

HEALTHMARK INDUSTRIES CO., INC.

GENERAL TERMS AND CONDITIONS OF SALE

1. **Acceptance.** The following general terms and conditions of sale (“Terms and Conditions”) apply to all transactions for a good (“Good”) sold by Healthmark Industries Co., Inc. (“Healthmark”), and each Quotation (defined below), order acknowledgement, and invoice from Healthmark and to each purchase order (“Purchase Order”) from each customer (“Customer”), are the only terms and conditions applicable to the sale of Goods, except those relating solely to quantities, shipping instructions, or descriptions of the Goods set forth in Customer’s Purchase Orders or releases (collectively, “Purchase Order Terms”). Purchase Orders, if accepted by Healthmark are accepted subject to the Terms and Conditions set forth herein. **HEALTHMARK HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY CUSTOMER, WHETHER OR NOT CONTAINED IN ANY OF CUSTOMER’S BUSINESS FORMS OR ON CUSTOMER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS IN A WRITTEN AGREEMENT, SIGNED BY AN OFFICER, DIRECTOR, OR LEGAL COUNSEL (“AUTHORIZED REPRESENTATIVE”) OF HEALTHMARK, WHICH SPECIFICALLY REFERS TO “A MODIFICATION OF” OR “DEVIATION FROM” THE LANGUAGE OF “HEALTHMARK’S GLOBAL TERMS AND CONDITIONS”.** The parties agree that it is their intention that the battle of the form section of §2-207 of the Uniform Commercial Code shall not apply to these Terms and Conditions.

2. **Quotations.** Any quotation or pricing proposal (a quotation or pricing proposal hereinafter “Quotation”) is only valid if in writing and then only for thirty (30) days from the date of the Quotation unless otherwise set forth in such Quotation. All Quotations by Healthmark are subject to change or withdrawal without prior notice to Customer unless otherwise specifically stated in the Quotation. Healthmark shall have no obligation to provide, deliver, or sell Goods covered by Healthmark’s Quotation unless and until Healthmark issues an order acknowledgement or upon the shipment of Goods by Healthmark.

3. **Prices.** Unless otherwise stated in the applicable documents, prices are in U.S. Dollars and are subject to change without notice. If a raw material or component is subject to a price increase, or if a supplier raises its prices or imposes a surcharge on Healthmark, Healthmark reserves the right to increase prices and/or surcharge Customer and Customer agrees to accept such price increase or surcharge until the term of such price increase or surcharge or until the termination of the contract to which these Terms and Conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to Healthmark’s price in effect at time of shipment.

4. **Terms of Payment.** The inspection rights granted to Customer will not affect or alter the payment terms or the timing of Customer’s payment obligations. Under no circumstances will Customer have a right of setoff. Healthmark shall have the right to offset its payables against its receivables from Customer. Unless otherwise expressly agreed to by Healthmark in Healthmark’s Quotation, terms of payment are thirty (30) days net from the date of Healthmark’s invoice. In the event of Customer’s failure to pay Healthmark timely Healthmark reserves the right to take any or all of the following actions: (a) any actions allowable under law; (b) withhold shipment of Goods; (c) demand the return of previously shipped Goods; (d) institute new payment terms; and/or (e) cancel any Purchase Orders. Customer agrees to pay interest on overdue invoices at the rate of the lesser of one and one half percent (1 ½ %) per month or the highest rate permitted by law. If Customer fails to make any payment as required, Customer agrees to indemnify Healthmark for all costs and expenses, including reasonable attorneys’ fees, court costs, and associated expenses incurred by Healthmark in collecting the past due amount.

5. **Credit Approval.** All Quotations and shipments to be made hereunder are subject to the approval of Healthmark’s accounting department. If, in Healthmark’s sole judgment, the financial viability or responsibility of Customer is or becomes unsatisfactory, then Healthmark may, at its option and without prejudice to any of its other remedies hereunder or at law or equity, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and / or (b) terminate all Purchase Orders of Customer.

