

# Terms

## Stryker Sales Corporation, through its Medical Division & North Richland Hills (TX) (Sept 24, 2020)

### TERMS AND CONDITIONS

#### General Terms for all Products, Services and Software Subscriptions.

Stryker Sales Corporation, acting through its Medical Division (“Seller”) accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer’s acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

**Pricing.** Pricing for the products and/or services is as set forth in Seller’s quote. Unless otherwise indicated on Seller’s invoice, prices do not include, and Buyer is responsible to pay, freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. All applicable sales, use, value added, excise and all other federal, state, local or foreign taxes will be invoiced in addition to the price of the goods and services unless Seller receives a copy of a valid exemption certificate from Buyer prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

**Payment.** Payment for goods and services shall be subject to approval of credit by Seller. Unless otherwise specified by Seller in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

**Limitation of Interest.** Through the purchase of Seller products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

**Delays.** Seller will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, or Seller’s inability to obtain goods from its usual sources.

**Warranty** Seller warrants its products and services in accordance with the terms of the limited warranties located at [https://www.strykeremergencycare.com/globalassets/assets/general-documents/device\\_warranty\\_statement.pdf](https://www.strykeremergencycare.com/globalassets/assets/general-documents/device_warranty_statement.pdf).

The remedies provided under such warranties shall be Buyer’s sole and exclusive remedies. Seller makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

**Compliance with Confidentiality Laws.** Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

**Compliance with Law.** The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

**Regulatory Requirement for Access to Information.** In the event 42 USC § 1395x(v)(1)(I) is applicable, Seller shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, together with such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Seller.

**No Debarment.** Each party represents and warrants that neither it nor any of its directors, officers, and employees: (a) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (c) are not under investigation which may result in such party being excluded from participation in such programs.

**Choice of Law.** The rights and obligations of Seller and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

**Proper Reporting.**

Buyer will comply with all applicable laws and regulations relating to the accounting and application of discounts, including but not limited to all Federal and State laws and regulations regarding reimbursement and proper reporting of discounting and pricing, such as the requirements of the discount "safe harbor" located at 42 C.F.R. 1001.952(h). Pricing under this Agreement may constitute discounts on the purchase of Products, and must be properly reported and appropriately reflected as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports.

**Insurance.**

Seller will maintain adequate general liability insurance, including coverage for Products and completed operations, and workers compensation and employer's liability insurance against any claim or claims, which might arise out of Seller's performance of its obligations hereunder. Seller has the right to self-insure to comply with this requirement. When requested by Buyer, Seller will furnish an insurance certificate signed by an authorized agent evidencing such insurance coverages.

**Confidential Information.**

Subject to the applicable public information and open record laws, the parties hereto shall hold in strictest confidence any information and materials that are related to the business of the other party hereto or are designated by any such party as proprietary and confidential, herein or otherwise ("Confidential Information"). The parties hereby covenant that to the extent permitted by law, they shall not disclose such Confidential Information to any third party without prior written authorization of the party to whom such information relates. The parties agree that any breach or threatened breach of this clause would cause irreparable harm to the other party, that a remedy at law may be inadequate to remedy such a breach or threatened breach, and that this clause may be enforced by way of a restraining order or injunction in addition to any other available legal remedies.

**Additional Terms for Purchase and Sale of Products.**

In addition to the General Terms above, the following terms apply to all purchases of products from Seller:

**Delivery.** Unless otherwise specified by Seller in writing, delivery shall be FOB Seller's point of shipment and title and risk of loss shall pass to Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from Buyer, Seller will obtain transportation on Buyer's behalf and for Buyer's account. Delivery dates are approximate. Freight is pre-paid and added to Buyer's invoice. Products are subject to availability.

**Inspections and Returns.** Within 30 days of receipt of a shipment, Buyer shall notify Seller of any claim for product damage or nonconformity. Seller, at its sole option and discretion, may repair or replace a product to bring it into conformity. Return of any product shall be governed by the Returned Product Policy located at <https://www.strykeremergencycare.com/return-policy/>. Payment of Seller's invoice is not contingent on immediate correction of nonconformities. Buyer agrees that 30 days following receipt of shipment is a reasonable time frame within which to diligently inspect the products received and provide notice to Seller, and Buyer waives any right to reject the shipment or revoke acceptance thereafter.

**No Resale.** Buyer agrees that products purchased hereunder will not be resold to third parties and will not be reshipped to any persons or places prohibited by the laws of the United States of America.

**Additional Terms for Purchase and Sale of ProCare Services.**

**Service Plans.** Seller shall provide services according to the applicable Service Plan purchased by Buyer and described at <https://www.strykeremergencycare.com/service--support-overview/service-hospitals-ems/> for the length of the subscription purchased and for the devices specified as covered by the Service Plan. In addition to the General Terms above, the terms and conditions located at <https://techweb.stryker.com> apply to all ProCare Service Plans.

