



proprietary party. Mark means copyright, trademark, trade dress, or similarly protected designations.

## **RETURNS**

Supplier will accept returns of saleable inventory and non-saleable customer returns for a full refund without penalty.

## **RECALLS**

In the event of a recall, all recalled product in NAR MD's inventory will be returned to Supplier, at Supplier's expense, for a full refund of the purchase price paid by NAR MD with no penalties. Supplier will repair, replace, or refund NAR MD's customers for recalled products, covering the cost of any shipping and destruction, as applicable. At NAR MD's reasonable discretion, Supplier will administer the recall, including contacting NAR MD's customers. In such an instance, NAR MD will provide Supplier a list of all customers who purchased the recalled product, specific to the recalled lots (if applicable), and customer contact information NAR MD has on file. Supplier will reimburse NAR MD for the administrative costs, including personnel costs, of a recall.

## **NOTICE**

Supplier will promptly notify NAR MD of any of the following related to the product: Recalls; discovered design, manufacturing, or warranty defects; pending or threatened litigation; pending or threatened government action, including investigations; and, material or recurring customer complaints related to the product.

## **INDEMNIFICATION**

Supplier agrees to defend, indemnify, and hold harmless NAR MD from and against any Losses, by reason of or arising out of any suit or claim against NAR MD relating to (i) any breach of Supplier's obligations under these terms, (ii) the negligence, gross negligence, or willful misconduct of Supplier, and (iii) Supplier's violation of any applicable law or governmental regulations. **Losses** means any liability, loss, expense, cost, claim, or judgment, including reasonable attorneys' fees.

## **LIMITATION OF LIABILITY**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NAR MD WILL NOT BE LIABLE FOR ANY SPECIAL, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES. IN NO EVENT WILL NAR MD'S LIABILITY UNDER ANY CIRCUMSTANCES EXCEED THE PRICES PAID TO SUPPLIER FOR PRODUCTS WITHIN THE PROCEEDING 12 MONTHS.**

## SUPPLIER REQUIREMENTS

Prior to the shipment of products to NAR MD for sale to any market, and during the Term, Supplier will have all applicable governmental registrations, licenses, approvals, and requirements necessary for the manufacture, assembly, sale, and distribution of the products to the applicable markets, including, as applicable, Unique Device Identifiers, CE registration, and U.S. Food and Drug Administration approval/compliance. This specifically includes compliance with 21 CFR 807 for device listing requirements, registration as a contract manufacturer with the FDA in accordance with 21 CFR 807, maintaining the appropriate device listings for contract manufacturing of a finished good medical device, as required. Supplier represents it is not on any restricted party list, including the Denied Persons List and Specially Designated Nationals List. All suppliers must comply with our Supplier Code of Conduct [here](#). NAR MD has the right to audit Supplier's compliance with these requirements upon reasonable notice.

## COUNTRY OF ORIGIN REQUIREMENTS

Supplier warrants the country of origin of product is accurate and properly marked on the product. Upon request, Supplier will provide NAR MD (i) certification a product is compliant with the Buy American statute, 41 USC § 8301, et. seq.; Trade Agreements Act, 19 USC § 2501, et. seq.; Berry Amendment, 10 U.S.C. §2533a; or, Kissell Amendment, 6 U.S.C. §453b, as implemented by the Federal Acquisition Regulation and Department/Agency Supplemental Regulations (e.g., DFAR) (collectively, Country of Origin Requirements (**COR**)), to the extent applicable to the product, (ii) for a product not compliant with COR, a statement the product is not compliant, or (iii) sufficient information for NAR MD to determine compliance with COR.

## INSURANCE

Supplier agrees to maintain at its own expense commercial general liability insurance, including products liability coverage. The applicable limits shall be no less than \$3,000,000 per occurrence for Rx products and medical devices or 1,000,000 per occurrence for all other products. All insurance shall be placed with insurers rated at least A- by A.M. Best. All liability policies shall be written (i) on claim's made basis, with such policy maintained through the expiry of the product, or for products with no expiry, for 5 years after purchase, or (ii) on an occurrence basis. Such insurance coverages shall not act to limit Supplier's liability under this agreement.

