its obligations hereunder, (ii) fails to observe any of its obligations hereunder, or (iii) institutes voluntary proceedings or if any proceedings are instituted against Buyer under any bankruptcy, insolvency or receivership laws. Upon any default by Buyer, Wytech may exercise any and all of the following remedies, in addition to other rights and remedies provided hereunder or by law or equity: (a) suspend or stop in transit any shipments, whether or not pursuant to this Contract; (b) exercise all rights of a secured party; or (c) declare all amounts owed by Buyer to be due and payable immediately. If Wytech elects to repossess the Products, Buyer shall permit Wytech to enter all premises where the Products are located with or without legal process to remove and take possession of the same. Ten (10) days advance notice of any intended disposition of repossessed Products shall be deemed reasonable. All remedies of Wytech hereunder are cumulative and nonexclusive. In addition, Buyer shall reimburse Wytech for all costs incurred as a result of Buyer's default, including reasonable attorneys' fees and other legal expenses.



8. LIMITATION OF REMEDIES. IN NO EVENT SHALL WYTECH BE LIABLE TO ANY PERSON FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER SPECIAL DAMAGES OF ANY DESCRIPTION INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE, EQUIPMENT DAMAGE, LOSS OF PROFITS OR REVENUES OR BUSINESS, COST OF CAPITAL, COST OF PURCHASE, COST OF RECALL, OR COST OF REPLACEMENT GOODS, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE. FURTHER, IN NO EVENT SHALL WYTECH BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE OF THE PARTICULAR SERVICE SPECIFIED ON THE ORDER THAT IS THE SUBJECT MATTER OF A DISPUTE. BUYER EXPRESSLY WAIVES ANY SECURITY INTEREST IN OR OTHER LIEN ON REJECTED PRODUCTS.

9. INTELLECTUAL PROPERTY. Buyer acknowledges that Wytech Intellectual Property (as defined below) shall remain the sole and exclusive property of Wytech and all right, title and interest in and to the Wytech Intellectual Property shall vest solely with Wytech. Notwithstanding anything contained in this Contract to the contrary, and unless specifically agreed upon to the contrary in writing, Buyer acknowledges and agrees that Wytech is in the business of designing, developing, manufacturing, prototyping and assembling metal and plastic components for specialized medical devices and that Wytech may develop products or other items for itself or other persons that are identical or similar in structure, functionality, or both structure and functionality to the Products. Buyer acknowledges and agrees that Wytech, its employees and agents shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, processes or skills gained or learned during the course of performing the services for the Buyer. Buyer understands and agrees that Wytech may perform similar services for third parties using the same personnel that Wytech may utilize for rendering services for Buyer hereunder. For the purposes of thi Contract, the term “Wytech Intellectual Property” means inventions, improvements, developments, or innovations (including all rights to patents, copyrights, trademarks, and trade secrets and know-how inherent therein and appurtenant thereto) and other creative works (whether or not patentable, copyrightable, or otherwise protectable under any and all state or federal legal theories, e.g., unfair competition, conceived or made or reduced to practice), know-how, technical information, pending patent applications, registrations, divisionals, continuations and continuations-in-part, registered and unregistered copyrights, and all associated goodwill, designs, drawings, specifications, vendor lists, manufacturing methods and processes, and all other information pertinent to these terms and conditions, which is proprietary to Wytech or is developed by Wytech during the term of this Contract or otherwise.

10. MISCELLANEOUS.

A. Shipment Variance. Wytech reserves the right to over ship or under ship the order quantity by 10%.

B. Return Policy. Within thirty (30) days of receipt, if any of the Products do not meet the limited warranty specified in Section 5A, Buyer may return the Products to Wytech for repair, replacement or credit, at Wytech’s option. In addition, subject to the conditions specified herein, Wytech will provide free shipping for the return of the Products to Wytech.

C. Records. Wytech will maintain its records with respect to the manufacture of the Products for a minimum of seven (7) years after the date of manufacture of the last Product under an Order unless an alternate retention period has been agreed, in writing, with the Buyer. Wytech reserves the right to retain records in electronic format.



D. Assignment; Entire Agreement. Buyer may not assign these terms and conditions without the prior written consent of Wytech. Wytech may assign all or part of these terms and conditions to a subsidiary of Wytech or to a party acquiring all or a substantial part of Wytech's business (whether through asset sale, merger, consolidation, reorganization or other form of transaction), without Buyer's prior written agreement. These terms and conditions are the sole and complete agreement between Wytech and Buyer with respect to Buyer's purchase of Products and supersedes all prior or subsequent oral and written understandings that contain any terms or conditions different from or in addition to the terms and conditions contained herein unless agreed to by Wytech in a signed writing that specifically references this Contract by Quote number. In the event of a conflict between the terms and conditions of an Order and this Contract, the terms and conditions of this Contract shall govern.

E. Modification and Waiver. No addition or modification to this Contract shall be binding unless set forth in writing and signed by all parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term or of the same circumstance or event upon any recurrence thereof. Wytech shall not be deemed to have waived any provision hereof or any remedy available to it, except pursuant to a written document signed by a duly authorized officer of Wytech.

F. Governing Law and Forum. Any and all matters of dispute between the parties arising out of or in connection with this Contract shall be governed by, and the rights and responsibilities of the parties construed, and enforced in accordance with the laws of the State of New Jersey, regardless of the legal theory upon which such matter is asserted, and without regard to conflicts of laws principles. Each party agrees to personal jurisdiction solely and exclusively in the State of New Jersey.

G. Export Compliance. Wytech sales of the Products are U.S. purchases and shipments only by Wytech. Buyer is the importer of record and must comply with all laws and regulations of the destination country if the shipment is made outside the United States. Wytech is committed to compliance with all applicable U.S. export regulations and laws, including, but not limited to the U.S. Treasury Office of Foreign Asset Control ("OFAC"), the U.S. State Department Directorate of Defense Trade Controls ("DDTC") and the U.S. Commerce Department Bureau of Industry and Security ("BIS"). Wytech will not sell or ship products prohibited under Export Administration Regulations to individuals or organizations identified by the BIS. Furthermore, Wytech prohibits the re-export, brokering or transshipment of its products or services to any individual, organization or country prohibited by the OFAC, BIS or DDTC. Buyer agrees to comply with all such laws and regulations. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required. Buyer represents and warrants that it is not on the OFAC's Specially Designated Nationals and Blocked Persons List, the BIS's Denied Persons/Entities List, the DDTC's Debarred Parties List or otherwise prohibited from purchasing the goods or services hereunder. Buyer shall promptly notify Buyer, in writing, if Buyer becomes debarred, suspended or proposed for debarment.

H. Severability. If any provision hereof is held to be unenforceable by final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of the remaining provisions hereof.



Wytech Industries LLC/ 960 East Hazelwood Avenue/ Rahway, NJ 07065 January 21, 2025

T (732) 396-3900
info@wytech.com
960 East Hazelwood Avenue
Rahway, NJ 07065
wytech.com