

## **Sizewise Rentals, L.L.C. – Standard Terms and Conditions of Sale**

**1. General.** Unless otherwise expressly agreed in writing by the Customer and Sizewise Rentals, L.L.C. or its subsidiaries ("Sizewise" or "Seller"), all sales including rental and maintenance are expressly conditioned on the following terms and conditions. Sizewise's offer of sale is based on the terms and conditions found in the body of a Quote (defined herein) and those provided herein. A quotation from Sizewise may be for (a) the sale or rental of product ("Sales Quote") or (b) maintenance work on Customer owned equipment including without limitation repair and replacement parts (the "Maintenance Services") quoted by Sizewise either in a maintenance ticket or other Sizewise quotation documents including but not limited to service repair quotes, work orders and invoices (collectively referred to as a "Maintenance Quote"). The Sales Quote and Maintenance Quote are collectively referred to herein as a "Quote". All Quotes are with the express condition that these Sizewise Rentals, L.L.C. Standard Terms and Conditions of Sale ("Terms and Conditions") apply; and Customer's acceptance of the same. Unless otherwise provided on the body of the Quote, offers are available for acceptance for a period of 30 days from the date on the Quote. An order by Customer, Customer's receipt of product (purchased or rented), or Sizewise's commencement of Maintenance Services will constitute Customer's acceptance of these Terms and Conditions. No waiver, consent, modification, amendment or change of the Terms and Conditions contained herein shall be binding unless in writing and signed by Sizewise and Customer. Any terms and conditions on a Customer Purchase Order or any other document issued by Customer are specifically rejected by Sizewise, and nothing contained in any Purchase Order or Customer issued document will in any way serve to modify or add any terms or conditions to the Quote except for the basic Purchase Order terms that identify the product and quantity ordered. Sizewise's failure to object to terms and conditions contained in any subsequent communication or documents from Customer will not be a waiver or modification of these Terms and Conditions set forth herein. All Quotes and orders shall and are made pursuant to these Terms and Conditions.

