

## Applied Medical Standard Terms and Conditions of Sale

All orders, shipments, sales, and uses of Applied Medical Distribution Corporation ("Applied Medical") medical device products ("Products") and electrosurgical capital equipment ("Equipment") in the United States are subject to the terms and conditions provided on this webpage (collectively, "Terms and Conditions"), unless set forth in a separate written agreement with the ordering customer ("Customer") or Customer's group purchasing organization executed by Applied Medical or in documentation provided by Applied Medical with the Products or Equipment specifically referencing these Terms and Conditions. These Terms and Conditions shall apply in countries other than the United States if referred to in applicable documentation expressly agreed to by Applied Medical or one of its affiliates, but only to the extent not prohibited by applicable laws. These Terms and Conditions may be modified from time to time by Applied Medical upon posting to this webpage. By ordering and by receiving Products or Equipment, Customer accepts these Terms and Conditions in effect as of the date Applied Medical receives the applicable order. These Terms and Conditions shall supersede all prior and contemporaneous oral or written agreements, understandings, proposals, and communications pertaining to the subject matter hereof.

### General Terms

1. Orders: All orders are subject to acceptance by Applied Medical. Applied Medical reserves the right to reject any order or limit the quantities provided under any order. All orders are not deemed accepted until shipment by Applied Medical.
2. Payment Terms: Payment terms are net thirty (30) days from invoice date. If any amounts become overdue, in addition to Applied Medical's remedies at law, Applied Medical may, in its sole discretion, charge a late payment fee of up to two percent (2%) per month and change the payment terms to pre-payment for all future shipments.
3. Shipping: All shipments are made FOB Destination (Incoterms 2020), Freight Prepaid and Added. Applied Medical will charge Customer for all shipping and handling costs as a separate line item. Applied Medical will select the carrier, unless otherwise agreed to in writing by Applied Medical. Title to Equipment provided to Customer on a right-to-use, loan, rental, or other non-purchase basis stays with Applied Medical. Risk of loss of Products and Equipment transfers to Customer upon delivery to Customer or any carrier selected by Customer. Applied Medical reserves the right to reject requests to bill shipping charges to non-Applied Medical carrier accounts.
4. Price, Product, and Equipment Changes: Prices are subject to change without prior notice. Applied Medical may update and improve its Products and Equipment periodically and may discontinue or modify Products and Equipment at any time. Products and Equipment may not be available in all countries. If available, Products and Equipment may be subject to varying government approvals, market clearances, or restrictions, or be for a different use or indication.
5. Complaint Reporting: Customer shall report all Products and Equipment complaints, including any adverse events or limited warranty issues, to Applied Medical within forty-eight (48) hours of use of the Products or Equipment by emailing to [customersatisfaction@appliedmedical.com](mailto:customersatisfaction@appliedmedical.com) (<mailto:customersatisfaction@appliedmedical.com>).
6. Taxes: All applicable taxes will be charged unless Customer is a tax-exempt entity and Customer provides appropriate tax exemption certificates.
7. Third Party Distributors or Resellers: Under most circumstances Applied Medical does not use third parties to distribute or resell Products or Equipment in the United States.
8. Confidentiality: Applied Medical's confidential information, including pricing, provided to any customer shall not be disclosed, intentionally or unintentionally, to any third party for any reason without the prior written permission of Applied Medical, except for attorneys or accountants who must be bound to keep the information confidential.
9. Recall: In the event of a recall or market withdrawal of Products or Equipment by Applied Medical, third-party manufacturer, or regulatory authority, whether voluntary or involuntary, Applied Medical or the third-party manufacturer shall be responsible for the conduct of any such recall or withdrawal; however, Applied Medical and Customer will discuss and cooperate with each other as to the communications with regulatory authorities in order to minimize the risk to Applied Medical and Customer of a failure to follow legal requirements for such recall or withdrawal. Applied Medical and Customer shall maintain complete and accurate records of all Products and Equipment for recall and withdrawal purposes. Applied Medical shall not be responsible for any costs or expenses incurred by Customer as a consequence of such recall or withdrawal.
10. Governing Law and Jurisdiction: These Terms and Conditions are governed by and construed under the laws of the state of California. The courts within California shall have exclusive jurisdiction to adjudicate any dispute arising out of these Terms and Conditions. Customer hereby expressly consents to (i) the personal jurisdiction of such courts, (ii) service of process being affected upon it by registered mail sent to the address on file with

Applied Medical, and (iii) the uncontested enforcement of final judgment from such courts in any other jurisdiction wherein Customer or any of its assets are present.

