

ITAMAR MEDICAL GENERAL TERMS AND CONDITIONS

The following general terms and conditions, together (if applicable) with the specific terms and conditions detailed in a product or services agreement, sales quote or purchase order (“**Purchase Order**”) (collectively the “**Terms**”), shall apply to the sale of products, services, and any consumables (the “**Products**”) by Itamar Medical, Inc. (the “**Company**”) to the purchaser (including its affiliates) (the “**Customer**”).

1. **Scope.** All sales by Company of any of its Products to Customer and all related Services are subject to these Terms. Customer hereby acknowledges and confirms that no terms or conditions contained in any order form submitted by Customer that varies from, or conflicts with, any of these Terms shall become part of these Terms unless it is expressly accepted in writing and signed by Company’s authorized representative. In these Terms, “**Services**” shall include, without limitation, the Licensed Software (as detailed below in Section 15); provision of customer support; and, provided that Company processes Protected Health Information (“**PHI**”) on behalf of Customer, the use or disclosure of PHI in a manner permitted by the terms of Company’s business associate agreement (“**BAA**”) with Customer, where applicable. Company reserves its right to change or broaden the Services from time to time, at its discretion.
2. **Delivery and Acceptance.** Delivery of all Products shall be made *Ex-Works* Company’s facilities (Incoterms 2020) within fourteen (14) business days of Company’s acceptance of the Purchase Order. Company shall have the right to deliver Products earlier than any agreed upon delivery date. Company reserves the right to make deliveries in installments. Customer shall pay all necessary shipping and receiving fees associated with the Products.
3. **Risk of Loss, Title, and Security Interest.** Risk of loss to Products and transfer of title shall pass from Company to Customer upon transport of the Products from Company’s facilities.
4. **Prices and Terms of Payment.** The prices of the Products and terms of payment shall be as detailed in the agreement between the parties or Purchase Order. Unless otherwise set forth in the agreement between the parties or Purchase Order, Customer shall pay for the Products within thirty (30) days of invoice date. All payments shall be made in USD and all sales are final. In the event Company institutes legal action against Customer to collect delinquent accounts, Customer agrees to reimburse Company for reasonable legal fees and costs of any legal action taken by Company. In addition, all late payments shall be subject to a late payment penalty calculated at the rate of the higher of: (i) annual rate of 10%, compounded monthly; or (ii) the highest amount permitted by applicable law. All payments shall be made without set offs or deductions.
5. **Taxes and Additional Costs.** Prices are exclusive of any applicable goods and services tax, harmonized sales tax, sales, use, value added, or other similar taxes, fees, levies, duties, and other governmental charges. Each party shall bear its own tax liabilities in connection with these Terms and to the extent a jurisdiction provides a tax exemption to a Customer or on a product-specific basis, Customer and Company will only be responsible for the taxes associated with such upon Company’s receipt of the tax-exempt certificate. If any payment made by Company or Customer as a consequence of a breach, modification or termination of these Terms is deemed by any applicable law to include a value-added or multi-staged tax, the amount of such payment shall be increased accordingly and borne by the breaching party.
6. **Customer Default.** If Customer is in default on any provision of these Terms, Customer’s payment obligations to Company shall immediately become due and payable, and Company may, without notice, decline to make further shipments or deliveries or terminate Customer’s outstanding Purchase Order(s), without affecting any other right or remedy Company may have, including, but not limited to, any right to cancellation charges. For purposes of these Terms, a “default” shall occur if Customer is more than thirty (30) days delinquent in any payment to Company, becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statutes, has a receiver appointed or makes an assignment for the benefit of creditors, or is otherwise unable to meet its financial obligations as they become due. Continued shipment by Company following Customer’s default, which shall be at Company’s sole and exclusive discretion, shall not constitute a waiver of any of its rights nor shall it affect Customer’s legal obligations hereunder.
7. **Customer’s Representations and Warranties**
 - 7.1. Customer shall use the Products solely in accordance with the operation manual available on Company’s website at <https://www.itamar-medical.com/support/manuals/>, which may be modified from time to time by Company (the “**Operation Manual**”) and any updates as shall be provided by Company. Customer shall also ensure, that Customer’s patients are provided with instructions, based on the Operation Manual, for proper use of the Products.
 - 7.2. Customer shall use the Products only in the normal course of sleep testing and shall not sell, resell, lend, assign, convert, or otherwise transfer them to any third party, except as expressly permitted herein and the License Agreement nor shall Customer use the Products on any devices not covered under these Terms (“**Prohibited Activities**”).
 - 7.3. Customer shall have full and sole responsibility for the proper safeguarding and preservation of the Products. Customer shall promptly and without any undue delay notify Company of any misuse, malfunction, or problems related to the Products and shall cease the use and shall instruct the End Users to cease the use of such Products until they are repaired or replaced.
 - 7.4. The Products were either evaluated by or demonstrated to and selected by Customer and Customer is satisfied that the Products are suitable for Customer’s purposes.
 - 7.5. Customer has not relied upon Company’s skill or judgment in the selection of the Products as suitable for any particular purpose.
 - 7.6. Customer has full right and authority to enter into these Terms and to perform its obligations hereunder.
 - 7.7. Customer shall: (a) comply with all applicable laws and regulations, accreditation standards, and third-party payor requirements applicable to the Products and the Services performed using the Products; (b) maintain all licenses, permits, registrations, and accreditations as required to perform its obligations hereunder, including, without limitation, the purchase and use of the Products and any applicable requirements to maintain distribution records, complaint handling records, and recall procedures; and (c) only use the Products pursuant to these Terms.
 - 7.8. Customer is solely responsible for providing all medical oversight, training and supervision for all services performed using the Products.