**2. Delivery/Returns and Risk of Loss/Cancellation.** Upon receipt and approval of a Customer order, including any specific order guide Sizewise requires Customer to complete for the ordered product, a shipping/delivery date will be established by Sizewise. Unless otherwise provided on the body of the Sales Quote, (a) all product purchased by Customer will be shipped EXW Sizewise's location, according to Incoterms 2010 freight prepaid and added to invoice using Sizewise's standard methods for packaging and shipping. Customer agrees to cooperate fully in the event a claim needs to be filed for lost or damaged goods. Title and risk of loss for purchased product(s) passes to Customer upon Sizewise's tender of such Products to the freight carrier at Sizewise's location; and (b) all rented product will be shipped F.O.B. Destination subject however to a delivery fee which may apply depending on the location of the Customer's desired delivery location. All rented product is owned by Sizewise and shall remain the property of Sizewise, however, upon delivery of rented product to Customer's location risk of loss passes to Customer and Customer shall be responsible for the rented product. Customer must return the rented product to Sizewise in the same condition as delivered less normal wear and tear. All rented product must remain at the Customer's delivery location and cannot leave the Customer's facility unless removed by Sizewise or its authorized agent. **Additionally, upon delivery of rented product Customer is provided a service ticket ("Service Ticket") which includes additional rental terms and conditions. All rented product is, in addition to these Terms and Conditions, subject to the term and conditions contained on the Service Ticket and the Equipment Lease and Ancillary Services Agreement presented to Customer in hard copy and/or through electronic presentation ("Equipment Agreement"). A copy of the Equipment Agreement currently in effect is located at [www.sizewise.com/legal](http://www.sizewise.com/legal). The Equipment Agreement may be amended, modified, or supplemented from time to time by Sizewise in its sole discretion. Adding your name on the electronic device is your electronic signature and your agreement to the terms and conditions of our Equipment Agreement (available at [www.sizewise.com/legal](http://www.sizewise.com/legal)) for your order. Customer's acceptance of the delivered rental product will constitute acceptance of these Terms and Conditions including the additional rental terms and conditions stated on the Service Ticket and the Equipment Agreement.** Shipments should be inspected immediately upon receipt for damaged or lost goods. Customer must note any damage or loss on the shipping carrier's receipt (bill of lading) at the time of delivery and notify Sizewise as soon as loss or damage is discovered and include model number(s), serial number(s), and a description or picture of the damage. Depending on the particular shipping arrangement, the obligation to prepare, file and pursue a claim for any damage or loss may be Customer's. Upon notice to Sizewise of the damage or loss Sizewise will inform Customer if Customer must pursue the claim. **FAILURE TO FULLY AND ADEQUATELY INSPECT EACH SHIPMENT UPON ARRIVAL MAY IMPEDE OR RESTRICT THE CLAIMS PROCESS WITH THE APPLICABLE CARRIER. SIZEWISE WILL NOT BE RESPONSIBLE FOR ANY DELAY IN CUSTOMER'S REPORTING OF DAMAGED GOODS OR LOST SHIPMENTS.** For purchased product that is un-used, undamaged and unpackaged, Customer may return the product if within ten (10) days of delivery, however, subject to Sizewise's Returned Goods Policy then in effect. A copy of the Sizewise Return Policy currently in effect is located at [www.sizewise.com/legal](http://www.sizewise.com/legal). The Sizewise Return Policy may be amended, modified, or supplemented from time to time by Sizewise in its sole discretion. Sizewise reserves the right to refuse returned products for any reason, and when accepted by Sizewise, the amount of credit for the returned product will be determined by Sizewise and at its discretion. Products that are returned are subject to a twenty-five percent (25%) restocking fee, plus shipping and any additional costs resulting from damage or use. All made to order or custom products are non-refundable and non-returnable. A return authorization number (RA#) is required before returning any product. Products returned without a RA# will be refused. RA#'s are available by calling 877-590-3151 and must be marked on the outside and inside of the returned product. Returns do not include shipping/freight charges shown on the packaging slip or invoice. You are responsible for paying your own shipping costs for returning your item. Shipping costs are nonrefundable. If you receive a refund, the cost of return shipping will be deducted from your refund. Sizewise shall acknowledge receipt of Purchase Order(s) submitted by Customer. In the event that Customer cancels a Purchase Order more than ten (10) days following Sizewise's acknowledgement of such Purchase Order, Customer shall be assessed a twenty-five percent (25%) cancellation fee.

**3. Maintenance.** The Maintenance Services listed on a Maintenance Quote are limited to visual inspection of the equipment and is an estimation of the parts and labor required to repair or perform maintenance on the equipment. No attempt was made to search for hidden damage. Sizewise, at its discretion, will use new or refurbished parts for any parts replaced pursuant to an accepted Maintenance Quote. Any parts removed for replacement become the property of Sizewise. Sizewise is not responsible for (i) supplies or other consumable items or (ii) any defects or damages resulting from (a) the negligent acts or omissions, misuse, or improper use of the equipment by Customer or its agents, employees, invitees,

contractors, representatives, third party beneficiaries or by any other persons Customer intends to use the equipment; (b) the unauthorized repair by Customer or a third party; (c) fire, water, other acts of God or force majeure events; (d) damage normally covered by insurance; or (e) any other exclusions stated in the Warranty section. Customer is solely responsible for providing back-up equipment and services upon a failure of a product covered under these Terms and Conditions. To the extent Customer uses the product to store or collect data, Customer is responsible for maintaining a procedure external to the product (i.e. data backups on diskettes) for re-construction of lost or altered files or data. Under no circumstances will Sizewise be held liable for missing or altered files or data. **Customer's signature on a Maintenance Quote or specific work order will constitute Customer's acknowledgment and acceptance that the Maintenance Services were performed in a workmanlike manner and the equipment was returned to Customer in working condition. Adding your name on the electronic device is your electronic signature and your agreement to the terms and conditions of the Maintenance Quote and Services performed for your equipment. Customers purchasing a preventive maintenance plan must first agree to the terms in the Sizewise Maintenance Plan Agreement or Total Cost of Ownership Agreement. Customer may obtain a copy of the Sizewise Maintenance Plan Agreement or the Total Cost of Ownership Agreement by contacting the local Sizewise Sales representative or customer service at 800-814-9389.**