**Additional Terms Regarding Wireless-Enabled Devices.**

In addition to the General Terms above, the data services provided by a third party are pursuant to the following terms:

**Payments.** Payments to Seller are non-refundable as they are incorporating into the pricing of the connected devices.

**Geolocation.** Buyer is responsible for maintaining the actual location of the devices within their facilities, property or buildings.

**Not Wireless Provider.** Seller has contracted with an outside data services provider for the provision of services on behalf of Buyer. Seller is not a telecommunications services company nor does it possess any telecommunications personal property.

**Security.** Buyer has the sole responsibility for ensuring the security of its network and data. Buyer will take reasonable measures to protect against unauthorized access.

**No Guarantee. SELLER DOES NOT GUARANTEE SECURITY, UNINTERRUPTED DATA SERVICES, THE ACCURACY OF GEOLOCATION SERVICES, NETWORK TRANSMISSION CAPACITY, COVERAGE OR THE INTEGRITY OF THE DATA TRANSMITTED.** Seller is not responsible for any consequential damages caused in any way by Buyer's hardware, software, network or other Buyer responsibilities.

**Additional Terms for Purchase and Sale of LIFELINKcentral<sup>SM</sup>.**

In addition to the General Terms above, the following terms apply to purchases of Seller's LIFELINKcentral AED Program Manager:

**LIFELINKcentral Services.** Seller shall provide services according to the applicable LIFELINKcentral AED Program Manager purchased by Buyer and described at <http://www.strykeremergencycare.com/service--support-overview/lifelink-central/> for the length of the subscription purchased.

**Buyer's Duties.** Buyer shall:

- Take reasonable steps to notify building occupants and guests of its emergency response program and how to access it including initial and periodic email reminders, signage and visible placement of AED devices in facilities.
- Use AEDs and/or other medical equipment in accordance with the standing orders, protocols or other instructions as may be provided by Seller whether in written form or otherwise (e.g. instructions from a licensed physician) and assure that AEDs are used and maintained according to the applicable manufacturer's labeling and instructions.
- Notify Seller within 24 hours after an AED is connected to a person— even if a shock is not delivered (an "Event") and keep records of the Event for one year. Buyer shall assist Seller in its review of all Events, and provide Seller with information it reasonably requests regarding such Event.
- Notify Seller immediately when an AED is in need of service.
- Provide Seller with all information that Seller reasonably requests in connection with Seller's performance of medical authorization and direction services for Buyer.
- Notify Seller as soon as possible after a material change in the information submitted to Seller as part of this Agreement.

**Training Requirements.** Buyer understands that Seller recommends potential users of AEDs participate in a nationally recognized AED training session. Buyer understands that such training may be required by the state in which the AED is located in order to receive limited immunity from civil liability under Good Samaritan laws. Seller can provide names of nationally recognized training organizations.

**Good Samaritan Laws.** Good Samaritan protection varies from state to state. Under certain situations, Good Samaritan Laws protect individuals from liability where they render first aid in good faith to persons in need without compensation. Seller makes no representation or warranty that Good Samaritan Laws will protect Buyer and/or its employees or agents. It is up to Buyer to make this assessment.

**Additional Terms for Purchase and Sale of Software Licenses and Software-as-Service.**

In addition to the General Terms above, software and software-as-service is licensed (not sold) pursuant to the following terms:

**Licenses.** Upon full payment, Seller will grant to Buyer the licenses to the software and/or software-as-service ordered by Buyer according to the Software and Hosting Terms & Conditions and applicable Product Addendums located at <https://www.strykeremergencycare.com/software-hosting>. The duration of each license is the term of the subscription purchased by Buyer.

**Term.** Customer's subscription shall commence on the date that Stryker accepts Customer's order ("Commencement Date") and remains in effect for term of the subscription that is specified in the applicable Ordering Document. Customer may terminate this Agreement at any time after the one-year anniversary of the Commencement Date by providing ninety (90) days' prior written notice. In the event of such early termination by Customer, Stryker shall refund the remaining portion of the subscription fee, less an administration fee of 10% of such remaining portion. The remaining portion shall be determined by allocating the subscription fee based on the number of full calendar months remaining until expiration of the term specified in the Ordering Document.

**Automatic Renewal.** This Agreement will automatically renew upon its expiration for a period equal to the Term set forth in the applicable Ordering Document unless it is terminated in writing thirty (30) days prior to the end of the Term. Pricing for automatic renewals shall be based on current list price, less any percentage discount Customer received on its initial order.