## GENERAL

NAR MD's purchase orders and payment to Supplier are expressly conditional on Supplier's assent to these terms. Statements, clauses, or conditions modifying, adding to, or inconsistent with these terms contained in any order submitted by Supplier are void, and do not become part of the agreement between NAR MD and Supplier without NAR MD's express written acceptance of those statements, clauses, or conditions. NAR MD's acceptance of product shall not be construed as assent to any of the terms proposed by Supplier and will not constitute a waiver by NAR MD of any of NAR MD's terms.

This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings relative to such subject matter. No provision or term herein may be modified, supplemented, waived, discharged, terminated, or otherwise altered except in writing signed by the parties.

Any failure or delay by NAR MD in exercising any right or remedy provided by or relating to this agreement does not constitute a waiver and shall not prohibit NAR MD from exercising such right or remedy at a later time or from exercising any other right or remedy available.

The provisions of these terms are separate and independent covenants. Accordingly, the invalidity or unenforceability of one or more of these provisions or covenants will not affect the validity or enforceability of the remaining provisions.

NAR MD shall not be liable for any loss arising out of any delay or failure in the performance of its obligations hereunder that result from events beyond its reasonable control, including (a) acts of God; (b) acts or regulations of any governmental or national authority; (c) war, terrorism, or other civil unrest; (d) accident, fire, flood, or other natural event; (e) strikes, industrial disputes; or other labor matters; or (f) shortages in labor or supplies. If Supplier's performance is delayed beyond thirty (30) days due to a force majeure event, NAR MD reserves the right to terminate the affected purchase order without penalty.

Notices and other communications given under this agreement will be in writing and effective if delivered via (a) hand-delivery; (b) certified United States mail; (c) overnight courier; (d) electronically to [legal@narescue.com](mailto:legal@narescue.com); or (e) any other method in which proof of receipt can be independently verified.

Supplier agrees disputes regarding the provisions and performance of this agreement shall be resolved according to the [Conflict Resolution Appendix](#) which is incorporated into this agreement by reference. This agreement will be governed by, construed under, and interpreted according to the laws of the State of South Carolina without regard to conflict-of-laws principles. The Parties agree the courts in Greenville, South Carolina, whether state or federal, shall have exclusive jurisdiction in any proceeding initiated between the Parties regarding this agreement.

## **FLOWDOWN OF FAR AND DFARS CLAUSES**

For applicable purchases, the Federal Acquisition Regulation (**FAR**) and Defense Federal Acquisition Regulation Supplement (**DFARS**) clauses below are incorporated herein by reference. The DFARS clauses are applicable only to contracts entered into under United States Department of Defense contracts. No clause is applicable if—by the terms of the FAR or DFARS—it is made inapplicable. The date or substance of the clause incorporated by the applicable prime contract shall apply.

Where necessary in the context of these clauses, the words “Government,” “Contracting Officer,” and equivalent phrases mean NAR MD, and the words “Contractor” shall mean Supplier and the term “Contract” shall mean these terms, except where regulations or the clause

dictate otherwise. The Contracts Disputes Act has no application, and any reference to a “Disputes” clause means the dispute resolution clause of the supplier agreement.

Supplier shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFARS.

52.203-3, Gratuities

52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements

52.204-19 Incorporation by Reference of Representations and Certifications.

52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities

52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

52.204-27, Prohibition on a ByteDance Covered Application.

52.204-30, Federal Acquisition Supply Chain Security Act Orders - Prohibition

52.209-5, Certification Regarding Responsibility Matters

52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (*Only paragraph (e)(1) if subcontract is for commercial items*)

52.222-3, Convict Labor

52.222-19, Child Labor-Cooperation with Authorities and Remedies

52.222-21, Prohibition of Segregated Facilities

52.222-50, Combating Trafficking in Persons

52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving.