11. Entire Agreement: Except as expressly allowed herein, no modification or amendment to these Terms and Conditions, no waiver of any rights under these Terms and Conditions, and no terms or conditions in any Customer document, including without limitation, any purchase order, payment remittance, policies, acceptance, or acknowledgment shall be effective or binding unless in writing signed by an authorized representative of Applied Medical. The validity, interpretation, construction and performance of these Terms and Conditions shall be in accordance with the English language. If these Terms and Conditions are translated into another language and there is a conflict between the non-English and the English versions, then the English version shall prevail.
12. Legal Expenses: The prevailing party in any legal action arising out of these Terms and Conditions shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including all costs and reasonable fees for attorneys, accountants and expert witnesses.
13. Force Majeure Events: Applied Medical will not be liable for damages, product or equipment failures or failure to perform or delay due to events beyond the reasonable control of Applied Medical including, without limitation, the following force majeure events: (a) acts of God and natural disasters; (b) floods, fires, earthquakes, tornadoes, hurricanes, severe weather, epidemics, pandemics, diseases, and explosions; (c) wars, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots, and other civil unrest; (d) government orders, laws, and actions (including, without limitation, quarantine and government shut down); (e) embargoes and blockades; (f) national or regional emergencies; (g) strikes, labor stoppages or slowdowns, and other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, and inability to obtain or delay in obtaining supplies of adequate or suitable raw materials.

## Applied Medical Return Policy

Applied Medical will accept unopened Products and Equipment for return by Customer, subject to all the below terms and conditions of this policy, as determined in Applied Medical's reasonable discretion.

1. Request a Return: Customer must request a return from Applied Medical within thirty (30) days of delivery of Products or Equipment to Customer.
2. Ship the Products and Equipment: Upon receipt of a return goods authorization ("RGA") and shipping label from Applied Medical, Customer shall return the applicable Products or Equipment, which must be received by Applied Medical within thirty (30) days of the date of RGA issuance. Products and Equipment must be returned with the RGA number placed on the outside of the shipping carton, in its original packaging, sterile if applicable, and otherwise in the condition received by Customer.
3. Shipping Charges and Restocking Fee: If the Products or Equipment were sent in error by Applied Medical and Customer returns the Products or Equipment in accordance with this policy, Applied Medical will, in its sole discretion, either: (i) replace the Products or Equipment at its sole expense; or (ii) credit Customer for the full purchase price of the Products or Equipment. Return of visibly damaged, used or opened Products and Equipment are governed by the Applied Medical Limited Warranty. For all other returns or return requests, including if Customer ordered Products or Equipment in error, Customer shall be responsible for any return shipping charges and Applied Medical will, in its sole discretion, either (i) accept the Products or Equipment subject to a fifteen percent (15%) restocking fee; (ii) return the Products or Equipment to Customer at Customer's expense; or (iii) reject the request.

## Applied Medical Products and Equipment Limited Warranty

1. Limited Warranty: Applied Medical warrants to Customer for one (1) year from the date of shipment that the Products and Equipment will: (i) materially conform to the then-current written specifications, which may be amended from time to time, provided by Applied Medical to Customer; (ii) be free from defects in material, manufacturing, and workmanship under normal use and maintenance; and (iii) comply with any then-applicable requirements of the U.S. Food, Drug and Cosmetic Act, the Medical Device Directives/Medical Device Regulations, and the respective regulations promulgated thereunder ("Limited Warranty").
2. Equipment Troubleshooting: Prior to the return of any defective or non-conforming Equipment, Customer must contact Applied Medical's Device Support department at the contact information in the applicable Equipment user manual for troubleshooting by Applied Medical. After such contact, Applied Medical may provide authorization to return ship the Equipment to Applied Medical.
3. Warranty Returns: To obtain the remedies set forth in Section 4 below, Customer must complete and submit an Applied Medical Product Complaint Form to Applied Medical within forty-eight (48) hours of use of the Products or Equipment. Customer may request a Product Complaint Form by emailing [customersatisfaction@appliedmedical.com](mailto:customersatisfaction@appliedmedical.com) (mailto:customersatisfaction@appliedmedical.com). Upon

