

**1. DEFINITIONS**

*Buyer* means the person, firm, company or other trading organization to which the goods are supplied subject to these Conditions.

*Conditions* means the terms and conditions contained herein.

*Contract* means any agreement for the sale of goods by Essex to Buyer.

*Products* means goods supplied by Essex to Buyer under a Contract subject to these Conditions.

*Essex* refers to Essex Industries, Inc., (also known as Essex Cryogenics and also known as The Medlox Group) a Missouri corporation.

**2. APPLICABILITY OF THESE CONDITIONS AND EXISTENCE OF CONTRACT**

**2.1.** Any written quotation issued by Essex shall constitute an invitation to treat. No binding Contract shall be created by the placing of an order by Buyer, whether in accordance with any quotation or otherwise unless and until Essex accepts the order in writing or dispatches the Products to Buyer. These Conditions shall apply to all Contracts for the sale of Products by Essex to Buyer to the exclusion of all other terms and conditions, including any terms or conditions which Buyer may seek to apply under any order, request, or similar document. No variations or alterations of these Conditions shall be binding on Essex unless agreed in writing by or on behalf of Essex by an authorized representative. The signing by Essex of any of Buyer's documentation shall not imply any modification of these Conditions. All orders by Buyer for Products shall be deemed to be an offer by Buyer to purchase the Products pursuant to these Conditions. Acceptance of Products by Buyer at delivery shall be deemed conclusive evidence of Buyer's acceptance of these Conditions.

**2.2.** These Conditions shall remain in force until such times as Essex shall advise Buyer in writing that it has adopted revised Conditions of sale in substitution for these Conditions.

**2.3.** No particulars contained in any advertising matter, catalogues or other publications supplied by Essex, nor any oral representations by any employee or agent of Essex, nor any course of dealing established between Essex and Buyer shall form part of the Contract, nor shall they be treated as constituting a representation on the part of Essex.

**2.4.** No Contract may be cancelled by Buyer less than 30 days prior to the scheduled shipping date except with the written consent of Essex, which, if given, shall be deemed to be on the express condition that Buyer shall indemnify Essex against all loss, damage, claims or actions arising out of such cancellation, unless otherwise agreed in writing. Cancellations of Contracts less than 30 days prior to the scheduled shipping date, if accepted, are subject to a charge of 25% of the payment due Essex for the Products under the Contract so cancelled.

**3. PRICES AND PAYMENT**

**3.1.** Unless otherwise mutually agreed in writing, all prices quoted to Buyer are exclusive of Value Added Tax (or any other similar tax levied on the value of the Products) and carriage costs (including all freight, insurance, duties, and other shipping expenses), but such costs shall be added to the invoice/statement and paid by Buyer.

**3.2.** Prices for Product are only firm upon written acceptance by Essex of Buyer's order. Unless otherwise agreed in writing, the price of the Products shall be paid in U.S. dollars not later than 30 days following the date of Essex's invoice. Notwithstanding the foregoing, if Essex determines in exercise of its reasonable discretion, that the payment ability of Buyer is questionable, Essex may ship any or all Products only upon prior payment by Buyer, against Buyer's letter of credit, or subject to cash on delivery.

**3.3.** Essex reserves the right, in its sole and absolute discretion, to charge interest on unpaid invoices calculated daily, at a rate of 1.50% per month, equal to 18% annum, from the date when payment for the Product becomes due until the date when payment is made and will accrue both before and after any judgment. Buyer shall reimburse Essex for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount.

**3.4** Expedite requests are subject to additional fees and are applicable on a case by case basis.

**4. RESALE OF GOODS**

**4.1.** The Products are supplied subject to the following Conditions:

**4.1.1.** the Products must be sold or resold only in the packages and containers in which the Products were supplied by Essex and the marks, numbers, or references indicated on such packages or containers shall neither be covered, defaced, altered, or erased;

**4.1.2.** Buyer, at its sole cost and expense, shall deliver to its customers all manuals, instructions, training materials, and such other notices and materials relating to the Products ordered as provided by Essex from time to time. Buyer shall not provide customers with any materials which are not produced or approved in writing by Essex for use in connection with the sale of the Products.