6. **Cancellation.** Healthmark reserves the right to cancel any Purchase Orders or terminate any Agreement relating to Goods on not less than thirty (30) days notice. Unless specifically agreed to by Healthmark in writing signed by an Authorized Representative of Healthmark, once Healthmark has either accepted

a Purchase Order or has begun taking actions with respect to such Purchase Order, such Purchase Order cannot be canceled, terminated or modified by Customer in whole or in part except with Healthmark’s consent in a writing signed by an Authorized Representative of Healthmark and then only upon terms and conditions to be agreed upon which shall include protection of Healthmark against all losses related to the termination. If Customer nonetheless repudiates the Purchase Order or contract or notifies Healthmark to proceed no further therewith, Healthmark shall have the right to deliver all Goods, and Customer agrees to accept same and to pay to Healthmark the contract price for all such Goods plus reimbursement of any costs associated with the early termination.

7. **Inspection / Non – Conforming Shipments.** Healthmark grants Customer the right to inspect Goods for a period of five (5) business days immediately following delivery (“Inspection Period”). Customer must notify Healthmark of any Goods that do not conform to the terms applicable to its order within the Inspection Period, and afford Healthmark a reasonable opportunity to inspect such Goods and cure any nonconformity. If Customer fails to provide Healthmark with a written report specifying the non-conformity (a “Non-Conformance Report”) within the Inspection Period Customer shall be deemed to have accepted such Goods. Customer will have no right to return any Good without Healthmark’s prior written authorization. Any return authorized by Healthmark must be made in accordance with Healthmark’s return policies then in effect and must be accompanied by a Non-Conformance Report. Healthmark, in its sole discretion, may reject any return of Goods not approved by Healthmark in accordance with this paragraph or otherwise not returned in accordance with Healthmark’s then current return policies.

8. **Title / Risk of Loss / Delivery.** Unless other arrangements are made in writing Healthmark anticipates use of common carriers for transport of Goods. Unless specifically otherwise provided in Healthmark’s invoice or Quotation, Healthmark will bill Customer the then current freight rates and applicable transportation charges, and Customer shall pay such costs in accordance with the terms of Healthmark’s invoices. Healthmark reserves the right to adjust prices to cover additional costs a) when the Customer specifies that deliveries are to be made in installments that do not conform to Healthmark’s typical production schedule, and b) when Healthmark elects to deliver as specified by Customer. All Goods shall be shipped F.O.B. Healthmark’s facility and shall become the property (if not already the property) of Customer upon delivery to the carrier and receipt of payment in full to Healthmark. Customer assumes all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties who may acquire or use the Goods illicitly after the delivery to the carrier. Unless mutually agreed upon in writing, shipping dates are approximate and are based upon prompt receipt of all necessary information. Healthmark reserves the right to ship items in a single or multiple shipments.

9. WARRANTY. HEALTHMARK WARRANTS, ONLY THAT THE GOODS CONTRACTED FOR HEREUNDER (A) WILL CONFORM TO THE DESCRIPTION ON THE FACE OF THE QUOTATION, INVOICE, PACKING LIST, ETC., AND (B) UNLESS OTHERWISE AGREED WILL BE FREE OF DEFECT IN WORKMANSHIP OR MATERIALS FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF DELIVERY.

HEALTHMARK SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE GOODS (TO THE EXTENT SUCH DEFECT IS PROXIMATELY CAUSED BY HEALTHMARK), TO REFUND THE CONTRACT PRICE, REPLACE (OR PAY FOR REPLACEMENT OF) DAMAGED PARTS, OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS, AND HEALTHMARK’S LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY FOR DEFECTIVE GOODS SHALL BE LIMITED SOLELY TO RE-PERFORMANCE, REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS HEALTHMARK MAY ELECT.

HEALTHMARK SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL NON-CONFORMANCE CLAIMS.

10. DISCLAIMER OF FURTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE, HEALTHMARK MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS GOODS.

11. LIMITATION OF LIABILITIES AND REMEDIES. HEALTHMARK SHALL NOT BE LIABLE, AND CUSTOMER WAIVES ALL CLAIMS AGAINST HEALTHMARK FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON HEALTHMARK'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. HEALTHMARK WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RE SALE, OR USE OF ITS GOODS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT SHALL HEALTHMARK'S ENTIRE LIABILITY EXCEED THE PURCHASE PRICE WITH RESPECT TO GOODS IN WHICH THE CLAIM IS MADE.

12. Taxes. Customer shall pay to Healthmark, in addition to the agreed price, the amount of all fees, duties, licenses, tariffs, and all transactions, use, privilege, occupation, excise, value added or other taxes, federal, state, local or foreign, which Healthmark is required to pay or collect in connection with the Goods contracted for under this Agreement. Failure by the Healthmark to collect any such fees or taxes shall not affect Customer's obligations hereunder and Customer shall fully defend, indemnify and hold harmless Healthmark with respect to such tax obligations.

13. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents, etc. and applications therefore, and other information or Intellectual Property disclosed or otherwise provided to Customer by Healthmark and all rights therein (collectively, "Intellectual Property") will remain the property of Healthmark and will be kept confidential by Customer in accordance with these Terms and Conditions. Customer shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Healthmark upon written request from Healthmark. Customer acknowledges that no license or rights of any sort are granted to Customer hereunder in respect of any Intellectual Property, other than the limited right to use Healthmark's proprietary Goods purchased from Healthmark.. Unless otherwise agreed to in a writing signed by an Authorized Representative of Healthmark any Intellectual Property developed by it or mutually with Customer in the course of providing, preparing to provide, or in any way related to the production/development of Goods shall be owned by Healthmark.

14. Confidential Information. Information furnished or made available by Healthmark (including, but not limited to, information disclosed prior to the applicability of these Terms and Conditions) to Customer in connection with the subject matter of these Terms and Conditions or of Customer's Purchase Order shall be held in confidence by the Customer. Customer agrees not to use or disclose such information without the prior written consent of an Authorized Representative of Healthmark. The obligations in this Section do not apply to information that (a) at the time of disclosure was or becomes, generally available to the public by no breach by the Customer of any obligation herein, (b) the Customer can show by written records was in its possession prior to disclosure by Healthmark, or (c) is legally disclosed to Customer by a third party having no direct or indirect confidentiality obligation to Healthmark respecting such information.

15. Updates. Healthmark may revise these Terms and Conditions at any time by posting them to their website, and Customer acknowledges and agrees any updates to these Terms and Conditions shall be binding upon Customer.

16. Force Majeure. Healthmark shall not be liable for failure in delivery of any Goods due to (a) fires, floods, other natural disaster, strikes, or other labor disputes, accidents, sabotage, terrorism, war, riots, financial distress of a supplier or other disruption in Healthmark's supply chain, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the reasonable control of Healthmark. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be useful to enable Healthmark to perform. Healthmark may, during any period of shortage due to any of the above circumstances, allocate its available supply of resources to provide Goods among itself and its Customers in such manner as Healthmark, in its judgment, deems fair and equitable.

17. Assignment and Delegation. No assignment of any rights or interest or delegation of any obligation/duty of Customer under these Terms and Conditions, Healthmark's Quotation, order acknowledgement, invoice, or Customer's Purchase Order may be made without prior written consent of Healthmark's Authorized Representative. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

18. Integration Clause. Except as otherwise indicated herein, these Terms and Conditions constitute the entire Terms and Conditions to transactions between Healthmark and Customer with respect to the Goods.

19. Waiver. No failure of Healthmark to insist upon strict compliance by Customer with these Terms and Conditions or to exercise any right accruing from any breach of Customer shall impair Healthmark's rights in case Customer's breach continues or in case of any subsequent breach by Customer. Waiver by Healthmark of any breach by Customer of these Terms and Conditions shall not be construed as a waiver of any other existing or future breach.

20. Limitation of Actions. Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these Terms and Conditions by Healthmark shall be barred unless commenced by Customer within one (1) year from the accrual of such cause or action.

21. Dispute Costs. In any litigation or arbitration between Healthmark and Customer concerning these Terms and Conditions, the prevailing party is entitled, in addition to such other relief that is granted, to a reasonable sum for their attorney's fees, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine.

22. Choice of Laws. Any dispute arising out of or related to these Terms and Conditions shall be governed by and construed according to the laws of the State of Michigan and litigated exclusively in a court located in Macomb County, Michigan (to the extent that a matter may only be litigated in a federal court the parties agree that venue for such dispute shall be the Federal Court for the Eastern District of Michigan). The parties hereby agree to the exclusive jurisdiction and venue of such courts. These Terms and Conditions and the rights and obligations of the respective parties hereunder shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

23. Severability. The parties intended that these Terms and Conditions are severable. If any provision herein is or is deemed to be unlawful or unenforceable then the remaining provisions shall remain in full force and effect.

24. Survival. Any provision of these Terms and Conditions, which by its nature extends beyond the expiration, termination, or cancellation of these Terms and Conditions, shall remain in full force and effect.

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