7.9. Customer further represents and warrants that (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, including all states where it provides medical services to patients; (b) it shall comply with applicable laws and regulations, requirements of third-party payors, including but not limited to the Medicare Anti-Markup Rule and comparable requirements, professional standards and policies, billing and conflict of interest policies, and the standard of care of the medical community in which the patients reside; (c) it shall obtain or ensure that an order, prescription or other applicable written direction from a physician who is licensed in the state where a patient resides is obtained prior to using the Products for that patient; and (d) neither it nor any of its employees, contractors, and agents are, or have been, debarred or suspended under the US Federal Food, Drug, and Cosmetic Act or any comparable laws and regulations of any other applicable jurisdiction or suspended or excluded from, or otherwise ineligible to participate in, any federal or state healthcare program or non-procurement program, including the Medicare Anti-Markup Rule and comparable requirements.

8. **Confidentiality and Intellectual Property**

8.1. Company and Customer acknowledge that in the course of performing their duties under these Terms each may obtain access to Confidential Information (as defined below) of the other. Neither Company nor Customer may disclose or use the Confidential Information of the other during the term or at any time thereafter except as contemplated by these Terms, as expressly permitted by the written consent of the other, or as required by law. Upon termination of the commercial agreement between Company and Customer for any reason, each shall return to the other party all Confidential Information of the other. For purposes of these Terms, “**Confidential Information**” means all documents, materials, or other information which contain or include proprietary information, and which are valuable to Company or Customer, including but not limited to the terms of the commercial agreement between Company and Customer. Notwithstanding the foregoing, Confidential Information shall not mean: (i) any information lawfully in the possession of the receiving party before disclosure thereof to such party by the party to whom the Confidential Information relates, (ii) any information received by a party from a third party unless the receiving party has reason to believe that the third party is obligated to maintain the confidentiality of such information, or (iii) any information available to the public other than by reason of a breach of these Terms. To the extent Confidential Information is required to be disclosed by applicable law or legal process, the receiving party shall promptly notify the disclosing party in order to allow the disclosing party the opportunity to contest such disclosure and the receiving party shall further cooperate with the disclosing party’s efforts, at the expense of disclosing party, to oppose or narrow such disclosure or obtain a protective order for such Confidential Information.

8.2. It is expressly understood and agreed by Customer that the Products and any Services provided by Company as well as any customizations, derivatives, modifications, improvements of the Products and Services is and/or

incorporates the confidential information, know-how, knowledge, ideas, inventions, works, designs, works of authorship, technology, and other technology, intellectual property, and intellectual property rights of Company, and Company Data as defined in Section 8.3, whether or not copyrighted, patented, or registered, (all of which are hereafter referred to as the “**Technology**”). The Technology is, and shall always remain, the exclusive property of Company. Customer shall have a continuing obligation to maintain the confidentiality of the Technology until such time that it becomes publicly known through no fault of Customer. Customer agrees not to use in any way or form, any part of the Technology for any purpose other than its intended use. Customer shall not replicate, reproduce, alter, modify, disassemble, decompile, reverse engineer, create derivative works from misuse, incorporate into another product, enhance, change, copy or attempt to copy, transfer or disclose to third parties or perform any similar type of operation on Products or the Technology or any part thereof, in any fashion or for any purpose, or otherwise, either directly or indirectly, infringe, violate, or misappropriate Company’s rights with regard to the Technology or Products. By taking delivery of or using the Products, Customer shall not become entitled to any proprietary or non-proprietary rights in or to the Technology or the Products.