**4.1.3.** No trademarks other than the trademarks carried by the Products at the time of delivery by Essex will be marked on or applied in relation to the Products;

**4.1.4.** Buyer shall take all such steps as are necessary to ensure that the Products are stored, displayed and offered for sale in accordance with any instructions provided by Essex from time to time; and

**4.1.5.** Buyer will co-operate with Essex in the event it is necessary to recall any Products supplied.

**4.2.** No right or license is granted under these Conditions or any Contract to Buyer in respect of any trademark, copyright, registered design, or other intellectual property right except the right to use or resell the Products. No warranty is given hereunder as to whether that use or re-sale will infringe the right of any third parties.

**5. DELIVERY**

**5.1.** Unless otherwise specified in Contract, time and dates quoted by Essex for delivery of the Products are intended as estimates only and time will not be of the essence of the Contract in this respect.

**5.2.** Unless otherwise specified in Contract, Essex shall not be liable in any way for any loss, damage, or expenses (whether direct or indirect, consequential or otherwise), including without limitation for loss of profits and liability to third parties, suffered or incurred by Buyer as a consequence of any delay in delivering the Products.

**5.3.** Unless otherwise specified in Contract, Essex may deliver the Products by installments in any sequence and issue a separate invoice in respect of each installment. Where the Products are delivered by split installments, the Contract will become severable and each installment will be deemed to be the subject of a separate Contract. No default or failure by Essex in respect of one or more installments will entitle Buyer to treat the Contract as repudiated or to damages.

**5.4.** Delivery will be deemed to have occurred at the date specified in the delivery documentation which will be conclusive evidence of that fact unless: (a) notice is given to Essex of non-delivery of Products within 4 working days of the due date for delivery and (b) notice is given to Essex within 7 working days of receipt of invoice where it is alleged the delivery as shown on the invoice was not made. The Buyer shall inspect the Products on delivery and shall within 10 working days thereof notify Essex and the carrier in writing of any alleged defect or damage.

**5.5.** The Buyer shall notify Essex and the carrier in writing of any shortage of Products within 10 working days of the date of dispatch (as stated on the invoice).

**5.6.** An oral communication of any alleged defect or damage, shortage or non-delivery will not be deemed to be sufficient notice to Essex for the purposes of this Condition 5. Any notice must be in writing and must refer to the date and reference number of the invoice.

**5.7.** If Buyer shall fail to comply with the requirements of this Condition 5, the Products shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent upon a reasonable examination of the Products and Buyer shall be deemed to have accepted the Products and Essex will not be liable to Buyer except for any defects to which any limited warranty applies.

## **6. RETURN OF PRODUCT**

The return of any Essex products, other than for warranty claims, is subject to the following conditions:

**6.1.** Buyer must request return by written notice delivered to Essex within thirty (30) days after the original shipping date. Or return may be requested by calling customer service at 314-832-4500 within thirty (30) days after the original shipping date.

**6.2.** A "RETURN MATERIAL AUTHORIZATION" number must be obtained from Essex prior to any return of Product and that number must accompany all product returned by Buyer to Essex. Product not accompanied by a "RETURNED MATERIAL AUTHORIZATION" number may be refused by Essex and returned at Buyer's expense.

**6.3.** Buyer shall prepay shipping charges for product returned to Essex.

**6.4.** Product returned to Essex should be properly crated for shipment, and the Buyer shall bear the risk of loss until the Product is delivered to, and its return is accepted by, Essex.

**6.5.** Product returned to Essex must be returned in the condition originally received by Buyer and free from damage, use or modification.

**6.6.** All applicable taxes, duties, insurance, and shipping charges shall be the sole responsibility of Buyer.

**6.7.** Product returned for other than warranty repair shall be subject to a restocking charge of twenty five percent (25%) of the original sales price of the returned item.

