

Diopsys, Inc.
Terms and Conditions of Sale

Our Terms and Conditions of Sale were updated on August 25, 2022.

Your purchase of products (“Products”) and/or services (“Services”) from the Diopsys, Inc. (“Diopsys”) e-commerce portal (the “Store”) or otherwise from Diopsys constitutes your agreement to be bound by these Terms & Conditions of Sale (“Terms & Conditions”) and any additional terms we provide, including but not limited to our Terms of Use and the terms of Diopsys’ Limited Warranty included with certain Diopsys Products.

THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER FOR PRODUCTS AND/OR SERVICES, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS & CONDITIONS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS & CONDITIONS. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO PURCHASE AND USE PRODUCTS AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS & CONDITIONS, YOU SHOULD NOT PURCHASE THE PRODUCTS.

We reserve the right to change these Terms & Conditions at any time, so please review the Terms & Conditions each time prior to making a purchase from the Store. Every time you order Products from Diopsys, the Terms & Conditions in force at that time will apply between you and Diopsys. If you have any questions regarding these Terms & Conditions, you can contact Diopsys.

Please read these terms carefully. They require the use of binding arbitration to resolve disputes rather than jury trials or class actions. Please follow the instructions in the Dispute Resolution and Arbitration section below if you wish to opt out of this provision. As a consumer, you have certain legal rights. The disclaimers, exclusions, and limitations of liability under these Terms & Conditions will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties, including exclusions relating to products or services that are faulty or not as described, or the exclusion or limitation of incidental or consequential damages or other rights. For a full description of your legal rights you should refer to the laws applicable in your country or jurisdiction. Nothing in these Terms & Conditions will affect those other legal rights.

1. Regulatory Approval Required.

Although the Store is accessible worldwide, the Products and Services offered within the Store may not be available in your home country. Sales of certain Products, such as medical devices, require regulatory approval prior to being offered for commercial sale. Any orders for such Products or Services made or set for delivery outside of countries where Diopsys has obtained the appropriate regulatory approvals will not currently be fulfilled; however, you may place a reservation or express interest in Products as further described in Section 3 below. To the extent permissible by law, Diopsys accepts no responsibility or liability for any damage or loss caused by your access or use of the Store if you reside in a country where we have not yet obtained regulatory approval.

2. Restricted Customer Base.

Sales of Products and Services within the Store are limited to certain medical professionals, with the credentials necessary to operate the Products and treat patients in their home countries, and certain distributors and sales representatives approved by Diopsys. Purchases of Products and Services within the

Store require an online account, and accounts will not be made available to persons or entities other than those described above.

3. Product Reservations and Expressions of Interest.

You may reserve or express interest in certain Products that are not currently available for shipment, or that are not yet offered for sale by Diopsys in your country. Your placement of a reservation or expression of interest does not create a contract for sale. When the Product is offered for sale in your country, Diopsys will endeavor to contact you regarding purchase.

4. Payment

By providing a credit card, routing and account numbers, or other payment method accepted by Diopsys, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor) to charge your payment method for the total amount of your order (including any applicable taxes (including all VAT that may apply in your country) and other charges). If the payment method you provide cannot be verified, is invalid, or is otherwise not acceptable, your order may be suspended or cancelled. You must resolve any problem we encounter in order to proceed with your order. In the event you want to change or update payment information associated with your Diopsys account, you can do so at any time by logging into your account and editing your payment information.

5. Availability and Pricing.

All Products offered within the Store are subject to availability, and we reserve the right to impose quantity limits on any order, to reject all or part of an order, and to discontinue offering certain Products or Services without prior notice. Prices for the Products and Services are subject to change at any time, but changes will not affect any order for Products you have already placed.

6. Taxes.

Depending on the order, Diopsys calculates and charges sales tax and any additional value added taxes in accordance with applicable laws.

7. Resale and Title Transfer.

Unless otherwise specified in a written contract between you and Diopsys, purchases made on the Store are intended for end users only, and are not authorized for resale. Title for Products purchased from the Store passes to the purchaser at the time of delivery by Diopsys to the freight carrier. You and/or the freight carrier will be responsible for any Product loss or damage that occurs when the Product is in transit to you.

8. Shipping and Delivery; Legal Use.

Prices for the Products do not include shipping costs. Our delivery charges and methods are as described on the Store website from time to time. The estimated arrival or delivery date is not a guaranteed delivery date for your order. Refused deliveries will be returned to our warehouse. It may take up to 45 days for the returned items to be identified as refused and processed for a refund, less the cost of any diminution in value assessed by Diopsys and any applicable testing and restocking fees.

