

TERMS AND CONDITIONS FOR THE PURCHASE OF MOTIVA® PRODUCTS

Motiva USA, LLC, a limited liability company incorporated under the laws of the state of Delaware ("MOTIVA") is an entity that sells medical device products, namely in breast reconstruction and aesthetic augmentation, to health care professionals ("CUSTOMER"). The following terms and conditions ("Terms") will apply to all CUSTOMERS who purchase devices sold by MOTIVA, which includes, but is not limited to, Motiva SmoothSilk® Round and SmoothSilk Ergonomix® breast implants, the Motiva Flora SmoothSilk® Tissue Expander and the Motiva Flora® Port Locator ("Products"). The order of MOTIVA's Products by CUSTOMER in any written form will constitute acceptance of these Terms.

1. APPLICABILITY; PURCHASE ORDERS

- 1.1. Applicability. These Terms apply to the delivery and sale of Products as described in an applicable quote, pricing confirmation letter, or similar document provided by MOTIVA for the sale of its Products ("Quote") and such sale is conditioned upon the acceptance by the CUSTOMER of these Terms. Any differing terms or provisions provided in any document that CUSTOMER provides shall be expressly rejected unless expressly accepted in writing by MOTIVA.
- 1.2. Method of Product Sale. CUSTOMER may purchase the Products pursuant to the purchase prices listed in the Quote either (1) through a direct sale (2) on a flash order basis as governed by the additional terms listed in Exhibit A of these terms and conditions, or (3) on a consignment basis as agreed to by the Parties in a separate "Consignment Agreement".
- 1.3. Purchase Orders: Acceptance. CUSTOMER agrees to purchase the quantity of Products specified in orders issued in connection with the prices listed in the Quote and that are accepted by MOTIVA (each a "Purchase Order"). Purchase Orders may be submitted by written, telephonic, or electronic means. MOTIVA may accept, at its sole discretion, any Purchase Order by confirming the order by any written means. No Purchase Order is binding on MOTIVA unless accepted by MOTIVA in writing.

2. UNAUTHORIZED USE AND CUSTOMER CREDENTIALS

- 2.1. Unauthorized Use. CUSTOMERS shall not modify or reverse engineer or permit or encourage others to modify or reverse engineer, the Products. CUSTOMER shall not use the Products for the benefit of third parties that are not affiliated with or patients of CUSTOMER.
- 2.2. Physician Credentials. MOTIVA Products are prescription medical devices and U.S. law restricts the sale of these products to sale by or on the order of a physician. MOTIVA sells these Products only to licensed physicians who are Board-certified in the specialty of plastic or reconstructive surgery, or who are otherwise Board-admissible in the specialty of plastic or reconstructive surgery (e.g., by virtue of having completed the training and other prerequisites required for permission to take Board examinations). By purchasing these Products from MOTIVA, CUSTOMER represents that it is comprised of physicians duly licensed to use the Products pursuant to U.S. law and are Board-certified or otherwise Board-admissible in the specialty of plastic or reconstructive surgery or are purchasing Products on order of a person who holds such license and qualifications. MOTIVA reserves the right to verify the credentials of persons purchasing MOTIVA Products and to refuse sales to any person who does not meet these requirements.

3. DELIVERY; RISK OF LOSS; CUSTOMER ACCEPTANCE; RETURN POLICY.

- 3.1. Delivery. MOTIVA agrees to ship Product orders via standard 2-day shipping. CUSTOMER could be subject to shipping charges based on order type or requests for expedited shipping speed. MOTIVA will provide an estimated delivery date to CUSTOMER at the time of MOTIVA's acceptance of the Purchase Order. MOTIVA will use reasonable efforts to meet the delivery dates as quoted but will not be liable for any failure to meet such dates. Partial shipments may be made and invoiced (as applicable) and MOTIVA will use reasonable efforts to notify CUSTOMER in advance of any partial shipment.

3.2. Acceptance; Risk of Loss; Title. All risk of loss, theft, damage to or destruction of the Products shall pass to CUSTOMER, upon delivery of the Products to the delivery location specified by CUSTOMER (“**Delivery**”). The Products shall be deemed accepted by the CUSTOMER upon Delivery. This clause is subject to be superseded by a Consignment Agreement between the Parties where consignment is the chosen method of Product sale.

3.3. Returns. MOTIVA’S return policy for Products is attached hereto as Exhibit B.

4. PRICING; TERMS OF PAYMENT; TAXES

4.1. Pricing. The prices payable for the Products will be listed in the accepted Purchase Orders. Except as otherwise specified in an accepted Purchase Order, (i) prices are quoted by MOTIVA in USD, (ii) accepted Purchase Orders and payment obligations are non-cancellable and fees paid are non-refundable.