submission of the Product Complaint Form and receipt of authorization given at Applied Medical's reasonable discretion, Customer shall return the defective or non-conforming Products or Equipment using a shipping label provided by Applied Medical. Any unauthorized or freight collect returns will be refused and/or returned to Customer at Customer's expense. In compliance with applicable federal, state, and local regulations, Products and Equipment that come into contact with potentially infectious material must be decontaminated before being returned to Applied Medical. Used Products and Equipment returned to Applied Medical must be cleaned and packaged for safe handling and returned in accordance with Applied Medical's instructions.

4. **Warranty Claims/Servicing:** Applied Medical's sole obligation and Customer's sole remedy under the Limited Warranty is for Applied Medical to, at its sole discretion, either: (i) repair or replace the Products, Equipment, or any part thereof at its sole expense; or (ii) issue a credit for the purchase price paid, provided in each case that the Products or Equipment are returned to Applied Medical during the applicable time period of the Limited Warranty and is determined by Applied Medical to be non-conforming or defective. Applied Medical may provide reconditioned, refurbished, and/or serviced Equipment or components that meet Applied Medical's quality assurance standards. In the event that the Products or Equipment are repaired or replaced by Applied Medical, the Limited Warranty period shall not be extended. Customer shall pay for any servicing, repairs, or replacement of Equipment by Applied Medical outside of the Limited Warranty, including materials and labor at Applied Medical's then-current rates.
5. **Exclusions:** The Limited Warranty does not cover any Products or Equipment that has been misused, altered, abused, disassembled, repaired, refurbished, reprocessed, improperly stored, acquired from unauthorized third parties, subjected to physical abuse such as dropping or other impact, or damaged resulting from the use of non-Applied Medical devices, components or parts, except if done by Applied Medical. Applied Medical shall have no warranty obligation for Products or Equipment issues related to Customer's or its physicians', employees', agents', or carriers' negligence, recklessness, willful misconduct, or non-compliance with all instructions and requirements regarding the handling and use of Products, Equipment, or any software embedded in the Products or Equipment, as intended by Applied Medical, or any failure to follow the procedures set forth in any applicable user manual or maintenance guide or as demonstrated by Applied Medical's representatives. Applied Medical shall have no warranty obligations with respect to any failures of any Products, Equipment, or software embedded into the Products or Equipment that are the result of power surge or extreme electromagnetic field, or any other cause outside of Applied Medical's control. The Limited Warranty is exclusively for the benefit of Customer and cannot be transferred or assigned. Any sale, rental or other transfer or use of the Products or Equipment covered by the Limited Warranty to or by a user other than Customer shall cause the Limited Warranty to immediately terminate. The Limited Warranty does not apply to any accessories, supplies, consumables, or other devices used with the Products or Equipment. Applied Medical reserves the right to make changes to the Products and Equipment at any time without creating an obligation to make the same or similar changes to Products and Equipment previously sold.
6. **DISCLAIMERS:** EXCEPT AS PROVIDED EXPRESSLY IN THE LIMITED WARRANTY, APPLIED MEDICAL EXCLUDES ALL WARRANTIES CONCERNING THE PRODUCTS AND EQUIPMENT, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. APPLIED MEDICAL'S LIABILITY WITH RESPECT TO THE LIMITED WARRANTY SHALL BE LIMITED TO THE PURCHASE PRICE PAID. IN NO EVENT SHALL APPLIED MEDICAL OR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL LOSS, DAMAGE, OR EXPENSE, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION, LOST PROFITS, PROCUREMENT OF SUBSTITUTE GOODS, AND BUSINESS INTERRUPTION), AND WHETHER OR NOT APPLIED MEDICAL OR CUSTOMER WERE AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES. REPRESENTATIONS AND WARRANTIES MADE BY ANY PERSON, INCLUDING BUT NOT LIMITED TO SALES REPRESENTATIVES, EMPLOYEES, OR AGENTS OF APPLIED MEDICAL, THAT ARE INCONSISTENT OR IN CONFLICT WITH OR IN ADDITION TO THE TERMS OF THE LIMITED WARRANTY, SHALL NOT BE BINDING UPON APPLIED MEDICAL UNLESS REDUCED TO WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF APPLIED MEDICAL. THIS DISCLAIMER SECTION SHALL NOT APPLY TO THE EXTENT CONTRARY TO APPLICABLE LAW.

