

## **REVIVA CONDITIONS OF SALE\***

### **General**

1. Reviva Inc. ("SELLER") agrees to sell products to Buyer on the following Conditions of Sale which supersede any other or inconsistent terms of Buyer. Acceptance of orders by SELLER is based on the express condition that Buyer agrees to all of these Conditions of Sale. Buyer will be deemed to have assented to all Conditions of Sale contained herein if any part of the products are shipped or an invoice is presented for the products. No modification or alteration of any provision here shall result from SELLER'S acknowledgement of Buyer's purchase order, shipment of products or other affirmative action by SELLER toward performance following receipt of Buyer's purchase order or other forms containing provisions, terms or conditions in addition to or in conflict or inconsistent with these Conditions of Sale.
2. Prices do not include sales, use, excise or any other taxes based upon or measured by the sale, use, manufacture or shipment of the products hereby covered. All such taxes are in addition to prices quoted by SELLER or shown on its price list, and shall be paid by Buyer whether shown on SELLER'S original billing or added to the billing later and, if paid by SELLER, the Buyer agrees to reimburse SELLER on demand for the full amount thereof.

### **Terms of Payment**

3. Terms of payment on any order are subject to approval by SELLER'S Credit Department. Unless otherwise stated in writing by SELLER, terms to a Buyer who has established credit satisfactory to SELLER are net thirty (30) days from the date of the invoice. If Buyer fails to make payment in accordance with the terms of these Conditions of Sale, Buyer's account shall be deemed to be delinquent. A service charge and/or interest charges not exceeding the maximum amount allowed by law may be assessed. Buyer agrees to pay all collection costs and expenses, including reasonable attorney's fees incurred by SELLER in collecting or attempting to collect such account. Payment by the Buyer of the price of the order shall be a condition precedent to Buyer's right to assert any claim against SELLER. SELLER reserves the right to ship any order C.O.D.
4. Should the financial responsibility of Buyer at anytime become unsatisfactory to SELLER, SELLER shall have the right to suspend the performance of any order or require payment for any shipment in advance or require satisfactory security or other adequate assurance satisfactory to SELLER. If Buyer fails to make payment in accordance with the terms of this agreement or fails to comply with any provision hereof, SELLER may at its option, in addition to any other remedy, cancel any unshipped portion of this order with Buyer to remain liable for all unpaid accounts. SELLER shall have the right to credit toward the payment of any monies that may become due SELLER hereunder any sums which may now or hereafter be owed to Buyer by SELLER.

### **Delay in or Prevention of Performance.**

5. SELLER shall not be liable for any expense, loss or damage resulting from delay in delivery or prevention of performance caused by fires, floods, acts of God, pandemics, strikes, labor disputes, labor shortages, lack of or inability to obtain materials, fuels, supplies or equipment, riots, accidents, transportation delays, acts or failures to act of any government or of Buyer, or any other cause whatsoever, provided that such cause is beyond the reasonable control of SELLER; and

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\* These Conditions of Sale are subject to change by Reviva without notice. The current Reviva Conditions of Sale are available at [www.reviva.com](http://www.reviva.com).

SELLER shall have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect increases occasioned by such delay. Acceptance by Buyer of any product shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such products. If delivery is delayed or interrupted by any such cause, SELLER may store the products at Buyer's expense and risk, and SELLER may charge Buyer thereof a reasonable storage rate. If SELLER is delayed in proceeding with production or otherwise because it is awaiting Buyer's approval or acceptance of designs, drawings, prints, engineering or technical data, or is awaiting Buyer's approval or acceptance of the products, SELLER shall be entitled to an adjustment in price commensurate with any increase in SELLER'S cost of production and any other losses and expenses incurred by SELLER attributable to such delays.

### **Inspection and Acceptance**

6. Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer and must be determined at time of delivery and noted on the shipping documents. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products for defects and nonconformance which are not due to damage, shortage or errors in shipping and to notify SELLER, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation.

### **Returned Material**

7. No products or parts may be returned for any reason and no order may be cancelled or changed in whole or in part without the prior written consent of SELLER. For products or parts that are approved for return by SELLER, Buyer agrees to pay for the roundtrip freight charges and to pay a handling charge of up to twenty percent (20%) of the original invoice as a restocking fee. Buyer shall also pay for any damages to the returned products or parts.

