

## DITRON DENTAL USA TERMS & CONDITIONS

These Terms and Conditions (the “**Agreement**”) are effective as of the date the parties have both signed an Order Form (defined below). The Agreement is entered into by and between the party identified in the applicable Order Form (“**Buyer**”) and Ditron Dental USA, LLC, a Delaware limited liability company with an address of 555 Corporate Drive, Suite 150, Ladera Ranch, CA 92694 (“**Supplier**”). The Agreement incorporates the terms set forth in an applicable Order Form that references this Agreement, including the return and warranty provisions on the reverse side of the Order Form. If there is a conflict between the terms of this Agreement and the terms in any fully executed Order Form, the terms of the Order Form shall control.

**IN CONSIDERATION** of the promises and covenants contained herein and for other valuable consideration the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

### 1. SUPPLY

Supplier shall manufacture and supply to Buyer the items set forth in an Order Form signed by the parties (“**Products**”) in accordance with the terms of this Agreement. The Products shall be manufactured in accordance with the descriptions published by Supplier (“**Specifications**”), and applicable laws, rules, regulations, standards, and guidelines that apply to the performance of Supplier’s manufacturing obligations under this Agreement (“**Applicable Laws**”). This Agreement is not exclusive, and Supplier shall be free to sell Products to any party upon any terms it deems appropriate.

### 2. ORDERING AND PAYMENT

**2.1. Order Forms.** From time to time, Buyer may issue to Supplier specific Order Forms for the Product (each an “**Order Form**”). Individual Order Forms issued by Buyer referencing this Agreement will be the only documents authorizing the manufacture and supply of Products for Buyer. No terms of any document or communication between the parties, including without limitation an acceptance of an Order Form, shall be binding on the parties unless both parties have signed a document that ratifies the document or communication in a manner that clearly expresses their intent to supplement or amend the terms of this specific Agreement.

**2.2. Changes to Specifications.** Supplier shall be free to change the Specifications at any time and in its sole and absolute discretion. However, if Supplier materially changes the Specifications in a manner that will change the use of the Products, it will notify any current buyers of the changes in Specifications.

**2.3. Price.** Prices for the Products are as published by Supplier in any appropriate manner and are subject to change at any time and for any reason, provided that Supplier will not change pricing for Products after the specific Products have been ordered.

**2.4. Order Form Acceptance.** Supplier shall notify Buyer whether it accepts or rejects Order Forms within two business days after receipt of each Order Form.

**2.5. Adjustments to Order Forms.** Buyer may, with Supplier’s advance written approval, adjust any Order Form by increasing the quantity of Products ordered prior to the scheduled delivery date, or rescheduling the amount purchased and delivery date by up to ten calendar days in advance of the scheduled delivery date. Supplier shall use commercially reasonable efforts to accommodate any other requested schedule changes.

**2.6. Liability of Buyer for Cancelled Order Forms.** Buyer may from time to time cancel all or any part of an Order Form prior to shipment, in which event Buyer’s liability for cancellation shall be fifty percent (50%) of the price that would have otherwise been charged to cover Supplier’s labor, materials and overhead costs incurred to the time of cancellation. Orders that have been shipped cannot be cancelled.

**2.7. Payment.** Except where Buyer agrees in writing to make payment before delivery of the Products, Buyer will make payment within 30 calendar days of the issuance of an invoice. Invoices may be conveyed via e-mail to the e-mail address generally used by the Buyer for correspondence with Supplier, unless Buyer indicates otherwise in writing.

### 3. SHIPMENT AND DELIVERY

**3.1. Shipment.** Unless an Order Form indicates otherwise, Supplier shall deliver Product FOB Supplier’s dock (INCOTERMS 2000) to the address set forth in the applicable Order Form. Supplier shall be responsible for all costs and risk of loss until delivery of Product to the carrier, and Buyer shall be responsible for all costs and risk of loss after delivery of Product to carrier.

**3.2. Delay in Shipping.** Supplier shall not be responsible for any delay in shipment.

#### **4. RECALL AND PRODUCT LIABILITY**

In the event a recall becomes necessary or third parties allege that the Products have caused damages or losses ("Product Liability Claims"), the Parties shall allocate all liability and expense arising out of, resulting from, or related to the recall or any Product Liability Claims, including attorney fees and court costs, in an equitable manner, based on the proportionate fault of the parties.