The Products available on the Store have been designed, marketed, and sold for use by purchasers in the countries to where those products are shipped. All safety warnings, information, instructions, packaging,

in-box materials, and support services are provided only in the languages required by the governing authorities in the destination countries. Use of the Products available on the Store outside of the countries where we have obtained regulatory approval to sell Products is prohibited. You are responsible for complying with all applicable laws and regulations of the country for which the Product is destined. We are not liable or responsible if you break any such law.

9. In-Service Activities.

Diopsys' sales and distribution teams will coordinate with purchasers of certain Diopsys Products to offer certain in-service activities.

10. Product Purchases are Final and Non-Refundable.

If you experience a possible defect in the materials or workmanship of your Product, your Product may be repaired or replaced by Diopsys without cost to you, subject to the terms and conditions of Diopsys' Limited Warranty included with your Product. Barring a valid Limited Warranty claim, Diopsys Products are not subject to return, and Product purchases are not refundable.

11. Dispute Resolution and Arbitration.

Any dispute, controversy or claim arising out of or relating to these terms, your purchase of products or services, or any contract or agreement between you and Diopsys, including the formation, interpretation, breach or termination thereof, and including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of a sole arbitrator. The seat of the arbitration will be Seattle, Washington U.S.A. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

This agreement to arbitrate is intended to be broadly interpreted, including, for example:

- claims arising out of or relating to any aspect of the relationship between us that is created by or involves these terms and/or your use of the products, regardless of the legal theory;
- claims for mental or emotional distress or other emotional/mental injury arising from the relationship between us;
- claims that arose before you accepted these terms (such as claims related to disclosures or the marketing of the products or the process for seeking approval to use the products);
- claims that may arise after the termination of your use of the products or any agreement between us; and
- claims brought by or against our respective subsidiaries, parent companies, members, affiliates, as well as the respective officers, directors, employees, agents, predecessors, successors, and assigns of these entities, you, and Diopsys.

This agreement to arbitrate does not preclude either of us from seeking an individualized preliminary injunction or temporary restraining order, pending arbitration, in any court that has jurisdiction. In addition, you or Diopsys may seek injunctive or other equitable relief to protect your or its intellectual property rights or to prevent loss or damage in any court with competent jurisdiction.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU UNDERSTAND AND AGREE THAT WE ARE EACH (A) WAIVING THE RIGHT TO A TRIAL BY JURY; (B) WAIVING THE RIGHT TO PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION; AND (C) WAIVING THE RIGHT TO CLAIM OR RECOVER PUNITIVE DAMAGES AGAINST THE OTHER. These terms

evidence a transaction in interstate commerce, and, thus, the Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision.

- a. Notice of Disputes. If either of us intends to seek arbitration of a dispute, that party must provide the other with notice in writing (“Notice”). The Notice to Diopsys should be sent to:

Diopsys, Inc.
Attn: Legal Department
19578 10th Avenue NE, Suite 200
Poulsbo, WA 98370
U.S.A.

Your Notice to Diopsys must (a) provide your name, mailing address, and email address; (b) describe the dispute; (c) state the relief you are requesting; and (d) provide the name and title of the executive who will represent the party in negotiations, and of any other person who will accompany the executive.

- b. Good Faith Negotiations. Prior to initiating arbitration, the parties will attempt in good faith to resolve any such dispute promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the person with direct responsibility for administration of this Agreement. Within 15 days after delivery of the Notice, the receiving party shall submit to the other a written response. The response shall include with reasonable particularity (a) a statement of the party’s position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party, and of any other person who will accompany the executive. Within 30 days after delivery of the Notice, the executives of both parties shall meet at a mutually acceptable time and place. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of the executives described above (“First Meeting”). Such closure shall not preclude continuing or later negotiations, if desired. All offers, promises, conduct and statements, whether written or oral, made in the course of the negotiation by any of the parties, their agents, employees, experts and legal representatives are confidential, privileged, and inadmissible for any purpose in arbitration or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation. At no time prior to the First Meeting shall either side initiate litigation related to this Agreement except to pursue a provisional remedy that is authorized by law. Neither may either side initiate arbitration except to pursue a provisional remedy authorized by the JAMS International Arbitration Rules. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of this paragraph. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified this paragraph are pending and for 15 calendar days thereafter. If the dispute has not been settled at the close of the First Meeting as defined above, or within such time period as the parties may agree in writing, either party may initiate arbitration with respect to the matters submitted to negotiation by filing a written demand for arbitration with JAMS or its successors no earlier than 60-days after delivery of the Notice. The negotiations may continue after the commencement of the arbitration if the parties so desire.
- c. Arbitration Procedures. If the good faith negotiations described above do not result in resolution of the dispute, the parties may commence arbitration in accordance with the JAMS International Arbitration Rules no earlier than 60-days after delivery of the Notice. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the

privacy of the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. All applicable terms and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of Washington U.S.A., exclusive of conflict or choice of law rules. In any arbitration, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits.