4.2. Payment Terms. Unless otherwise stated in the accepted Purchase Order, pricing confirmation letter or similar document accepted by MOTIVA, all invoiced amounts due to MOTIVA are payable within thirty (30) days from the invoice date. CUSTOMER shall make all payments hereunder by the method of payment specified in each invoice provided to CUSTOMER and in USD. CUSTOMER shall pay interest on all late payments at the highest rate permissible under applicable law, calculated daily and compounded monthly. MOTIVA reserves the right, in its sole discretion, to change the payment terms (which may be either more permissive or more restrictive) at any time on prior written notice to CUSTOMER, including if CUSTOMER’S creditworthiness or payment history is unsatisfactory. Any change in MOTIVA’S payment terms will not affect the payment terms for Purchase Orders submitted by and accepted by MOTIVA prior to payment terms change notice. Acceptance by MOTIVA of less than full payment shall not be a waiver of any of MOTIVA’S rights.

4.3. Invoice Disputes. In the event of a payment dispute, CUSTOMER shall deliver a written statement to MOTIVA no later than fifteen (15) calendar days after the invoice date listing all disputed items or CUSTOMER shall be deemed to have waived its right to dispute charges. MOTIVA and CUSTOMER shall use their best efforts to promptly resolve any disputed charges. CUSTOMER may not set off any amounts due to MOTIVA.

4.4. Sales Tax. Products purchased may be subject to sales/use tax in accordance with the state tax laws in the state to which the Products are shipped. If the CUSTOMER is a tax-exempt entity or is purchasing Products pursuant to an exemption available in its home state, then the purchase may be eligible for tax-exempt treatment. MOTIVA reserves the right to request additional information from CUSTOMER for the purpose of complying with state sales tax laws.

5. COMPLIANCE WITH LAWS.

5.1. CUSTOMER will comply with all applicable federal, state, local and other applicable laws and regulations with respect to the Products.

5.2. MOTIVA and CUSTOMER each acknowledge and agree that the Terms are not intended in any way to limit or otherwise affect the objectivity or professional judgment of CUSTOMER or to interfere with the objectivity or professional discretion of any prescriber.

5.3. CUSTOMER acknowledges that it is required by law to disclose, in any cost reports or claims for reimbursement submitted to Medicare, Medicaid or certain other health care programs, the cost (including but not limited to, any discounts, rebates or other price concessions) of any reimbursable medical device product covered by an invoice under a Purchase Order, and on request, provide to the U.S. Department of Health and Human Services and any applicable state agencies, any invoices, coupons, statements and other documentation reflecting such costs. CUSTOMER may receive subsequent documentation under some programs reflecting adjustments or allocations to the price available hereunder. In preparing any cost reports, the CUSTOMER may be required to evaluate as a discount the value of any Products listed as \$0.00 on any invoice. The CUSTOMER should not include as a discount for cost reporting purposes the value of any Product that is designated as a sample, evaluation or support device that the CUSTOMER knows constitutes a sample, evaluation or support device, and it should not seek reimbursement for any such items. MOTIVA recommends the CUSTOMER retains a copy of any applicable invoice and any other documentation provided by MOTIVA regarding any price concessions. CUSTOMER may request additional information from MOTIVA to meet the CUSTOMER’S reporting or disclosure obligations.

- 5.4. If a patient of CUSTOMER should receive MOTIVA Implants®, CUSTOMER represents and warrants that it will inform these patients of all known or reported risks of breast implants as described and provided at www.motivausa.com.