#### **5. WARRANTIES**

Supplier's sole warranty on the Products is set forth on the reverse side of the applicable Order Form ("**Warranty**"), and Buyer acknowledges that it has reviewed such Warranty. SUPPLIER MAKES NO OTHER WARRANTIES THAN THOSE EXPRESSLY PROVIDED IN THE WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. The remedies described in the Warranty are Buyer's sole remedy and Supplier's only responsibility for any defects in the Products, misapplication or misuse of the products, and for any other claim arising out of or related to the Products.

#### **6. INDEMNITY**

On and subject to all of the following terms and conditions in this section, Buyer ("**Indemnitor**") shall indemnify, defend and hold harmless Supplier, its affiliates and their respective directors, officers, employees and agents ("**Indemnitee**") from and against any and all suits claims, losses, demands, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees and litigation costs) arising out of or related to (1) the Indemnitor's acts or omissions that may have caused damages to a third party, (2) the Indemnitor's breach of its obligations under this Agreement, and (3) any claim arising out of the use by any third party, including without limitation Buyer's patients, of any Product.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

Supplier shall continue to exclusively own all patterns, designs, patents, trademarks, trade secrets, know-how, inventions, improvements, and works of authorship, including any goodwill that may accrue thereto (collectively "**Intellectual Property**") which may relate to the Products and/or their design. Buyer shall have no rights in or to the Intellectual Property unless the parties separately execute an agreement providing such rights.

#### **8. GOVERNING LAW; JURISDICTION**

**8.1. Governing Law.** This Agreement and any purchase and sale transaction arising pursuant hereto shall be controlled by and construed in accordance with the laws of the State of California, USA and, where applicable, the federal laws of the United States of America.

**8.2. Consent to Jurisdiction and Venue:** The parties agree that jurisdiction, venue, and in-persona jurisdiction for any legal and/or equitable actions arising out of this Agreement shall be in the state courts in California, USA and parties submit themselves to jurisdiction of said court; Service of process may be effected by courier. Should this agreement be needed to be interpreted or enforced the prevailing party is entitled to reasonable attorney fees and costs, including appellate fees and costs.

#### **9. MISCELLANEOUS**

**9.1. Entire Agreement.** This Agreement embodies the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, oral or written proposals, and communications or other agreements, oral or written, relating thereto. Buyer acknowledges that it has not been induced to enter into this Agreement by any representation not contained in this Agreement.

**9.2. Severability.** Each provision of this Agreement is severable, and if any one or more provisions is determined to be unenforceable or invalid by a court of competent jurisdiction, in whole or in part, the remaining provisions shall nevertheless be binding, enforceable and in full force and effect.

**9.3. Assignment.** This Agreement is binding on successors and assigns of the Parties. Neither this Agreement nor any part or portion hereof shall be assigned or otherwise transferred by either party without the other party's prior written consent and any attempt to do so shall be void; provided however, that either party may assign this Agreement in connection with the sale, merger, acquisition, or other corporate restructuring of the assigning party or the sale of all or substantially all of the assigning party's assets.

**9.4. Waiver.** No failure or delay by either Party in enforcing any right or remedy under this Agreement shall be construed as a waiver of any existing or future right or remedy.

**9.5. Notices.** All notices shall be given in writing by personal delivery, certified or registered mail, or by overnight carrier to the other party at the address listed on the applicable Order Form. Either party may change its address for notice by so informing the other party in writing.

**9.6. Force Majeure.** A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event; provided that the payment of any fees or charges due under this Agreement shall not be excused or delayed by reason of force majeure.

**9.7. No Third-Party Beneficiaries.** The parties expressly acknowledge and agree that no third party is intended to be a beneficiary of any provision of this Agreement.

**9.8. Independent Contractor.** Buyer is an independent contractor, not an agent or employee of Supplier. Buyer is accordingly not authorized to assume or create any obligation or responsibility in the name of Supplier, including but not limited to obligations based on warranties (other than as specifically provided in this contract), guarantees or any other contractual obligation.

**9.9. Late Fees & Minimum Late Fee Payment Calculation.** If payment is late, Buyer will be responsible for a late fee calculated as follows: The sum of a. The greater of either: (i) \$25; or (ii) 3.25% of the new balance shown on Buyer's billing statement (excluding any balance attributable to any special promotional purchase with a unique payment calculation); or (iii ) The sum of 1% of Buyer's new balance shown on Buyer's billing statement (excluding any balance attributable to any special promotional purchase with a unique payment calculation) plus interest and late payment fees charged in the current billing cycle; PLUS b. Any past due amounts; PLUS c. Any payment due in connection with a special promotional purchase with a unique payment calculation. Supplier will round up to the next highest whole dollar in figuring Buyer's total minimum payment.