### **Cancellations – Partial/Deferred Delivery**

8. No order or contract is subject to cancellation or change by the Buyer unless agreed to in writing by an authorized person of SELLER. In the event of any cancellation and without any limitation to other available remedies to SELLER, Buyer shall pay SELLER within thirty (30) days of such cancellation the contract price, including applicable taxes, for all products, materials and services which have been completed prior to cancellation. Additionally, Buyer shall pay SELLER within thirty (30) days of such cancellation all costs and other expenses incurred by SELLER for uncompleted items (including without limitation all commitments to SELLER'S suppliers, subcontractors and others) and a cancellation charge in an amount equal to twenty percent (20%) of the total of the foregoing. In the event of any change, SELLER shall be entitled to revise its prices and delivery schedules to reflect such charges.
9. Buyer agrees to accept delivery of any part or all of the products on the mutually agreed upon delivery date and failure of Buyer to furnish SELLER with shipping instructions shall in no way alter the terms of payment of SELLER'S invoice for any of the products offered for delivery. Any deferred delivery requested by Buyer shall be subject to SELLER'S written approval.

### **Warranty and Limitations on Liability and Damages**

10. Pursuant to the terms of the Reviva Limited Warranty, which is incorporated here by reference, SELLER warrants to the purchaser and original owner (collectively "Owner") that the product

remanufactured by SELLER will be free from defects in materials and workmanship under normal use and service for the time periods and coverages provided in the Reviva Limited Warranty – Time Periods and Coverages. The limited warranty period commences from the date of product installation or from thirty (30) days of the shipment of the product by SELLER, whichever occurs first.

Subject to the time periods and coverages provided in the Reviva Limited Warranty – Time Periods and Coverages, the exclusive remedy of Owner and the sole liability of SELLER, whether based on contract, warranty, tort or any other basis of recovery whatsoever, is expressly limited at the election of SELLER to:

- (a) The replacement of any product or part, which upon inspection and determination by SELLER, is found not to conform to the limited warranty set forth above, or
- (b) The repair of such product or part, or
- (c) The refund or crediting to Owner of the net sales price of the defective product or part.

OWNER'S REMEDIES SET FORTH HERE ARE THE ONLY REMEDIES AVAILABLE TO OWNER.

THE WARRANTIES SET FORTH HERE ARE THE ONLY WARRANTIES MADE BY SELLER. ALL OTHER WARRANTIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION, SHALL REVIVA BE LIABLE FOR DAMAGES OF ANY KIND, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR FOR PERSONAL INJURY OR PROPERTY DAMAGES.

#### **Time Limit for Causes of Action**

- 11. All actions, regardless of form, arising out of or related to this transaction or the products sold must be commenced against SELLER within the applicable limitations period, but in no event more than one (1) year after the cause of action accrues.

#### **Indemnification**

- 12. SELLER shall not be liable for any losses or damages sustained by the Buyer, or any other person, as a result of improper installation or misapplication of the product. Buyer shall defend, indemnify and hold harmless SELLER and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, death, or damage to or loss of any property or the environment, or violation of any applicable laws or regulations, resulting directly or indirectly from the installation or operation of any products, machinery, equipment, apparatus, components or parts (collectively "Products") furnished by SELLER and caused by or resulting from Buyer's negligence or other fault, or caused by or resulting from any failure of Buyer or others to specify, or install, or provide devices or warnings to protect against or prevent personal injury or other damages in connection with the installation, operation, or use of any such Products by any person, whether or not such devices or warnings are required by law or government regulation.

## Other Conditions

13. These Conditions of Sale and the transaction between Buyer and SELLER shall be governed under and according to the laws of the State of Minnesota without regard to choice of law provisions. Any claim or action by Buyer against SELLER, regardless of form, arising out of or related to this agreement or transaction or the products sold hereunder shall be exclusively brought in state court in Anoka County, Minnesota, or in federal court in Minnesota, the personal and subject matter jurisdiction of which the Buyer irrevocably consents and submits.
14. Waiver of any term or provision in these Conditions of Sale or of any breach of these Conditions of Sale or of any term or provision hereof, shall not be construed as a waiver of any other term or provision or any other breach, nor shall any such waiver be deemed or construed as a continuing waiver of any such term, provision or breach. Any provision of these Conditions of Sale prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. The failure of SELLER to require strict performance of any provision shall not diminish SELLER'S right thereafter to require strict performance of any provision.
15. Buyer may not assign this order or any rights hereunder without SELLER'S prior written consent. These Conditions of Sale are enforceable, however, against the successors and assigns of Buyer.
16. These Conditions of Sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these Conditions of Sale and any uncertainty or ambiguity shall not be interpreted against any one party.
17. Buyer shall not be entitled to set-off any amounts due Buyer against any amounts due SELLER in connection with these Conditions of Sale or transaction.
18. There are no terms, conditions, understandings or agreements between Buyer and SELLER other than those stated herein and all prior proposals and negotiations are merged herein. No agent, employee or representative of SELLER has any authority to bind SELLER by any affirmation, representation or warranty concerning the products sold under this agreement and unless the affirmation, representation or warranty made by an agent, employee or representative appears as an express warranty in these Conditions of Sale, it shall not be enforceable.