6. WARRANTY.

- 6.1. MOTIVA warrants that the Products that it manufactures, when used in accordance with the directions for use (“DFU”) are manufactured to meet the approved specifications and are fit for the indications described in the labeling. The warranty will not apply to Products which have been abused or misused by CUSTOMER or have not been shipped and stored in accordance with MOTIVA’s instructions, or which are damaged during shipment for reasons not attributable to MOTIVA, or after applicable shelf life of the Product.
- 6.2. If any of the Products prove not to conform to the warranty given in Section 6.1, CUSTOMER may submit a claim to MOTIVA for replacement. MOTIVA’s obligations arising from said warranty will not arise unless claims are submitted to MOTIVA by CUSTOMER in writing with explanatory documentation attached within 90 days of the later of the date of alleged Product failure and the date the CUSTOMER first knew, or should have known, of the warranty non-conformance. Time will be of the essence in respect of the making of any warranty claim.
- 6.3. TO THE EXTENT PERMITTED BY LAW, MOTIVA EXCLUDES ALL IMPLIED TERMS AND/OR REPRESENTATIONS AND EXCEPT AS STATED IN SECTION 6.1, THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT PERMITTED BY LAW, SELLER WILL NOT BE LIABLE FOR PROXIMATE, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PRESENT OR PROSPECTIVE PROFITS OR BUSINESS, ANTICIPATED SALES, EXPENDITURES, INVESTMENTS, OR COMMITMENTS. MOTIVA shall not be liable for damages and CUSTOMER will indemnify and hold MOTIVA, its Affiliates, and its and their respective directors, officers and employees free and harmless for any claims or damages occurring as a result of incorrect clinical applications of Products or combination of Products with third-party components or implanting of Products with incompatible tools or third party components if operating instructions and references to user instructions and manuals are not fully adhered to in the clinical technique. This applies particularly if Products are used or combined with third-party tools or components that are not included in the DFU for such use or combination and/or single use products, tools or components are reused. All such misuses will void all MOTIVA warranties.
- 6.4. CUSTOMER will indemnify and hold MOTIVA, its Affiliates, and its and their respective directors, officers and employees free and harmless from any claim arising for any warranty made or implied to the extent that it exceeds or differs from the warranty given under this Section 6 by MOTIVA.
- 6.5. To the extent MOTIVA offers or advertises any other program outside of this Section 6 which is referred to using the term “warranty,” such program shall be considered a discretionary service courtesy for patient benefit only and shall be strictly limited to the terms set forth in such program’s advertised terms.
7. **LIMITATIONS OF LIABILITY.** THE TOTAL LIABILITY OF MOTIVA, INCLUDING ITS SUBCONTRACTORS OR SUPPLIERS, ON ANY AND ALL CLAIMS, WHETHER IN WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATIONS UNDER A PURCHASE ORDER OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT RELATING THERETO SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PURCHASE ORDER WHICH DIRECTLY GIVES RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL MOTIVA, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE OR DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER OR DOWNTIME COSTS FOR SUCH DAMAGES.

8. **FORCE MAJEURE.** MOTIVA will use reasonable efforts to complete shipment of Products in accordance with the requested delivery dates, but will not be liable for any loss or damage for delay in delivery, inability to implant or any other failure due to causes beyond its reasonable control including but not limited to: acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, disease, epidemic, civil commotion, blockades, embargos, calamities, floods, fires, earthquakes, explosions, storms, strikes, lockouts, labor disputes, or unavailability of labor, raw materials, power or supplies.

9. **VIGILANCE, PRODUCT TRACEABILITY, CORRECTIVE ACTIONS, DEVICE TRACKING AND EXPLANTS.**

9.1. CUSTOMER shall without undue delay notify MOTIVA of all Product-related “complaints” (within the meaning of U.S. FDA 21 CFR Part 820.198) or comparable requirements under applicable local laws, rules or regulations) which CUSTOMER becomes aware of by notices from users (patients) or otherwise from the marketplace; CUSTOMER will duly answer any follow-up questions asked by MOTIVA; this does not imply disclosure of personal data of users (patients) without their prior consent. If CUSTOMER obtains any queries or orders from authorities related to Products, CUSTOMER shall inform MOTIVA promptly thereof. CUSTOMER may give notice of any complaints to MOTIVA by calling 1-800-924-5072 or by reaching MOTIVA by e-mail at uspms@motivausa.com.

9.2. CUSTOMER shall ensure that CUSTOMER is able to trace all Products whether still in stock at CUSTOMER or already implanted in patients (the latter by inspecting its medical records including contact data of patients treated), so that CUSTOMER will be able to implement any corrective actions, including recalls, initiated by the manufacturer or by regulators.

9.3. MOTIVA Products may be subject to the Food and Drug Administration’s device tracking requirements. CUSTOMER will agree to comply with the device tracking requirements and complete all device tracking information for implanted Products. Device tracking information may be provided by completing and returning MOTIVA’s device tracking forms or participating in external registries such as the National Breast Implant Registry, or completion of device tracking information in Aesthetic One, or as may be designated by MOTIVA from time to time.

9.4. By Federal law, explanted Products must be returned to MOTIVA, pursuant to MOTIVA complaint investigation requirements, and the reason for the explant must be provided together with appropriate documentation. All explanted Products must be returned to MOTIVA by following the instructions for return entitled “**Returned Devices Handling Protocol**” at <https://motivausa.com/contact-us>. CUSTOMER shall send back explanted Products back to MOTIVA within thirty (30) days of the date of explant. MOTIVA requests the return of all explanted Products associated with a complaint to assist with evaluating and maintaining the quality and safety of MOTIVA Products.