52.224-3, Privacy Training (*Applies if Subcontractor will have access to a system of records; create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or design, develop, maintain, or operate a system of records*)

52.225-8, Duty-Free Entry (*Applies to subcontracts for supplies to be accorded duty-free entry that will be imported into the customs territory of the United States or other foreign supplies in excess of \$15,000 that may be imported into the customs territory of the United States*)

52.225-13, Restrictions on Certain Foreign Purchases.

52.225-25, Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Representation and Certifications.

52.232-40, Providing Accelerated Payments to Small Business Subcontractors

52.244-6, Subcontracts for Commercial Items

252.244-7000, Subcontracts for Commercial Items

**Should this the anticipated value of this agreement exceed the following thresholds, the listed clauses apply:**

**\$10,000**

52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving

52.222-40, Notification of Employee Rights Under the National Labor Relations Act (*If required*)

*in accordance with 52.222-40(f)*

**\$15,000**

52.222-36, Equal Opportunity for Workers with Disabilities

**\$30,000**

52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards

**\$35,000**

52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (*Does not apply to commercially available off-the-shelf products*)

**\$150,000**

52.222-35, Equal Opportunity for Veterans

52.222-37, Employment Reports on Veterans

**\$250,000**

52.203-6, Restrictions on Subcontractor Sales to the Government

52.203-7, Anti-Kickback Procedures

52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

52.203-12, Limitation on Payments to Influence Certain Federal Transactions

52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

52.227-1, Authorization and Consent

52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement

52.248-1, Value Engineering

DFARS 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data.

DFARS 252.247-7023, Transportation of Supplies by Sea.

**\$500,000**

252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns

**\$700,000**

52.219-8, Utilization of Small Business Concerns (*Applicable if the subcontract offers further subcontracting opportunities*)

52.219-9, Small Business Subcontracting Plan (*Applicable if the subcontract offers further subcontracting opportunities*)

**\$6,000,000**

52.203-13, Contractor Code of Business Ethics and Conduct (*Applies if subcontract performance period greater than 120 days*)

52.203-14, Display of Hotline Posters (*Applies if subcontract is for non-commercial items and not performed entirely outside the U.S.*)

**MISCELLANEOUS**

52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (*Applies to all subcontracts that are funded in whole or in part with Recovery Act funds*)

52.204-9, Personal Identity Verification of Contractor Personnel (*Applies if subcontractor's employees are required to have routine physical access to a federally-controlled facility or routine access to a federally-controlled information system*)

52.204-21 Basic Safeguarding of Covered Contractor Information Systems (*Applies if subcontractor, other than those providing commercially available off-the-shelf items, may have Federal contract information residing in or transiting through its information system*)

52.228-5 Insurance--Work on a Government Installation. (*Applies if subcontract involves work on a Government installation.*)

52.245-1, Government Property (*Applies to subcontracts under which Government property is acquired or furnished for subcontract performance*)

DFARS 252.203-7002, Requirement to Inform Employees of Whistleblower Rights.

DFARS 252.204-7000, Disclosure of Information.

DFARS 252.204-7012, Safeguarding Covered Defense Information and cyber Incident Reporting.

DFARS 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

DFARS 252.223-7002 Safety Precautions for Ammunition and Explosives. (*Applicable to subcontracts that involve ammunition or explosives.*)

DFARS 252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials. (*Applicable to subcontracts that require, may require, or permit a subcontractor to access a DoD installation, at any subcontract tier.*)

DFARS 252.223-7008, Prohibition of Hexavalent Chromium.

DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals. (DEC 2019) (*less paragraph (d) and (e)(1)*)

DFARS 252.225-7028, Exclusionary Policies and Practices of Foreign Governments.

DFARS 252.225-7048, Export-Controlled Items.

DFARS 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime.

DFARS 252.227-7015, Technical Data—Commercial Items.

DFARS 252.227-7016, Rights in Bid or Proposal Information.

DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System. (*less introductory text*) *Applies to subcontracts for electronic parts or assemblies containing electronic parts, including subcontracts for commercial items.*

