

Ceterix Orthopaedics Terms and Conditions

All sales of Ceterix Orthopaedics® products (the "Product(s)") to the Customer and Customer's use thereof are expressly conditioned on Customer's acceptance of the following terms and conditions (the "Terms and Conditions"). Ceterix Orthopaedics will not be bound by any terms of Customer's Purchase Order (as defined below) or any terms of any authorized written order (as further described below) that are inconsistent with the terms herein, and in the event of such inconsistency, these Terms and Conditions will control. No Purchase Order or other authorized written order will be binding on Ceterix Orthopaedics until accepted and acknowledged by Ceterix Orthopaedics in writing.

Orders

All orders of Products hereunder must be initiated by a purchase order (a "Purchase Order") or, if the Customer does not issue purchase orders, an authorized written order setting forth the applicable information below. Customer will issue a valid Purchase Order number prior to ordering Product by Purchase Order. Orders of Product may be placed by an authorized representative of Customer by:

1. Emailing Ceterix Orthopaedics at customerservice@ceterix.com
2. Faxing order to 650-618-2779

When ordering, Customer shall specify:

1. Purchase Order number (if applicable);
2. Shipping and billing address;
3. Requested delivery date;
4. Quantities and pricing of Product desired; and
5. FedEx or other freight account number (if FedEx or other carrier freight billing is requested)

All Products are priced by the package quantity. Products can only be shipped in multiples of the listed package quantity.

Payment Terms and Price

Ceterix Orthopaedics will invoice Customer for each shipment of Product. Payments, in U.S. dollars, are due net thirty (30) days after the date of the invoice. Any unpaid due amounts will be subject to interest at 1.5% per month, or, if less, the maximum rate allowed by law. Except as otherwise specifically set out in a written agreement between the parties, Ceterix Orthopaedics reserves the right to change the Terms and Conditions at any time. All prices shown are in U.S. dollars, and will expire thirty (30) days from the date issued, unless withdrawn earlier by Ceterix Orthopaedics. Except as otherwise specifically set out in written agreement between the parties, prices are subject to change without notice, and are exclusive of all taxes, duties, customs, tariffs, charges or other fees now in force or in the future imposed on this transaction by any federal, state or local governmental authority.

Option to accelerate

Ceterix Orthopaedics may by written notice to the Customer demand that the Customer immediately pay all amounts due under any invoice if Ceterix Orthopaedics believes in good faith that the prospect of the Customer paying those amounts has been impaired. By accepting the Products covered by any invoice the Customer is representing that it is not then insolvent within the meaning of Title 11, United States Code, or any similar federal or state law.

Taxes

In addition to the invoice price, Customer shall pay any tax, duty, custom, tariff, charge or other fee now in force or in the future imposed on this transaction by any federal, state or local governmental authority. If Ceterix Orthopaedics is required to prepay, or pay at the time of sale, or thereafter, any such tax, duty, custom, tariff, charge or other fee, Customer will reimburse Ceterix Orthopaedics for such amount.

Delivery; Freight

Delivery of all Products will be made F.O.B. Ceterix Orthopaedics' facility at 6500 Kaiser Dr. Suite 120, Fremont, CA 94555 (the "Facility"), unless the parties specifically agree otherwise in a writing signed by both parties. Delivery shall be deemed to occur when the Products are placed at Customer's disposal at the Facility or at such other shipping point as agreed in a writing signed by both parties, at which time, all title, risk of loss, and risk of damage shall pass to Customer. Ceterix Orthopaedics will not be liable for any failure to deliver any Product by Customer's requested delivery date. Freight and handling charges will be invoiced to the Customer, or will be billed directly to the Customer with the Customer's freight account number if requested. A standard freight charge of \$25.00 per order will be invoiced for all hand-delivered orders.

No Resale; Use of Product

The Products covered by these Terms and Conditions are intended for the Customer's own use and are not for resale. Customer warrants that the Products will at all times be used and operated in the application for which they were intended as indicated in the corresponding instructions for use provided to Customer. Customer shall not alter, modify or make additions or improvements to the Products.

Changes; Product Shortages

Ceterix Orthopaedics may from time to time in its sole discretion: (i) change specifications or designs of the Product; (ii) limit its production of any Product; and (iii) allocate, terminate or limit deliveries of any Product in time of shortage. Ceterix Orthopaedics is not liable for delays in delivery due to Product shortages.