- d. Prevailing Party Fees. In any arbitration, the arbitrator shall award to the prevailing party, if any, the reasonable costs for legal representation incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under the circumstances where the prevailing party won on some but not all of its claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the reasonable costs for legal representation incurred by the prevailing party in connection with the arbitration.
- e. No Class Arbitration. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND DIOPSYS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless all affected parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

12. Warranties and Disclaimers.

As far as permitted by applicable law, the Store, and all content available on the Store, is provided on an "as-is" basis without warranties or conditions of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose. All products and services purchased through the Store are provided on an "as-is" basis unless otherwise noted in the Limited Warranty included with a Product. With respect to Diopsys Products, you may choose whether to make a claim under these Terms & Conditions, the Limited Warranty, or both, but you may not recover twice in respect of the same loss. To initiate a return under the Limited Warranty for your Diopsys Product, you should contact Diopsys.

You use any Products or Services at your own discretion and risk. You will be solely responsible for (and Diopsys disclaims) any and all loss, liability or damages resulting from your use of Products and Services, including, without limitation, injury or death. Diopsys does not guarantee or promise any specific treatment outcome, improvement to visual acuity, or patient satisfaction. Results from the use of Products will vary based on factors beyond Diopsys' control.

13. Limitation of Liability.

Nothing in these Terms & Conditions and in particular within this "Limitation of Liability" section shall be interpreted or construed to limit or exclude liability that cannot be so limited or excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) DIOPSYS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS OR SERVICES, EVEN IF DIOPSYS KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) DIOPSYS' TOTAL CUMULATIVE LIABILITY FOR ANY DIRECT DAMAGES, PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF LIFE OR ANY OTHER DAMAGES NOT EXCLUDED OR PRECLUDED PURSUANT TO (A) ABOVE, ARISING FROM OR RELATED TO THE PRODUCTS OR SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT NEVER TO EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO DIOPSYS AND DIOPSYS' AUTHORISED DISTRIBUTOR OR SALES REPRESENTATIVE FOR THE PRODUCTS OR SERVICES AT ISSUE IN THE PRIOR 6 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. DIOPSYS DISCLAIMS ALL LIABILITY OF ANY KIND OF DIOPSYS' LICENSORS AND SUPPLIERS.

14. Data Protection.

By requesting information or placing an order for Products or Services, you agree and understand that Diopsys may store, share, process and use data collected from you for the purposes of fulfilling your requests. Diopsys will protect your information in accordance with the terms of its Privacy Statement. Diopsys works with other companies that help Diopsys provide Products and Services to you, such as manufacturers, freight carriers, and credit card processing companies, and Diopsys may have to share certain information with these companies for this purpose.

15. Electronic Communications.

You are communicating with Diopsys electronically when you use the Store or send email to Diopsys. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. When you order in the Store, we collect and store your email address. From that point forward, your email address is used to send you information about Diopsys' products and services unless you opt-out of such emails using the opt-out link in the emails. Please see additional information regarding the use and storage of your email address and other personal information in our Privacy Statement.

16. Notifications.

Diopsys may provide notifications to you as required by law, or for marketing or other purposes with your permission via email to the primary email associated with your Diopsys account. Diopsys is not responsible for any automatic filtering you or your network provider may apply to email notifications that may limit the delivery of these messages.

17. Force Majeure.

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a contract that is caused by an act or event beyond our reasonable control, including without limitation acts of God, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic, or other natural disaster, failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

18. Protection of Confidentiality and Intellectual Property Rights.

Notwithstanding the foregoing, Diopsys may seek injunctive or other equitable relief to protect its intellectual property rights or other damage in any court of competent jurisdiction.

19. Severability.

If any part of these Terms & Conditions becomes illegal, invalid, unenforceable, or prohibited in any respect under any applicable law or regulation, such provision or part thereof will be deemed to not form part of the contract between us. The legality, validity or enforceability of the remainder of these Terms & Conditions will remain in full force and effect.

20. Survivability.

The obligations in Sections 11 through 22 will survive any expiration or termination of these Terms.

21. Waiver.

Failure or delay by us to enforce any these Terms & Conditions will not constitute a waiver of our rights against you and does not affect our right to require future performance thereof.

22. Governing Law and Jurisdiction.

These Terms & Conditions are governed by the laws of the State of Washington, U.S.A., without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state and federal courts in or for King County, Washington for the purpose of litigating all such claims or disputes, unless such claim or dispute is required to be arbitrated as set forth in an above section.