



# HAEMONETICS®

THE Blood Management Company™

Haemonetics Corporation  
400 Wood Road  
Braintree, MA  
02184  
United States  
[www.haemonetics.com](http://www.haemonetics.com)

Tel:781-848-7100  
Fax:781-348-7738

## SUPPLY AGREEMENT TERMS AND CONDITIONS

### 1. PURCHASES

#### 1.1 General

Haemonetics agrees to sell to Customer the consumable supplies listed in the Consumable Matrix (the "Consumables"). Haemonetics equipment and / or the Consumables may also be referred to herein as the "Products".

#### 1.2 Initial Prices

The prices of the Consumables are listed in the Consumable Matrix and are in effect for 12 months from the Effective Date.

#### 1.3 Pricing Changes

Haemonetics may increase prices of the Consumables due to changes in material and production costs. Such increase may occur only once in each 12 month period established by the Effective Date and each anniversary thereafter (each such 12 month period, a "Contract Year"). Haemonetics shall provide Customer with no less than 30 days prior written notice of such price increase. Such increase shall be based on changes in the Producer Price Index WPSSOP2000PPI - Intermediate Materials, Supplies, and Components during the 12 months immediately prior to notification.

### 1.4 PURCHASE COMMITMENTS

#### 1.4.1 Commitment

During each Contract Year, Customer agrees to purchase the quantity of Consumables listed under "Annual Commitment" in the Consumable Matrix (the "Annual Commitment"). During the Initial Term, the Customer agrees to purchase the total quantity of Consumables listed under "Total Commitment" in the Consumable Matrix (the "Total Commitment"). Failure to meet the Annual or Total Commitment is a material default.

#### 1.4.2 Commitment Deficit

Haemonetics has the right to review and solely determine the quantity of Customer's purchases under this Agreement. If Customer purchases less than the applicable Annual Commitment in any Contract Year, Haemonetics may adjust the price for such Consumable to reflect the lower volume. If Customer does not meet its Annual Commitment in the final Contract Year, Customer



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shall pay an amount equal to applicable purchase price multiplied by the Annual Commitment deficit

### **1.4.3 Changes to Customer**

Neither Annual nor Total Commitments will be reduced absent mutual written agreement of the parties.

## **2. PAYMENT AND DELIVERY TERMS**

### **2.1 Payment Terms**

Payment is due Net 30 days from date of invoice. Amounts which are not paid when due are subject to a service charge of 1½% per month (18% simple interest per annum) on the outstanding principal balance. Payment for amounts due is accepted by check, ACH or wire transfer.

### **2.2 Shipment Stoppages**

If Customer is in violation of the payment terms, then Haemonetics may discontinue filling any orders until full payment of any past due amounts, require a full or partial payment in advance, suspend its performance until any past due payments are made, or cancel the Customer's order(s).

### **2.3 Taxes**

Customer is responsible for the payment of any taxes assessed on the transactions contemplated by this Agreement. Customer shall pay when due all such taxes, whether due from Customer or collected by Customer, such as sales or withholding taxes. Customer shall provide all applicable tax exemption certificates immediately upon Haemonetics' request.

### **2.4 Delivery**

Delivery is F.O.B. Origin, Haemonetics place of shipment. Freight expenses are Prepay & Add and handling expenses are paid by Customer.



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## 3. TERM

### 3.1 Term

The term of this Agreement begins on the Effective Date and continues in effect for the Term first set forth in Consumables Matrix (the "Initial Term"). Thereafter, the Agreement automatically extends for successive 12 month periods (each, an "Extension Term"), and together with the Initial Term, the "Term"). This Agreement may be terminated by either party by giving written notice of its intention not to extend the Agreement beyond its then current term not later than 30 days prior to expiration. All terms and conditions of this Agreement shall remain in effect during any Extension Term.

## 4. WARRANTY

### 4.1 Proper Use

Customer shall use and store the Products in a careful and proper manner consistent with Haemonetics' written instructions. Customer shall comply with all federal, state, municipal, and other applicable laws, ordinances, and regulations relating to the possession, maintenance, storage, use or disposal of the Products. Failure to use the Products in compliance with this clause voids all warranties.

### 4.2 Consumables Warranty

Haemonetics warrants that the Consumables when delivered F.O.B. Haemonetics' place of shipment (a) are free from material defects in material and workmanship, and (b) have been manufactured in a manner consistent with the United States Food and Drug Administration's current Good Manufacturing Practices. These warranties apply until the labeled expiration date. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 4.3 Warranty Claims

All warranty claims must be made in writing within 30 days of Customer's discovery of alleged defect. Such claims must be verified by an authorized representative of Haemonetics. On verification of the claims, Haemonetics shall correct such nonconformity by repair or replacement of the defective Consumables. Prior to returning any defective Consumables, Customer must obtain shipping instructions from Haemonetics.



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## 4.4 Limitation of Liability

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF A HAEMONETICS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT AT HAEMONETICS' ELECTION. FOR ALL OTHER CLAIMS, HAEMONETICS' LIABILITY IS LIMITED TO AMOUNTS RECEIVED FROM CUSTOMER IN THE 12 MONTHS PRECEDING THE CLAIM. EACH PARTY HEREBY WAIVES ANY IMPLIED REMEDIES, WARRANTIES, OR GUARANTIES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR TORT DAMAGES, HOWEVER OCCASIONED.