**4. Prices and Payment.** All prices, rates, fees or costs (collectively "Charges") published by Sizewise are subject to change at any time without notice. Customer shall pay for any Charges (including without limitation Charges applicable to parts or replacement products) at the then current published figures. All Charges listed in a Quote are valid for thirty (30) days, unless otherwise stated in writing. All Charges incurred are the sole responsibility of the Customer. Unless invoiced separately with different terms, payment is due upon delivery of the product, completion of the Maintenance Services or any other services, as applicable. Charges, including those listed on a Quote, may exclude all sales and other taxes that may be imposed on Customer. Customer shall be responsible for all taxes (including but not limited to, city, county, state, and Federal taxes) applicable to the sold or rented products, any Maintenance Services, any parts or replacement products provided hereunder, and any other services. In addition to labor and parts Charges on a Maintenance Quote, a minimum service charge of one (1) hour labor will be charged at the Sizewise current labor rate for the applicable time of day and day of the week Sizewise dispatches its service technician, plus mileage at the rate of \$1.00 per mile travelled over 50 miles roundtrip from the Sizewise service distribution center. Freight or delivery Charges will be billed to the Customer. A copy of the Sizewise Return Policy currently in effect is located at [www.sizewise.com/legal](http://www.sizewise.com/legal). The Sizewise Return Policy may be amended, modified, or supplemented from time to time by Sizewise in its sole discretion. Payments shall be made in U.S. currency to Sizewise Rentals, L.L.C., P.O. Box 320, Ellis, Kan., 67637. Electronic or credit card payments shall be made via Sizewise's instructions. Billing or invoice questions should be directed to 800-814-9389. If Customer fails to pay any Charges or other amounts when due, Customer shall pay Sizewise interest thereon at a rate of one and one-half (1.5%) per month (or the highest rate permitted by law) together with all costs and expenses (including without limitation reasonable attorneys' fees and court costs) incurred by Sizewise in collecting such overdue Charges and amounts or otherwise enforcing Sizewise's rights. As collateral security for the payment of the Charges for the products purchased as set forth on the Quote, Customer hereby grants to Sizewise a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the products, 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 until the invoice for the applicable products is paid in full, including any late payment fees and costs of collections. Customer agrees Sizewise may file any financing statements or related filings to perfect and protect this security interest as Sizewise reasonably deems necessary or appropriate.

**5. Warranty and Disclaimer of Warranties.** (a) **LIMITED WARRANTY.** As set forth in the Sizewise product documentation, user manual and specifications, or packaging inserts provided with the purchased product (collectively the "Product Documentation"), Sizewise warrants to the Buyer of each new Sizewise manufactured or Sizewise branded equipment or product (collectively referred to as "Product(s)") that from the invoice date of the original purchase of the Product (unless a different date is otherwise agreed to in writing by Sizewise), the Product will be free of defective material and workmanship for the period of time set forth in the Product Documentation (the "Warranty Period") when the Product is used and serviced properly in accordance with the terms of the Product Documentation in effect at the time of sale of the Product. If there is no period of time specified in the Product Documentation, the Warranty Period shall be ninety (90) days from the date of the invoice date of the original purchase of the Product by Buyer. As used herein Buyer means the original purchaser or original end user of the Product designated at the time of purchase. Any reference to "you" is as the Buyer. Parts repaired or replaced under the terms of this warranty will be warranted for the remainder of the original Warranty Period only. Sizewise's warranty is non-transferable (unless otherwise agreed to in writing by Sizewise) and in the event of any conflict between the information stated herein and that in the Product Documentation, the Product Documentation shall control. Any description of the Products is for identification purpose only and is not an express warranty. The only express warranty given by Sizewise for the Products is as set forth in the Product Documentation applicable to the purchased Product, and such is the exclusive warranty made by Sizewise and supersedes any prior, contrary or additional representations or warranties, whether oral or written. THE WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. Sizewise's sole liability shall be discharged by replacing or repairing, at Sizewise's option, any Product or its part or parts which are determined by Sizewise to be defective during the Warranty Period under normal and proper use. Buyer shall notify Sizewise immediately upon the discovery of any alleged defect by contacting Sizewise Parts and Service at 1-800-814-9389 Monday through Friday 8am – 5pm local time. Buyer must include proof of purchase, the Product model and serial number (if applicable) and details of the alleged defect. If on-site technical service is required, as determined by Sizewise, a qualified service representative will be dispatched during Sizewise's standard service hours Monday through Friday 8am – 5pm local time provided the Product is located within Sizewise's service distribution territory. If Sizewise determines the problem with the Product or part is a result of defective material or workmanship, the Product or part will be replaced or repaired at the discretion of Sizewise, at no charge to the Buyer subject to the limitations and exclusions stated herein. At the election of Sizewise, replacement parts may be new or refurbished; and Sizewise reserves the right to substitute materials if original materials are no longer available. If a Product or part should be returned to Sizewise, a return authorization number (RA#) must first be obtained by Buyer from Sizewise. The RA# will be valid for 21 days from the date it is issued. Buyer is