8.3. **Ownership of Data.** With regard to Customer and Company, Company shall have all ownership rights and title in any metadata, usage data, technical device data, information, consumer behavior data, statistical and/or analytic data or other related content generated by or arising from the use of the Products and/or Licensed Software during the Services including but not limited to the devices’ serial numbers, sleep test status, codes, and volumes (“**Company Data**”). Without derogating from the above and for the avoidance of doubt, any clinical recordings, sleep test results, and any other clinical data collected from End Users through Customer’s use of the Products and/or Licensed Software during the Services (“**Clinical Data**”) shall be owned by Customer. Unless otherwise agreed by the parties in the BAA, Company shall have all ownership rights and title to de-identified Clinical Data.

9. **Data Protection**

9.1. Company has no contractual relationship with individuals who use the Products (“**End Users**”). Customer shall be responsible to obtain all required consents from, and provide all required notices to all End Users to allow for the processing of their Personal Information (as such term is defined in applicable data protection laws and regulations) for the purposes contemplated by these Terms.

9.2. In order to be compliant with any and all applicable data protection laws including, but not limited to: the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and their implementing rules and regulations codified at 45 C.F.R. Parts 160 and 164 (“**HIPAA**”), and any amendment thereto, and any regulation promulgated thereunder, the parties shall enter into the BAA.

ITAMAR MEDICAL GENERAL TERMS AND CONDITIONS

- 9.3. In the event Customer uses zzzPAT or a third party management platform, in lieu of Company's CloudPAT, in connection with performance of the Services pursuant to these Terms, Customer acknowledges that Company shall not have access to, receive or otherwise process any PHI of Customer, as defined under HIPAA.
10. **Limited Warranty**
- 10.1. Company hereby warrants to Customer that each Product delivered hereunder shall be free of defects in material and workmanship under normal use and service for a period of twelve months from the date of delivery (the "Warranty Period").
- 10.2. If, during the Warranty Period, a Product or any component of a Product becomes defective by reason of material or workmanship, and provided Customer immediately notifies Company in writing of such defect, Company may, at its option, supply a replacement, or request the return of the Products or a component of the Products to Company's premises for repair in accordance with Company's warranty and repair procedures.
- 10.3. This warranty shall not apply to any Products or component parts, that Company determines (a) have been damaged by improper operation, tampering with, improper maintenance, misuse, accident, or neglect, or were subject to any of the Prohibited Activities; (b) have been used in a manner not in accordance with the applicable laws or the instructions provided by Company, including without limitation, in accordance with the Operation Manual; (c) have had changes or repairs made not by Company or without written authorization of Company to do so; (d) were incorporated into another product without the prior written approval of Company; or (e) were stored in conditions or for a period of time contrary to the guidelines of Company.
11. **LIMITATION OF LIABILITY**
- 11.1. THE PRODUCTS, LICENSED SOFTWARE, AND SERVICES ARE PROVIDED "AS-IS". EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, COMPANY MAKES NO WARRANTIES OF ANY KIND HEREUNDER, WHETHER EXPRESS, IMPLIED, OR ARISING FROM TRADE USAGE, CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TRADE USAGE, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF INFORMATION, LACK OF NEGLIGENCE AND CORRESPONDENCE TO DESCRIPTION, AND TITLE. WARRANTIES ARE EXTENDED SOLELY TO CUSTOMER. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY AND ALL WARRANTIES, AND COMPANY'S TOTAL LIABILITY OF ANY KIND UNDER OR ARISING OUT OF THESE TERMS (WHETHER BASED IN TRADE USAGE, CONTRACT, TORT, OR OTHERWISE) IN RELATION TO THE PRODUCTS, LICENSED SOFTWARE, AND SERVICES PURSUANT TO THESE TERMS, THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES BY COMPANY OR ANY OF ITS AFFILIATES OR REPRESENTATIVES SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCTS, LICENSED SOFTWARE OR SERVICES.
- 11.2. OTHER THAN AS SET FORTH IN SECTION 11.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR ANY OF ITS AFFILIATES OR REPRESENTATIVES BE LIABLE TO CUSTOMER IN THE AGGREGATE FOR DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER UNDER THE COMMERCIAL AGREEMENT EXECUTED BETWEEN COMPANY AND CUSTOMER OR PURCHASE ORDER, AS APPLICABLE, DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM(S). THE FOREGOING LIMITATION ARISING OUT OF THESE TERMS SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, CIVIL LIABILITY, OR OTHERWISE.
- 11.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF THESE TERMS, INCLUDING, WITHOUT LIMITATION, ANY PUNITIVE, DIRECT (OTHER THAN THE REPAIR OR REPLACEMENT OF THE PRODUCTS, LICENSED SOFTWARE, OR SERVICES PURSUANT TO SECTION 11.1 OR THE DAMAGES OR LOSS LIMITED IN SECTION 11.2), INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, REPUTATIONAL HARM, OR LOSS OF DATA), WHETHER BASED IN TRADE USAGE, CONTRACT, TORT OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
12. **Force Majeure**. Except for Customer's payment obligations, no default shall be caused by, and the parties shall not be responsible to one another for any loss, damages, or penalty resulting from any delay or failure to perform the obligations of a party hereunder that are due to any cause beyond a party's control. Both parties shall not be liable to one another for any delay(s) or failure(s) to perform their obligations hereunder due to strikes, political unrest, financial distress, war, civil disorder (unrest and disturbance), threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, acts of terrorism, natural disasters, Pandemic, epidemic and analogue events, acts of God, the scarcity of the basic elements necessary to manufacture the Products or because of any governmental restriction whatsoever upon the possession or distribution of such basic elements.
13. **Compliance**. Company is committed to conducting its business in an ethical, legal, and socially responsible manner and expects similar high ethical values of integrity, professionalism, loyalty, and respect both for person and environment from everyone with whom Company has commercial dealings. Customer undertakes to conduct its business in compliance with all applicable national and international laws and regulations, including without limitation the Federal Anti-kickback Statute, Physician Self-Referral Law (Stark Law), Foreign Corrupt Practices Act, and any regulations under these statutes, and any similar laws or regulations in applicable jurisdictions, including