RETURN OF PRODUCT SHALL BE AT THE SOLE DISCRETION OF ESSEX.

## **7. PROPERTY AND RISK**

**7.1.** Unless otherwise specified by Contract, all risk and all liability in respect of the Products shall pass to Buyer on delivery to the carrier, chosen by Essex in its sole and absolute discretion, at Essex's facility. Essex shall not be liable for any loss of any kind to Buyer arising from any damage to the Products occurring after the risk has passed to Buyer however caused, nor shall any liability of Buyer to Essex be diminished or extinguished by reason of such loss. Notwithstanding delivery of the Products to Buyer and risk in the Products passing in accordance with this Condition 7, title and ownership in the Products shall not pass from Essex until: (i) Buyer shall have paid Essex unconditionally and in full for the Products in accordance with Condition 3; and (ii) no other sums are then outstanding from Buyer to Essex on any account whatever whether or not such sums have become due for payment.

**7.2.** While title and ownership in the Products remain with Essex under this Condition 7, Buyer shall store the Products at its sole cost and expense, separately from its own Products or those of any other persons in good condition and marked in such a way that they are clearly identifiable as the property of Essex and shall insure the Products to their full value against "All Risks" to the reasonable satisfaction to Essex.

**7.3.** Whenever reasonably required to do so Buyer shall produce to Essex a copy of the policy of insurance and the receipt or receipts for the current premium.

**7.4.** Buyer hereby grants to Essex a purchase money security interest in the Products purchased from Essex, all additions and accessions thereto and all proceeds thereof, to secure payment of the purchase price for Products purchased by Buyer from Essex. Buyer shall permit Essex to file one or more financing statements pursuant to the applicable Uniform Commercial Code or other applicable laws to evidence and/or perfect Essex's security interest in the Products. On request, Buyer shall execute any and all documents and agreements in this regard and assist Essex in any filing thereof.

**7.5.** In the event that Essex is entitled to exercise any of its rights under Condition 8 below, any right of Buyer to sell, dispose of, deal or in any way use Products in which the property remains with Essex shall immediately cease. The Buyer must then immediately place any of the Products in its possession or under its control at the disposal of Essex and Essex shall (without prejudice to any of its other rights and remedies) have the right to repossess and use those Products and may by itself, its servants or agents, enter upon any of Buyer's premises for the purpose of removing such Products and detach them from other Products. Demand for or recovery of the Products by Essex shall not of itself discharge either Buyer's liability to pay the whole of the price and take delivery of the Products or Essex's rights to sue the whole of the price.

**7.6.** The Buyer gives Essex, its servants and agents, irrevocable authority to enter any land or building, vehicle or vessel or other place upon which such Products are reasonably thought to be situated without notice for the purpose of collecting and removing the Products. Where the Products are situated on the premises of a third party which holds those Products on behalf of Essex Buyer must procure that the third party stores those Products separately and clearly marked as Essex's property, that it consents to such entry and removal and that it relinquishes any claim it may have in respect of those Products.

7.7. Buyer may sell the Products in the ordinary course of its business, but not otherwise:

7.7.1 deal with, sell, part with possession of, consume or otherwise dispose of the Products or

7.7.2 pledge the Products or allow any lien to arise thereon; until property and ownership in them has passed to Buyer under this Condition.

8. **DEFAULT BY THE BUYER** If Buyer fails to make payment for the Products in accordance with Condition 3 or fails to pay any other debt due and payable to Essex or otherwise commits a breach of these Conditions, or if any distress or execution shall be levied upon any of Buyer's assets, or if Buyer offers to make any arrangement with its creditors, or commits an act of bankruptcy, or if any petition in bankruptcy be presented against Buyer, or if Buyer is unable to pay its debts as they fall due or if, being a limited company any resolution or petition to wind up Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or, if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of Buyer's business or respect of Buyer, or if Buyer should suffer any analogous proceedings and foreign law, or if Essex has reasonable cause to believe that any of these events is likely to occur then all sums outstanding in respect of the Products shall become due and payable immediately, and Essex may in its sole and absolute discretion and without prejudice to any other rights which it may have: (i) close any account(s) and suspend all future deliveries of Products to Buyer and/or terminate all or part of a Contract with Buyer without liability on its part; and/or (ii) exercise any of its rights pursuant to Condition 7.