responsible for any shipping, freight, handling, pickup or delivery charges or fees including without limitation any expediting fees involved with the delivery of the defective Products or parts to Sizewise's factory for repair or replacement. If Sizewise determines the problem with the product or part(s) is a result of defective material or workmanship, the product or part will be replaced or repaired at the discretion of Sizewise, and at no charge to the Buyer however subject to the limitations and exclusions of this Limited Product Warranty. If Sizewise determines the Product(s) that Buyer has requested warranty service on are not covered by the warranty either because it is outside of the Warranty Period or it is excluded from the warranty or the warranty is void, Buyer shall pay for the repair or replacement services, including parts and labor, performed by Sizewise at Sizewise's prevailing time and material rates plus freight and delivery. If Buyer declines the repair or replacement service upon notice it is not covered under the warranty, Buyer shall reimburse Sizewise for all costs from investigating and responding to Buyer's request. Any assistance provided by Sizewise outside the terms of Limited Product Warranty does not waive the limits of the Limited Product Warranty. Unless otherwise agreed to by Sizewise, the costs to Buyer shall be at Sizewise's prevailing time and material rates plus freight and delivery. **(b) EXTENDED WARRANTY.** If the Product covered under the Limited Product Warranty had from Sizewise an extended warranty option made available only at the time of the Buyer's original purchase from Sizewise, Buyers who then also purchased such extended warranty, and have proof of such purchase, may extend the Warranty Period stated in the Product Documentation on parts, electronics, frame and labor relating to parts, electronics and frame repairs for an additional one (1) or two (2) years, whichever extension is purchased by Buyer ("extended warranty period"). Other than the extension on the Warranty Period, all other terms of the limited warranty including the exclusions, limitations and disclaimer of the original limited warranty apply during the extended Warranty Period. For the purpose of clarity an extended warranty is not available where the original Warranty Period is less than one (1) year, and an extended warranty may only be purchased at the time of the original purchase of the Product. **(c) EXCLUSIONS AND LIMITATIONS.** Sizewise's Limited Product Warranty shall not apply to the below listed events, occurrences, actions and/or items. Sizewise shall have no obligation to make repairs, replace or correct any Products including any part or parts of the Products as the result of Sizewise's determination of any of the following: (A) normal wear and tear of the Products or any parts including without limitation normal discoloring, body impressions on mattresses or loss in some resiliency, if applicable to the purchased Product, (B) cosmetic items, and consumable items including without limitation casters, sheets, handsets and batteries, (C) exposure of the Product(s) or part(s) to accident acts of God, natural causes (such as natural disasters, fire, flood, wind, and/or water or power failures, or acts or threats of terrorism, both domestic and foreign), and whether foreseen or unforeseen, (D) damage or Product failure from causes external to the Products or any parts including without limitation power or electrical failure or surges, electrical wiring not in compliance with electrical codes or the specifications in the Product Documentation, (E) removal of or altering, tampering or defacing in any manner the serial number and/or tag on the Products, (F) failure to provide proof of purchase, (G) damage or malfunctions resulting from work performed by service providers not authorized by Sizewise, (H) software (PROM) or firmware version updates or upgrades or any other changes and/or any outages, interruptions, delays, attacks, malware, or any other technology or viruses on such software or firmware or Buyer's network when software or firmware is part of the Product(s) purchased, (I) service calls relating to the installation of the Product(s) unless installed under a contract with Sizewise, (J) shipping, freight, handling, pick up and/or delivery charges or fees involved with the delivery of the Products and/or part or parts to Sizewise's factory for repair or replacement and returning the replacement or repaired Products and/or parts to Buyer, (K) improper storage, transport, installation, maintenance, use, repair, failure to follow instructions and procedures in the Product Documentation, (L) misuse, negligence, loss, unauthorized modifications or abuse of the Products or any parts by Buyer, or Buyer's agents, employees, invitees, contractors or representatives, third party beneficiaries, end user, caregivers, patients, or any others that Buyer permits to use the Products, including without limitation: (i) exceeding any specified weight limitations listed in the Product Documentation including without limitation as applicable to the Product, the Safe Working Load, Maximum Patient Weight, and/or Maximum Load as those terms are defined in the Product Documentation and by applicable regulations, (ii) to the extent the Product specifies a minimum load/weight criteria including without limitation a Minimum Patient Weight in order for the Product to function properly, then any use not in compliance therewith, (iii) cleaning upholstery or fabrics with harsh chemicals, or bleach, outside the recommended cleaning guidelines, (iv) altering, tampering with, or modifying in any manner without the express written consent of Sizewise any part or parts and/or structural components or appurtenances of the Products, (v) use of such Product(s) or part(s) in a manner for which it is not designed or in any manner inconsistent with the information set forth in the Product Documentation including without limitation use with other devices, accessories, cables or ancillary products including without limitation inappropriate replacement parts and/or repairs for which it was not intended to be used with, (M) any labor costs incurred beyond the applicable labor Warranty Period stated in the Product Documentation, (N) damage caused by Buyer's failure to provide reasonable and necessary maintenance as outlined in the Product Documentation, (O) operations of the Product beyond its normal useful life, (P) rental products, loaned products, demo or sample products and/or consumable products including without limitation batteries and sheets supplied by Sizewise are not covered under this warranty and are furnished to Buyer on an "AS IS WITH ALL FAULTS" basis, or (Q) products or items not manufactured by Sizewise are not covered by this Sizewise warranty. Rather for products or items obtained by Sizewise from an original manufacturer or third party supplier Sizewise agrees to assign to the buyer any warranty rights in such products or items that Sizewise may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by the original manufacturer or third party supplier. **(d) LIMITATION OF LIABILITY AND DISCLAIMER.** Buyer is solely responsible for determining whether the Products and services offered by Sizewise are appropriate for its intended use including use by Buyer's employees, invitees, contractors, representatives, third party beneficiaries, or any other persons Buyer intends to use the Products. Buyer acknowledges it has made the selection of the Products based upon its own judgment and that the Product is of a size, design, capacity, condition, quality, durability selected by Buyer. Buyer expressly disclaims any reliance upon any statements or representations made by Sizewise or any other party on its behalf except as otherwise specifically provided in the written warranty set forth in the Product Documentation. Buyer acknowledges and agrees that the remedy set forth in the warranty for repair or replacement of defective Product shall constitute the sole remedy in the event of a defective Product warranty claim. **TO THE EXTENT NOT PROHIBITED BY LAW, SIZEWISE'S WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. EXCEPT FOR THE EXPRESS WARRANTIES IN THE PRODUCT DOCUMENTATION AND TO THE EXTENT NOT PROHIBITED BY LAW, SIZEWISE DISCLAIMS ANY AND ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED WARRANTIES, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT,**

AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OPERATION OF LAW, OR OTHERWISE WITH RESPECT TO ANY PRODUCT, SERVICES, PARTS INCLUDING REPAIRED OR REPLACED PRODUCTS AND PARTS ARE HEREBY DISCLAIMED AND EXCLUDED. SIZEWISE ALSO HEREBY DISCLAIMS AND EXCLUDES ALL OTHER OBLIGATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY PRODUCT OR PART(S), INCLUDING BUT NOT LIMITED TO: (A) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF SIZEWISE OR ITS SUPPLIERS (WHETHER ACTIVE, PASSIVE, OR IMPUTED); AND (B) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PRODUCT OR PART(S). THIS DISCLAIMER AND RELEASE SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW DISCLAIMERS OF IMPLIED WARRANTIES, SO THIS DISCLAIMER MAY NOT APPLY TO YOU. TO THE EXTENT SUCH WARRANTIES CANNOT BE DISCLAIMED UNDER THE LAWS OF YOUR JURISDICTION, SIZEWISE LIMITS THE DURATION AND REMEDIES OF SUCH WARRANTIES TO THE DURATION OF THIS EXPRESS LIMITED WARRANTY. SIZEWISE AND/OR ITS SUPPLIERS SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT, OR ANY OTHER LEGAL THEORY (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR DAMAGE TO THE PRODUCT INCLUDING PART(S), PROPERTY DAMAGE, DEATH, PERSONAL INJURY, LOSS OF USE, GOODWILL, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCT, ADDITIONAL COSTS INCURRED BY BUYER (BY WAY OF CORRECTION OR OTHERWISE), OR ANY OTHER INCIDENTAL, SPECIAL, INDIRECT, COMPENSATORY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, WHETHER RESULTING FROM NONDELIVERY, USE, MISUSE, OR INABILITY TO USE THE PRODUCT, SERVICES OR PART(S). THIS EXCLUSION APPLIES EVEN IF THE ABOVE WARRANTY FAILS OF ITS ESSENTIAL PURPOSES AND REGARDLESS OF WHETHER SUCH DAMAGES ARE SOUGHT FOR BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR STRICT LIABILITY IN TORT OR UNDER ANY OTHER LEGAL THEORY. SIZEWISE LIABILITY SHALL UNDER NO CIRCUMSTANCE EXCEED THE AMOUNT PAID BY BUYER FOR THE RELEVANT DEFECTIVE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION ON SUCH MAY NOT APPLY TO YOU. As set forth in the Product Documentation, to make a warranty claim contact Sizewise at 8601 Monrovia Street, Lenexa, KS 66215 or by phone at 800-814-9389 Monday-Friday 8am-5pm local time.