Limited Warranty

Ceterix Orthopaedics warrants that each of its Products, as delivered to the original Customer, will be free from defects in workmanship and materials for a period of 150 days from date of delivery of such Product to Customer ("Warranty Period"). Ceterix Orthopaedics' sole liability and Customer's exclusive remedy for Products that fail to conform to this Company product limited warranty during the Warranty Period ("Nonconforming Product(s)") is limited to repair or replacement of such Nonconforming Products, at Ceterix Orthopaedics' sole option and election. The warranty for the repaired or replaced Product is limited to the scope and duration of the original warranty for the Nonconforming Product. The above warranty is for Customer's sole benefit and is non-transferable. Customer must obtain written authorization for return of any Nonconforming Product ("Written Authorization") and a Returned Materials Authorization number ("RMA #") from a Ceterix Orthopaedics Customer Service representative. For used Nonconforming Product, Ceterix Orthopaedics will send a pre-paid biohazard mailer with RMA # to the Customer for exchange of potentially contaminated Nonconforming Product. Customer is responsible for properly packaging the returned Nonconforming Product to prevent damage and deterioration.

CETERIX ORTHOPAEDICS' WARRANTY IS LIMITED EXCLUSIVELY TO THE EXPRESS WARRANTY SET FORTH IN THIS SECTION OF THE TERMS AND CONDITIONS. ANY OTHER WARRANTIES OF ANY KIND WHATSOEVER INCLUDING WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, EXPRESS OR IMPLIED, ARE HEREBY SPECIFICALLY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW. The foregoing warranty is contingent upon proper use of the Products in the application for which they were intended as indicated in the corresponding instructions for use and will not apply to Products that were modified or otherwise altered or changed without Ceterix Orthopaedics' prior written approval.

Customer Indemnification:

Customer shall indemnify, defend and hold harmless Ceterix Orthopaedics for any costs, expenses, damages, or other losses arising out of (i) any warranty greater in scope or duration than that set forth in the limited warranty above; (ii) failure to disclaim implied warranties and limit remedies and liabilities, by and on behalf of Ceterix Orthopaedics.

Limitation of Liability:

CETERIX ORTHOPAEDICS' LIABILITY TO CUSTOMER ARISING OUT OF OR RELATING TO ANY PRODUCTS SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO CETERIX ORTHOPAEDICS FOR SUCH PRODUCTS. IN NO EVENT WILL CETERIX ORTHOPAEDICS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONTINGENT LOSS OR DAMAGE (INCLUDING WITHOUT LIMITATION LOST OR ANTICIPATED PROFITS AND SAVINGS, OR, DAMAGE TO GOODWILL) ARISING FROM THIS ARRANGEMENT OR ITS PERFORMANCE, OR IN CONNECTION WITH THE PURCHASE, USE OF, OR INABILITY TO USE THE PRODUCTS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER CETERIX ORTHOPAEDICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Returns

All sales of Product are final and no right of return is conferred, as expressly set forth herein. Refer to the Limited Warranty regarding products authorized by Ceterix Orthopaedics to be Nonconforming Product(s). Authorized Nonconforming Product under the Limited Warranty are to be shipped freight prepaid by Customer for returns of any unopened Nonconforming Product.

Return Address:

Ceterix Orthopaedics, Inc.
ATTN: RMA# _____
6500 Kaiser Dr. Suite 120
Fremont, CA 94555

All returns of Nonconforming Product must reference the Written Authorization, and be accompanied by the RMA # along with the original Purchase Order or authorized written order information. Products shipped in error by Ceterix Orthopaedics will receive full credit if returned in unopened package.

In order to obtain Return Material Authorization:

1. Email Ceterix Orthopaedics at customerservice@ceterix.com or
2. Call Ceterix Orthopaedics at 650-241-1748

Include in the communication to customer service:

1. Account name
2. Complete billing and shipping addresses
3. Contact name
4. Contact phone number
5. Product number and lot number being returned
6. Brief explanation of problem

Ceterix Orthopaedics Representatives

For the name and address of your Ceterix Orthopaedics representative, contact the Ceterix Orthopaedics Customer Service Department at 650-241-1748, or via email at customerservice@ceterix.com. Sales personnel may not alter these Terms and Conditions, extend credit, or accept payment for Products.

General

- (a) Ceterix Orthopaedics will be excused from any obligation to the extent performance thereof is rendered impossible due to material shortages, acts of nature, war, terrorism, riots, strikes, governmental acts, acts of God, inability to obtain labor or materials through its regular sources, regulatory or carrier issues or any circumstances beyond its reasonable control.
- (b) THESE TERMS AND CONDITIONS ARE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. The federal and state courts within the State of California will have exclusive jurisdiction to adjudicate any dispute arising out of these Terms and Conditions of Sale.
- (c) None of the Products or underlying information or technology may be exported or reexported, directly or indirectly, contrary to US law or US Government export controls.