## Equipment Right-to-Use Terms and Conditions

If Customer is receiving Equipment on a no-charge, right-to-use basis ("RTU Equipment"), the following terms shall apply. Customer shall purchase from Applied Medical the number of Products agreed to by Applied Medical, net of Product returns. The cost of use of the provided RTU Equipment is covered by the amounts charged for the individual Products. Product purchase compliance and the return of RTU Equipment shall be set forth in a written agreement between Customer and Applied Medical.

RTU Equipment is, and shall remain, the sole and exclusive property of Applied Medical. Customer shall bear the entire risk of lost, damaged, or stolen RTU Equipment. Customer shall use and maintain RTU Equipment

following all instructions from Applied Medical, including without limitation, applicable user manuals and maintenance guides.

Customer shall not move RTU Equipment from the facility(s) to which RTU Equipment is shipped without prior written approval from an authorized representative of Applied Medical.

Providing RTU Equipment at no separate charge is intended to be a “discount” as defined in applicable federal and state anti-kickback laws and regulations, including those related to discounts, rebates, “safe harbors,” and reporting requirements. The discount is not determined in a manner that takes into account any referrals or business between Applied Medical and Customer. Customer is obligated to report any discounts, rebates, and other cost reductions fully and accurately to the appropriate agencies to the extent required by applicable laws and regulations. Customer shall not seek or receive any reimbursement for RTU Equipment by any federal or state healthcare program, managed care organization, or private or self-payer unless pursuant to a single reimbursement methodology. Any cost report and other reimbursement documentation submitted by Customer to a payer shall not include RTU Equipment.

## Voyant® Products and Equipment Software License Agreement

1. License: Any software, including any source or object computer code, embedded within the Applied Medical generator and Applied Medical handpieces (“Handpieces”) used with the generator (collectively, “System”), any data collected by the embedded software related to use of the System, and the accompanying documentation (as updated by Applied Medical in its sole discretion, collectively, “Software”) are provided under license and are not sold to Customer. Applied Medical through its affiliate, Applied Medical Resources Corporation, grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable, fully-paid, revocable license to (a) use the Software solely as incorporated in the System in machine-executable object code form and FPGA bitstream on processor(s) or other hardware instantiation embedded in the System, for internal business purposes, and solely in connection with the operation of the System as described in the accompanying documentation, and (b) use the documentation solely for the purpose of using the Software in compliance with this license. Customer shall not unembed the Software from any System and shall only use the Software on the System in which such Software is provided or embedded.

Customer shall not (and shall not cause or allow a third party to) (i) use, copy, translate, modify, create derivative works of, based on, or alter (including without limitation, translations, transformations, adaptations, or altered versions), or transfer, (ii) merge the Software with any other software or product not supplied by Applied Medical, (iii) sublicense, lease, rent, loan, sell, or otherwise transfer, (iv) reverse engineer, decompile, disassemble, attempt to derive the source code for, or otherwise manipulate, or (v) distribute, disclose, permit to be disclosed or publicly display or perform, in any forum or by any means, the Software, in whole or in part, or any copy thereof. Manipulation of the Software is permitted only to the extent the Software is required to be modified by applicable law, but only upon prior 30 days written notice to Applied Medical. Customer shall not copy the Software under any circumstances. Customer shall not alter, obscure or remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Software (including those of third parties).