10. **CONFIDENTIAL INFORMATION.** CUSTOMER shall hold the following information in strict confidence and not disclose the same to any other person or entity except as provided herein: all information, pricing and terms relating to or contained in the Purchase Order, Quote or pricing confirmation letter, including any attached data, trade secrets, financial data, pricing, business plans or any other information received from MOTIVA in connection with the Purchase Order (collectively, “**Confidential Information**”). Notwithstanding the above, CUSTOMER may disclose Confidential Information: (i) to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the party’s rights and obligations in connection with the Purchase Order, provided that the disclosing party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential, (ii) as required by law, provided that the disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure, and (iii) with the prior written consent of MOTIVA.

11. **MISCELLANEOUS.**

11.1. **Intellectual Property.** MOTIVA retains all right, title and interest in and to all intellectual property rights in and covering the Products.

11.2. **Independent Contractors.** CUSTOMER is solely liable for its operating costs and bears alone the risks inherent in its business. CUSTOMER’s relationship with MOTIVA is that of an independent contractor and none of the provisions of these Terms can be interpreted to mean that MOTIVA and CUSTOMER have agreed to form a company, an

association, a partnership or a joint venture or so as to render CUSTOMER an employee of MOTIVA. CUSTOMER is solely responsible for all of CUSTOMER's expenses and employees. CUSTOMER shall have no power or authority to conclude any contract or make any representation, promise, statement or guarantee on behalf of MOTIVA or to bind MOTIVA in any other way.

- 11.3. Severability. If any provision of the Terms is declared void, null or unenforceable by a court or tribunal of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable where possible, and in any event the other provisions hereof not so declared shall remain in full force and effect.
- 11.4. Waivers. No waiver will be effective unless given in writing by MOTIVA. No waiver of a right will be construed as a waiver of any other right, whether or not of a similar nature.
- 11.5. Governing Law and Venue. These Terms shall be governed by and construed in accordance with the laws of the State of Texas, without reference to the choice of law principles or rules thereof. Any legal suit, action, or proceeding arising out of or relating to this these Terms or Purchase Order must be instituted in the courts of Texas, and MOTIVA and CUSTOMER irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by certified or registered mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. MOTIVA and CUSTOMER irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. MOTIVA and CUSTOMER agree that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Exhibit A
Flash Order Terms

CUSTOMER will be eligible to purchase MOTIVA Products on a flash order basis (“**Flash**”) upon express written approval from MOTIVA. Flash will be used to provide Products on an expedited and as needed basis for customers who desire Product orders for patients with imminent surgeries. In a Flash order, CUSTOMER shall place an order for the Products and MOTIVA will provide a select range of sizes of the Products up to a maximum of twelve (12) Products per patient surgery. CUSTOMER can make a Flash order after MOTIVA approval by going to Motiva® Easy Direct, or any platform designated by MOTIVA and providing the information requested. CUSTOMER agrees to adhere to the following guidelines for Flash;

- 1.1 **Flash Use.** CUSTOMER will notify MOTIVA’S Customer Service of the Product used from the Flash order within forty-eight (48) hours of the applicable patient’s surgery by e-mail at customercare@motivausa.com or telephone using 1-800-924-5072. Such notice will be deemed to be a Purchase Order and such Product will be deemed to have been purchased by CUSTOMER from MOTIVA and subject to the Sales Agreement.

- 2.1 **Unused Product Return.** All unused Products in a Flash order must be returned to and processed by MOTIVA within thirty calendar (30) days from the applicable patient’s date of surgery (“**DOS**”). MOTIVA shall provide pre-paid ground shipping labels for such returns. Any Products not returned and processed by the designated MOTIVA warehouse within thirty (30) calendar days of the DOS will be assumed used and an invoice will be issued to CUSTOMER. To avoid automatic billing, MOTIVA recommends return shipments for unused Flash Products be set by CUSTOMER for fifteen (15) calendar days after the DOS. Unused Flash Product returns are subject to inspection by MOTIVA and will only be accepted if package seals and Product integrity are intact.

Exhibit B
Return Policy

Mail Return Address: 3495 Gantz Rd, Suite B, Grove City, OH 43123

Serialized Products:

Upon inspection and receipt, credits will be issued based on the following time limits from the date of the invoice:

- 0-30 days: 100% credit
- 31-60 days: 75% credit

Conditions for credit issuance:

- No credit for opened or damaged product boxes.
- The tab sealing the box must be intact.
- No markings or writings on the label, box, or pouch
- Tamper-evident seal must be intact with no evidence of removal.
- Freight charges will not be credited.

Shipping:

- Products must be returned to MOTIVA via an approved shipper, using the return label and box provided during the original shipment, or if a new shipper is required, please contact MOTIVA Customer Service before initiating the return and a replacement label will be provided.
- Products must arrive at MOTIVA's designated warehouse prior to the return windows stated above to be eligible for credit.

Additional Information:

- Claims for damages in transit and order discrepancies must be reported to MOTIVA Customer Service

Customer Service Contact:

- Email: customercare@motivausa.com