**6. Indemnification.** Customer will indemnify, defend, and hold Sizewise and its affiliates, directors, officers, employees, agents, successors and assigns, harmless from and against any and all claims, actions, causes of action, orders, arbitrations, proceedings, losses, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees and costs) arising, directly or indirectly, from or in connection with or relating to: (a) any breach of the terms hereof by Customer or any of its affiliates or agents; (b) violation of any laws or the rights of another person by Customer or any of its affiliates or agents; or (c) any negligent or intentional acts or omissions by Customer, Sizewise, and/or their respective affiliates, agents, employees, invitees, contractors, representatives, third party beneficiaries or by any other person Customer intends to use the equipment or product, except when caused by the sole negligence of Sizewise.

**7. Limitation of Liability.** A. IN NO EVENT SHALL SIZEWISE BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR REVENUE OR DIMINUTION IN VALUE) ARISING OUT OF, OR RELATED TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SIZEWISE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, WARRANTY, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. B. IN NO EVENT SHALL SIZEWISE'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 LESSER OF (A) \$100,000.00 OR (B) ONE TIMES THE AGGREGATE AMOUNTS PAID TO SIZEWISE PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**8. Force Majeure.** Sizewise will not be liable for delays in performance or in delivery of its obligations hereunder to the extent that such delays are due to but not limited to the following and whether foreseen or unforeseen: (a) causes beyond Sizewise's reasonable control; (b) acts of God, acts of civil or military authority, embargo, currency restrictions, fire, strikes, accidents, floods, epidemics, quarantine restrictions, war, riot, delays, threats or acts of terrorism, non-availability of transportation; or (c) inability to obtain necessary labor, materials, components or facilities through regular channels due to causes beyond its reasonable control. Any delay occasioned thereby will not be considered a breach by Sizewise.