9. **SELLER'S LIABILITY; LIMITED WARRANTY**

9.1. Essex's liability to Buyer hereunder whether for any breach of the Contract or otherwise is limited, at Essex's absolute discretion, to refunding Buyer for the price of Products or replacing the Products and will not in any event exceed the price paid or to be paid for the Products under the Contract and Essex will be under no liability for any punitive, consequential or indirect loss suffered or liability to third parties incurred by Buyer.

9.2. Unless otherwise specified with respect to a particular Product as provided by Essex in a writing signed by Essex, Essex warrants to Buyer for a period of one year for vacuum integrity and 90 days for parts and labor from the date of original shipment to Buyer that the Products delivered by Essex to Buyer pursuant to this Agreement shall be free from defects in materials and workmanship. Essex's obligation under this warranty is limited to replacing or repairing, at its option, at its facility, any of the Products (except expendable parts thereof) that within the warranty period are returned to Essex and that are found by Essex to be defective in proper usage. Buyer shall prepay transportation charges to Essex's facility. If returned parts are repaired or replaced under terms of this warranty, Essex will prepay transportation charges back to Buyer and reimburse Buyer for any transportation charges incurred by Buyer in connection with the return to Essex of the properly rejected Products.

9.3 The MedLox MODS-75 warranty is one year vacuum integrity on the dewar and 180 days parts and labor from the date of shipment from ESSEX Industries. The Patient Distribution Kits (PDK's) warranty is one (1) year parts and labor.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER.

10. **SET OFF AND COUNTER CLAIM** If Buyer is in default under the Contract, Essex may, at its discretion, set-off amounts owed by Buyer to Essex for Products supplied by Essex against other monies repayable to Buyer by Essex. The Buyer will not be entitled to withhold payment of any invoice by reason of any right to set-off or counter claim which Buyer may have or alleged to have against Essex or for any other reason whatsoever.

11. **FORCE MAJEURE** Essex will not be liable for failure to deliver the Products or any part thereof for any reason whatsoever outside the reasonable control of Essex including, but not limited to, industrial action, war, governmental action or regulation, act of God, riots or nonavailability of stocks or materials. Any such failure will not affect the obligation of Buyer to pay for Products already delivered. Should Essex be prevented from delivering part of the Products by reason of any of the causes specified above Essex shall deliver and Buyer shall take and pay for such part of the Products, and Essex shall be able to deliver in accordance with the Contract.

12. **ASSIGNMENT** The Buyer shall not assign, sub-contract or in any way dispose of its rights and obligations under the Contract without the prior written consent of Essex which may, if given, be on such terms as to Essex deems appropriate in its sole and absolute discretion.

13. **SEVERANCE** If any Condition (or any part of any Condition) is held by any court or other competent authority to be void, invalid, ineffective or unenforceable in whole or in part these Conditions will continue to be valid as to all other provisions and the remainder of the affected provision.

14. **WAIVER** No waiver or forbearance by Essex, whether express or implied, enforcing any of its rights under these Conditions will prejudice its right to do so in the future.

15. **LAW AND JURISDICTION** This Agreement is to be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflicts of law principles; provided, however, that the United Nations Convention on Contracts for the International Sale of Products shall in no way apply to the interpretation of this Agreement. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the state and Federal courts located in St. Louis County, Missouri, and the parties agree and submit to the personal and exclusive jurisdiction and venue of such courts. **THE PARTIES HERETO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.**