without limitation with those concerning corruption, bribery, fraud, and/or unfair and/or prohibited business practices.

14. **Export Control.** Customer agrees to comply with all United States and other government export controls laws including but not limited to the Export Administration Regulations (“EAR”, 15 CFR. 730-774) administered by the U.S. Department of Commerce, Bureau of Industry and Security and the International Traffic in Arms Regulations (“ITAR”, 22 CFR 120-130) administered by the U.S. Department of State, Directorate of Defense Trade Controls.

15. **Licensed Software.** If Customer opts to access and use Company’s software, including but not limited to Company’s management platforms CloudPAT and/or zzzPAT and the associated media and/or any other software and accompanying materials provided to Customer by Company (collectively, the “**Licensed Software**”), Company shall grant Customer a non-transferable, revocable, non-exclusive, non-sublicensable, royalty-free license to the applicable Licensed Software, all subject to the provisions set forth herein, including without limitation as set forth in the License Agreement available on Company’s website at <https://www.itamar-medical.com/wp-content/uploads/2025/02/License-Agreement.pdf>.

16. **Terms Applicable to Products Purchases**

- 16.1. **Disposable Products.** It is hereby clarified that the WatchPAT ONE is a disposable Product, and it is hereby agreed that any terms of any other commercial agreement between the parties that by their nature apply to reusable Products, such as, without limitation, pricing or RMA terms, shall not apply to the purchase of WatchPAT ONE and are hereby expressly disclaimed.
- 16.2. Customer is expressly prohibited from offering to resell or reselling any of the Products and/or Services including but not limited to a commercial or governmental customer as part of any commercial transaction or government solicitation.
- 16.3. Customer shall only be permitted to market home sleep apnea test interpretation services using the Products subject to the following terms: (1) Customer complies with the representations and warranties detailed in these Terms; (2) to the extent Customer uses subcontractors or third parties’ platforms (such as Amazon) for marketing its services using the Products, Customer shall comply with any requirements of such subcontractors and/or third parties and Customer shall ensure that any subcontractors and/or third parties comply with the provisions of these Terms; (3) the header of any such marketing materials must include language that reflects clearly that Customer is marketing its own services in connection to home sleep apnea tests and not the Products themselves; and (4) as part of the description of the services offered by Customer, it must be clarified that these services are not provided by Company nor are they for the sale of any of Company’s Products or Services. The subcontracting of any of Customer’s obligations under these Terms shall not relieve Customer from any obligation or liability under these Terms. Customer shall remain responsible and shall be liable for subcontractor’s and/or third party’s acts performed by each subcontractor and/or third party and their respective agents and employees to the same extent as if those acts were performed by Customer. Their work shall be deemed to be work performed by Customer.