**9. Safe Harbor Compliance.** If Customer is a recipient of funds from a state or federal healthcare program, Customer acknowledges it has been informed of any discounts or rebates, and agrees to accurately account for, and report, when applicable, the value of any discount, rebate or other compensation paid hereunder in a manner that complies with all federal, state and local laws and regulations providing a safe harbor for such discounts. To the extent Customer requires additional information from Sizewise in order to meet its safe harbor reporting requirements, Customer shall make a written request to Sizewise. When applicable, Customer shall notify Sizewise if Customer is deemed a "covered recipient" under Section 6002 of the Patient Protection and Affordable Care Act, Public Law 111-148 (March 23, 2019) (the "Sunshine Act") and whether any encounters with, interactions with, offers to, or payments in cash or kind to a Customer pursuant to this Agreement results in a reportable payment or transfer of value pursuant to the "Sunshine Act". Upon such notice, Sizewise shall work with, and provide sufficient information to Customer such that both Sizewise and Customer may properly categorize the reportable payment or transfer of value. This provision shall survive the expiration or termination of this Agreement.

**10. Notices.** Any notice or communication hereunder shall be in writing and deemed received when either (a) personally delivered, (b) three (3) days after being sent by US postal service certified or registered mail, postage prepaid to a party's address as listed on the signature page, or (c) such other form of communication that the parties may mutually agree to.

**11. Confidentiality.** Customer agrees that all Charges, discounts, and technical information that Sizewise provides to Customer are the confidential and proprietary information of Sizewise. Customer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Customer's internal purposes and in connection with the product supplied or services rendered hereunder. Nothing herein shall restrict the use of information available to the general public.

**12. Export Restrictions.** Customer acknowledges that each product together with any related software, technology, parts, and technical information supplied by Sizewise is subject to export controls of the U.S. government. Customer shall (i) comply with all applicable laws, regulations, treaties, and agreements relating to the export, re-export and import of any product supplied under these Terms and Conditions; (ii) obtain the required license from the appropriate U.S. government agency to export, re-export, distribute or supply any product including supply to any restricted or embargoed country or to any person or entity with restricted export privileges; (iii) upon Sizewise's request provide information to Sizewise on the end user or any end user of a product exported; (iv) cooperate fully with Sizewise in any audit or inspection applicable to export or import laws or regulations; and (v) indemnify and hold Sizewise harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants or agents.

**13. Miscellaneous.** Sizewise shall, at all times, act as an independent contractor and not as an employee, partner, or joint venturer with Customer. The services may be subcontracted or otherwise performed by third parties on behalf of Sizewise without the prior consent of Customer. There are no intended third party beneficiaries. The benefits set forth in these terms and conditions are solely the Customer and Sizewise 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 these Terms and Conditions. Customer may not delegate any duties nor assign any rights or claims hereunder without Sizewise's prior written consent, and any such attempted delegation or assignment shall be void. If any provision of these Terms and Conditions or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of these Terms and Conditions, and the application of such provision to other persons or circumstances, will not be affected thereby and will be enforced to the greatest extent permitted by law. The rights and obligations of the parties hereunder are governed by and will be construed in accordance with the laws of the State of Minnesota (without application of principles of conflicts of law). Each party consents to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota, in any action arising out of or relating to this agreement. The application to this agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. **Any action against Sizewise arising under or related to these Terms and Conditions or the subject matter hereof must be brought within one (1) year from the date that the cause of action arose. This one year period for any claims asserted by Customer against Sizewise shall have no effect on the ability of Sizewise to bring any claims against Customer, including but not limited to the enforcement of any rights or obligations created by this agreement, within the time period(s) specified in any applicable statute(s) of limitation.** The following sections of these terms and conditions shall survive the expiration or earlier termination of this agreement for a period of one (1) year after such expiration or termination: 5, 6, 7, 9, 11, 12, 13 and any other provision that, in order to give proper effect of its intent, should survive for the same timeframe as stated herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. Signatures of the parties transmitted by facsimile, electronically, digitally or scanned (PDF) e-mail attachment shall be deemed to be their original signatures for all purposes whatsoever. END OF DOCUMENT.