**Suspension & Termination of Service.** Stryker may suspend access to Stryker Software if Customer's invoices become thirty (30) days past due. Stryker may terminate this Agreement if Customer's invoices become sixty (60) days past due.

**Availability of Stryker Software.** Stryker will take commercially reasonable steps to ensure that the Stryker Software is available twenty-four (24) hours a day except for scheduled maintenance and backups. Backups will be scheduled at times to provide minimal impact to Customer's business activity. Stryker will take commercially reasonable steps to maintain data integrity in any



backup. However, Stryker will not be responsible for loss of data or data integrity so long as Stryker has performed the backup in a commercially reasonable manner

### **Additional Terms for Purchase and Sale of HealthEMS Patient Management System Extensions.**

In addition to the General Terms above and the Additional Terms for Purchase and Sale of Software Licenses and Software-as-Service, software and HealthEMS Patient Management System Extensions are licensed (not sold) pursuant to the following terms:

**EXTENSIONS.** Stryker may make available optional Extensions designed to extend the functionality of Stryker Software. Extensions may include, but not be limited to, RevNet, HealthEMS Fire, myPatientEncounters, XchangeER, SanFax, Data Xport and ConnectX for integration with third parties. Third parties may include, but not be limited to, billing vendors, payers, clearinghouses, CAD (Computer-Aided Dispatch) vendors, medical devices (such as ECG), HIEs, state reporting systems, and hospitals. Customer is responsible for acquiring licenses and paying fees to applicable third parties as required. Extension descriptions are set forth at <https://www.strykeremergencycare.com/products/data-solutions/>

**RevNet Extension.** RevNet is an optional extension of HealthEMS designed to provide secure, integrated, web-based revenue cycle management functionality for the automated billing and processing of Claims, ERA, Eligibility, Statements and other transactions between HealthEMS and designated payers.

- **Activation Fee.** The RevNet Activation Fee is the one-time fee to allow Customer access and set-up of RevNet.
- **Subscription Fee.** RevNet Subscription Fees are for the use of RevNet Extension functionality and associated customer support. RevNet Subscription Fees are based on Customer projections of Estimated Annual Net Revenue. Customer will be invoiced on the first day of each service month, synchronized to Customer's HealthEMS Subscription. In the event Customer's Actual Annual Net Revenue varies from Estimated Annual Net Revenue, by more than +/- 10%, Stryker reserves the right to make adjustments to the RevNet Subscription Fees provided the Customer is given 45 days prior written notice of such adjustment.
- **Clearinghouse Transaction Fees.** Clearinghouse Transaction Fees are for paper-based transaction services provide as a service by the Clearinghouse. Stryker will invoice Clearinghouse Transaction Fees monthly based on the prior month's actual usage. Stryker has no control over certain government-imposed fees and tariffs (e.g. postal increases or interchange fees) or changes in the rules, regulations or operating procedures of any service supplier or any federal, state or local governmental agency or regulatory authority. Any increase in fees due to these changes are Customer's responsibility. Any such increase shall become effective for Customer on the same day as the increase becomes effective to Stryker, or is otherwise incurred by Stryker.
- The RevNet Extension Term shall coincide with HealthEMS Subscription Agreement Term. Once the Term has commenced, Stryker will invoice Customer RevNet Subscription Fees and Clearinghouse Transaction Fees. Customer may discontinue RevNet Extension service by providing written notification to Stryker at least forty-five (45) days before the desired Termination date.

**HealthEMS Fire Extension.** The HealthEMS Fire Extension is an optional extension of HealthEMS designed to provide a cloud-based, NFIRS-5 compatible Record Management System (RMS) for capturing incidents and managing Customer's fire department.

- **Activation Fee.** The Activation Fee is the one-time fee to allow Customer access and set-up of the HealthEMS Fire Extension.
- **Subscription Fee.** HealthEMS Fire Subscription Fees are for the use of the HealthEMS Fire Extension functionality and associated customer support. Subscription Fees are based on Customer projections of Estimated Annual Run Volume. Customer will be invoiced on the first day of each service month, synchronized to Customer's HealthEMS Subscription. In the event Customer's Actual Annual Run Volume varies from Estimated Annual Run Volume, by more than +/- 10%, Stryker reserves the right to make adjustments to the Fire Subscription Fees provided the Customer is given 45 days prior written notice of such adjustment.
- The HealthEMS Fire Extension Addendum Term shall coincide with HealthEMS Subscription Agreement Term. Once the Term has commenced, Stryker will begin invoicing Customer HealthEMS Fire Subscription Fees. Customer may discontinue Fire Extension service by providing written notification to Stryker at least forty-five (45) days before the desired Termination date.