## 5. DEFAULTS

### 5.1 Notice and Cure Period

Upon the occurrence of a material default under this Agreement, the non-defaulting party will notify the other party in writing of the material default and the defaulting party will have 10 days to cure such material default. In the event the material default is not cured within 10 days, the non-defaulting party shall have the right to terminate this Agreement.

## 6. SECURITY AGREEMENT

### 6.1 Security Agreement

To secure the payment and performance of this Agreement, Customer hereby grants to Haemonetics a purchase money security interest in the Consumables sold hereunder until full payment for such Consumables (including deferred payments whether or not evidenced by a note or otherwise) has been received by Haemonetics. Haemonetics may file such financing statements and take all reasonable or necessary actions to perfect or protect Haemonetics' security interest in the collateral.

## 7. GENERAL

### 7.1 Confidentiality

Neither party, during or after the Term, may divulge or convey, any sensitive, confidential or proprietary information, knowledge or data obtained in connection with this Agreement, provided such information is marked confidential or if disclosed orally is identified in writing as confidential within 5 business days. Notwithstanding the foregoing, a party may disclose confidential information to affiliated entities or as required by law.



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## **7.2 Intellectual Property Ownership**

Haemonetics retains all rights to intellectual property developed by Haemonetics in preparing any and all reports or analysis for Customer. All of the reports, specifications, computer software, and documents created by Haemonetics in the course of their work together remain the exclusive property of Haemonetics and confidential information protected by this Agreement.

## **7.3 Obligation to Report**

The Customer acknowledges the prices provided under this Agreement may include discounts that Customer must report to certain health care payers.

## **7.4 No Resale**

Customer shall not resell Products to any third parties, unless Customer provides services to third parties and only then if a Product is part of such services.

## **7.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the subject matter herein. All prior proposals, understandings, course of conduct and writings by and between the parties and relating to the subject matter are superseded. The terms of this Agreement shall govern in the event of a conflict with the provisions of any other document; including without limitation any purchase order or invoice. If Customer issues a purchase order for Products, Haemonetics specifically rejects all terms and conditions of such purchase order except for the quantity ordered.

## **7.6 Amendments**

The terms of this Agreement may only be amended in a writing duly executed by all parties which specifically states that it modifies this Agreement.

## **7.7 No Waiver**

No provision of this Agreement is waived by any party unless such waiver is in a writing duly executed by the party to be charged with such waiver and such writing recites specifically that it is a waiver of the terms of this Agreement. The waiver by either party of any breach of this Agreement shall not be construed to act as a waiver of any subsequent breach.



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## 7.8 Remedies

The failure or delay of either party to exercise any right, power or remedy shall not operate as a waiver thereof, and all rights, powers and remedies will continue in full force and effect. All rights, powers and remedies of both parties provided for in this Agreement are cumulative and non-exclusive, except as otherwise expressly provided.

## 7.9 No Invalidity

If any provision of this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of any such provision in every other respect and the remaining provisions of this Agreement shall not be impaired in any way.

## 7.10 Successors and Assigns

This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

## 7.11 Compliance with Law

Each party shall comply with all applicable laws, statutes, rules and regulations of the United States of America and its constituent states, including, without limitation, the Arms Export Control Act, the Export Administration Act, the Foreign Corrupt Practices Act, U.S. economic sanctions regulations, U.S. anti-boycott laws and any applicable laws, regulations or rules respecting payments to healthcare providers.

## 7.12 Medicare

Each party represents, warrants and covenants that no payment shall be made at any time, directly or indirectly, to any physician or other person or entity as an inducement or remuneration for the utilization of the Equipment or Consumables, and neither party shall take any action in violation of any applicable Federal, state or local laws, rules or regulations including, without limitation; 42 U.S.C. § 1395nn (prohibition on certain referrals); 42 U.S.C. § 1396h(a) (making false statements or representations in application for Medicaid payments); 42 U.S.C. § 1320a-7b(a) (making or causing to be made false statements or representations); or 42 U.S.C. 1320a-7b(b) (illegal remunerations), as any of the foregoing may be amended from time to time.

## 7.13 Governing Law

This Agreement shall be governed and interpreted in accordance with the laws of Massachusetts except its rules in regard to choice



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of law.

## 7.14 Force Majeure Events

Failure of either party to perform its obligations under this Agreement shall not subject such party to any liability to the other party if such failure is caused by any cause beyond the reasonable control of such nonperforming party, including, but not limited to, acts of God, fire, explosion, flood, drought, war, riot, sabotage, terrorism, embargo, strikes or other labor trouble or a national health emergency. Such force majeure event shall not excuse payment for products or services previously delivered.

## 7.15 Survival

The provisions that survive termination and expiration of this Agreement are those clauses that address the parties' rights and obligations with respect to payment, warranties, limitation of liability, confidentiality and those others which by their nature are intended to survive, including those clauses titled "Payment Terms", "Limitation of Liability", and those clauses under the heading "General".

## 7.16 Notice

Any notice under this Agreement shall be deemed effective if delivered in writing (a) personally, (b) by certified mail, (c) by a courier who provides confirmation of delivery.

If to Haemonetics: Thomas McCurdy  
Vice President-Patient Division  
Haemonetics Corporation  
400 Wood Road  
Braintree, Massachusetts 02184

With a Copy:  
Manager, Contracts Administration, N.A.  
Haemonetics Corporation  
400 Wood Road  
Braintree, Massachusetts 02184