2. Ownership: Except for the limited rights expressly granted herein, Applied Medical and its affiliates own the entire right, title and interest to the Software and any modifications, improvements, and derivations thereof, and any data collected by the Software related to use of the System. Applied Medical reserves the right to collect such data from the System and its Software, and Customer shall provide Applied Medical with access to any System upon request for such purpose. The Software is licensed, not sold, to Customer. There is no implied license, right or interest granted in any copyright, patent, trade secret, trademark, service mark, or other intellectual property right. Nothing in the limited license requires Applied Medical to produce or furnish technical data to Customer.
3. Confidentiality: The Software and all components and elements of the Software, including, without limitation, technical and non-technical information regarding the Software and its development, constitute confidential information and trade secrets of Applied Medical (“Confidential Information”). Customer shall not disclose, provide, or otherwise make available such Confidential Information in any form to any third parties and shall exercise the same degree of care to maintain the confidentiality of the Confidential Information as Customer exercises with respect to its own confidential information. Customer shall only make the Software available to those employees, contractors, or consultants of Customer with a specific need to know, and who are bound to the confidentiality obligations and restrictions as set forth in this software license. Customer is responsible for the compliance of all users of the Software and Systems with the obligations as set forth herein and shall cause all users of the Software and Systems to comply with such obligations.

4. DISCLAIMERS: EXCEPT AS PROVIDED IN THE LIMITED WARRANTY OR PROHIBITED BY APPLICABLE LAW, APPLIED MEDICAL EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL APPLIED MEDICAL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL LOSS, DAMAGE, OR EXPENSE, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (INCLUDING LOST PROFITS, PROCUREMENT OF SUBSTITUTE GOODS, AND BUSINESS INTERRUPTION), AND WHETHER OR NOT APPLIED MEDICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLIED MEDICAL NEITHER ASSUMES, NOR AUTHORIZES, ANY THIRD PARTY TO ASSUME FOR IT, ANY LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE SOFTWARE.
5. Term: This license will begin on the date the Software is delivered to Customer and will continue for the life of the associated System as used by Customer. Notwithstanding the foregoing, this license shall terminate immediately upon written notice to Customer by Applied Medical if Customer breaches any term or condition of this license, as determined by Applied Medical at its reasonable discretion. Customer agrees upon notice of termination to promptly discontinue all use of the Software and destroy all copies thereof (whether in tangible form or as installed on Customer's equipment).
6. Export Laws and Regulations: The Software and related technology may be subject to U.S. export control laws and export or import regulations in other countries. Customer shall strictly comply with all such laws and regulations and has the responsibility to obtain such licenses to export, re-export or import as may be required, and shall obtain the prior written consent of Applied Medical prior to any export, re-export, or import of the Software.
7. U.S. Government Purchasers: The Software is a "commercial item" as that term is defined in 48 C.F.R. 2.101, developed exclusively at private expense, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in applicable U.S. acquisition regulations, all U.S. government end users acquire the Software with only those rights set forth therein. The Software is licensed hereunder only as a commercial item and with only those rights as are granted to all other customers pursuant to the terms and conditions of this software license.
8. Usage Data: The System may collect and store aggregated and anonymized activation data in connection with Customer's use of the System ("Usage Data"). Usage Data does not include any personal data or personal health information as defined by applicable privacy laws. Upon request, Customer shall provide Applied Medical with Handpieces and access to the System for extraction of Usage Data. Applied Medical may use Usage Data for any business purposes, such as research and development, improvement, testing, or maintaining the System or Software. Customer acknowledges that Applied Medical and its affiliates are the sole and exclusive owner of any Usage Data.
9. Miscellaneous: This software license sets forth the entire agreement and understanding of Customer and Applied Medical relating to the Software and supersedes all prior agreements, understandings, and discussions between them relating to the Software. No modification of or amendment to this software license, nor any waiver of any rights under this software license, shall be effective or binding on Applied Medical unless made in writing and signed by an authorized representative of Applied Medical. No failure on the part of Applied Medical or Customer in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. Whenever possible, each provision of this software license shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any provision becomes prohibited or invalid under applicable law, or is otherwise held unenforceable, then such provision shall be modified to reflect Applied Medical and Customer's intent, consistent with applicable law invalidating the remainder of such provision or the remaining provisions of the software license.

## Global Headquarters

949-713-8000  
22872 Avenida Empresa  
Rancho Santa Margarita, CA 92688 (<https://www.google.com/maps?daddr=22872%20Avenida%20Empresa,%20CA%2092688>)

## Connect


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## Legal

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