17. **Marketing and Trademarks**

- 17.1. “Trademark” shall refer to the trademarks WatchPAT ONE, WatchPAT, CloudPAT, EndoPAT and any other of Company’s or its affiliates’ trademarks.

- 17.2. Customer shall not use Company’s name, logo, Trademarks, trade names, trade dress, design, images, look and feel, or other proprietary rights (together “**Proprietary Rights**”) in any of its advertising, promotional communications, publications, or other work without the prior written permission of Company. Any such use shall be solely for the purpose of identifying Company as the source of the referenced Product(s) and shall not imply any other relationship between Company and Customer. Customer must not remove, obfuscate, deface, cover or alter any Company’s Trademarks or other Proprietary Rights nor add any Company’s mark or other mark to any materials provided by Company nor to any Product or its packaging. Neither Customer nor its agents shall register or use any trademark that may cause confusion with Company’s Proprietary Rights.

18. **Governing Law; Jurisdiction.** These Terms are governed exclusively by the laws of the State of Georgia, United States, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any of the transactions contemplated hereunder. Any proceeding brought by a party arising out of, under or relating to any dispute relating to these Terms, shall be submitted to the exclusive jurisdiction of the competent courts in the city of Atlanta, Georgia, and by signature on a Purchase Order, the signing party hereby irrevocably consents to the exclusive jurisdiction of such venue.

19. **Incorporation by Reference.** These Terms, including but not limited to Sections 8, 10, 11, 13, 15, 18, 21, and 22, shall be incorporated into and deemed a part of Company’s and Customer’s Cost Per Test, WatchPAT ONE Auto Ship, Consumable Auto Ship, WatchPAT Direct Program, Business Associate, License, and Interpretation Service Agreements (where applicable). In the event of an express conflict between these Terms and any other agreement, these Terms shall control.

20. **Relationship of the Parties.** The relationship of the parties established by these Terms shall be that of independent contractors and nothing contained in these Terms shall be construed to constitute the parties as principal and agent, employee and employer, franchisor and franchisee, partners, co-owners, or otherwise as participants in a joint venture or common undertaking.

21. **Obsolescence; Product Recall**

- 21.1. Company reserves the right to discontinue the production of any of its Products including, without limitation, spare parts and/or any of its Licensed Software and/or the provision of any of its Services. Company agrees to provide Customer with written notice prior to such discontinuation. Once a product is determined by Company to be obsolete, Company shall not be obligated to obtain replacement parts and/or provide technical support.

- 21.2. In the event of a recall, Company shall notify Customer and Customer shall fully cooperate with Company, including (i) immediately discontinuing the use of the relevant Product(s); (ii) returning or disposing the relevant Product(s) in accordance with Company’s instructions; and/or (iii) providing any necessary

ITAMAR MEDICAL GENERAL TERMS AND CONDITIONS

documentation or assistance requested by Company to facilitate the recall process.

22. **General.** No rights or obligations of Customer under these Terms may be assigned or otherwise transferred by Customer, in whole or in part, without the express written consent of Company. Company may assign its rights and obligations herein to any third party at its discretion. Section headings herein, are used for convenience only and shall not otherwise affect the provisions of these Terms. If any provision of these Terms is held to be invalid or unenforceable for any reason, such determination shall not affect the validity or enforceability of any of the remaining portions hereof. Failure of either party to insist upon strict performance of any of these Terms hereof, or delay in exercising any remedy, shall not constitute a waiver of these Terms nor shall it constitute a waiver of any default or remedy hereunder. No remedy or election hereunder by Company shall be deemed exclusive, but shall, whenever possible, be cumulative with other remedies provided herein or available at law or in equity. Customer shall pay Company all costs and expenses, including reasonable attorney's fees, incurred by Company in exercising any of its rights or remedies or enforcing any provisions of these Terms. These Terms are a complete and exclusive statement of the understandings

between the parties regarding the subject matter hereof. These Terms supersede and replace all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, written or oral. All covenants, obligations, representations, and provisions of these Terms which by their nature are intended to survive the expiration or termination of these Terms shall so survive. These Terms shall be for the benefit of the parties hereto and their successors, beneficiaries, or assignees. Company may however change, amend or add to these Terms at any time.

23. **Notices.** All notices shall be in writing and shall be hand-delivered, sent by courier, certified or registered mail, return receipt requested, or any nationally recognized express mail service, or via email to the addresses set forth in the Purchase Order or such other address as the parties shall notify the other in accordance with this Section. Notices shall be deemed delivered upon receipt if delivered by hand, overnight courier service, or email, or on the date set forth in the return receipt if sent by certified mail, return receipt requested.