

# Terms and Conditions of Sale

The following terms and conditions constitute an integral part of the Bard Product List to which it relates and is applicable to any purchase order.

## I. Shipping and Related Charges

Each purchase order will incur a \$25 shipping and handling charge, regardless of the size of the purchase order. This will ensure expeditious handling and prompt two (2) day delivery. All special shipping requests are subject to additional charges. All shipments are F.O.B. shipping point. Title and risk of loss shall pass to customer at F.O.B. shipping point.

## II. Payment Terms

Payment is due net thirty (30) days from invoice date.

## III. Acceptance of Purchase Orders

All purchase orders are subject to acceptance at Bard's Tempe, Arizona facility and will be deemed accepted only when confirmed in writing or upon Bard's commencement of performance.

For convenience, customers may place their purchase orders (between the hours of 6:00 a.m. – 5:00 p.m. Arizona Time, Monday – Friday), as well as any customer service inquiry, via the toll-free number 1.800.321.4254 (Fax: 1.800.440.5376).

Written purchase orders should be mailed to:

**Bard Peripheral Vascular, Inc.**  
P.O. Box 1740  
Tempe, AZ 85280-1740  
Attn: Customer Service

## IV. Additional Charges

All applicable excises, sales or other taxes will be invoiced to the customer and are not included in product prices.

## V. Shipping Damage

Although Bard takes special care in the packaging of its products, damage may occur in transit. All products should, therefore, be unpacked and inspected and any damage noted on the freight bill and reported to the carrier within five (5) days of receipt by Customer. Although Bard's responsibility for damage will cease when shipments are accepted by the carrier's agent (F.O.B. shipping point), it will assist in helping the customer settle damage claims.

## VI. Return Goods Policy

### 1. General

All product returns by customer must be authorized in advance by Bard. Any unauthorized returns will be refused. Each request for return must be made in writing to: Bard Peripheral Vascular, Inc., Customer Service Department, P.O. Box 1740, Tempe, AZ 85280 or by calling the toll-free number 1.800.321.4254. Freight must be prepaid by the customer on all authorized returns. If Bard ships defective items to customer or makes shipments to customer in error, Bard will reimburse customer for its freight charges.

### 2. The Request for Authorization Must Include

- A. Reason for Return
- B. Catalog Number, Size, and Quantity
- C. Customer's Purchase Order Number and Bard Invoice Number

### 3. Product That Will Not Be Accepted for Credit By Bard Peripheral Vascular, Inc.

- A. Product ordered on "Special Order" basis
- B. Product held over ninety (90) days by customer
- C. Product in unsaleable condition
- D. Product not listed in this Product Catalog or any Supplement thereto (i.e., discontinued product)
- E. Product sterilized or used by customer, unless defective
- F. Product that is not packaged properly for shipping when returned
- G. Incomplete cases (unless defective)

### 4. Credit Allowance Schedule for Authorized Returns

- A. Product defective in material, workmanship or packaging at time of receipt      Full Credit
- B. Product covered by limited product warranty      In accordance with warranty
- C. Product processed in error by Bard Peripheral Vascular, Inc.      Full Credit

D. Product returned within 90 days of Invoice date in saleable condition

Full Credit Less 30% Reprocessing Charge

E. Product returned within 30 days is not subject to a restocking charge

Full Credit

## 5. Equipment Repairs

All product repairs must be authorized in advance by Bard. Each request for return can be made by calling Bard Peripheral Vascular, Inc., Service and Repairs Department toll-free number at 1.800.526.4455 x96266. Information that should be given for return authorization includes: description of the item being returned for repair, reason for repair, name and telephone number of customer contact who may be called if more information is necessary. A purchase order is required for all repairs even in situations where there will be no charge. If the item to be repaired is covered by a written limited product warranty, a copy of the original invoice must be sent with the item. The cost of repair not covered by a written limited product warranty will be paid by the customer.

## VII. Confidentiality

The parties hereby expressly agree that all Confidential Information made available by Bard to customer, pursuant to the terms of this Agreement, shall be held in strict confidence by customer for a period of three (3) years from the signing of any purchase order and shall be utilized by customer solely in connection with the purchases made hereunder. "Confidential Information" shall mean the confidential or proprietary information of Bard relating to its business including its prices, but excluding information that: (a) is or becomes available in the public domain through no fault of, or act or failure to act on the part of the customer; (b) was known to customer at the time of disclosure as evidenced by the customer's business records maintained in the ordinary course of business; (c) is, at any time, disclosed to customer by any third party who customer reasonably believes has the right to disclose the same; or (d) is required to be disclosed by court order or otherwise by Law.

## VIII. Limitation on Warranties and Liabilities

Unless a written warranty is otherwise provided with a specific product at the time of shipment, BARD DISCLAIMS ALL PRODUCT WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THOSE RELATING TO SUCH PRODUCTS' MERCHANTABILITY AND SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SET FORTH IMMEDIATELY ABOVE, BARD'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE LIABILITY.

**IN NO EVENT SHALL BARD BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGE OR EXPENSE, DIRECTLY OR INDIRECTLY ARISING FROM THE USE OR HANDLING OF ANY PRODUCT. BARD NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OR ADDITIONAL LIABILITY OR RESPONSIBILITY IN CONNECTION WITH ANY PRODUCT.**

## IX. Product Changes

All products and product specifications identified in this Product List are based upon the information available to Bard at the time of publication. Bard reserves the right to discontinue any of the products or to change any specifications without notice.

## X. Termination

The purchase order and these terms and conditions may be terminated by Bard (i) upon thirty (30) days' prior written notice to customer; (ii) effective immediately, if customer commits a material breach of any provision of the purchase order or these terms and conditions and such breach continues for a period of thirty (30) days following written notice, or (iii) effective immediately, if the customer files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law or makes or seeks to make a general assignment for the benefit of its creditors or applies for or consents to the appointment of a trustee, receiver or custodian for its or a substantial part of its property.

## XI. Force Majeure

Bard will not be liable for its failure to perform or a delay in performance of any order due to strikes, fire, explosion, flood, riot, lock out, injunction, interruption of transportation, unavoidable accidents, acts of government or a public enemy, inability to obtain supplies at reasonable prices or other causes beyond its control.

## XII. Choice of Law

**All transactions under these terms and conditions shall be governed by the laws of the State of Arizona excluding its choice of laws rules and excluding the Convention for the International Sale of Goods.**

## XIII. General

NONE OF THE FOREGOING TERMS AND CONDITIONS MAY BE MODIFIED EXCEPT UPON BARD'S EXPRESS WRITTEN CONSENT STATING THAT IT IS AN AMENDMENT OR MODIFICATION THERETO.