



Contract Terms & Conditions

Indemnification

SunMedica, Inc. (“SunMedica”) shall defend, at its own expense, any claim, suit or action against Customer to the extent that such claim, suit, or action is based upon an allegation that SunMedica has infringed any U.S. Intellectual Property Rights of such third party (“**Customer Claim**”), and SunMedica shall indemnify and hold Customer harmless from and against all losses, damages, liabilities, costs, and expenses (including reasonable attorneys’ payments) (“**Losses**”) incurred by Customer specifically attributable to such Customer Claim, including those costs and damages agreed to in a monetary settlement of such Customer Claim. The foregoing obligations are conditions on Customer: (a) promptly notifying SunMedica in writing of such Customer Claim; (b) giving SunMedica sole control of the defense thereof and any related settlement negotiations (provided SunMedica will not enter into any settlement of any claim, suit, or proceeding that does not contain a full release of Customer’s liability without Customer’s prior written approval, which approval will not be unreasonably withheld, conditioned, or delayed), and (c) cooperating and, at SunMedica’s request and expense, assisting in such defense; provided, in each of the foregoing cases, that SunMedica’s obligations under this section shall be limited or reduced only to the extent it is materially prejudiced by Customer’s failure to satisfy the foregoing conditions. Notwithstanding the foregoing, SunMedica shall have no obligation under this Section or otherwise with respect to any infringement claim based upon, or otherwise resulting from: (1) any material breach of this Agreement by Customer; (2) any use of the ordered product not in accordance with this Agreement; (3) any use of the ordered product in combination with products, equipment, software, or data not supplied by SunMedica if such infringement would have been avoided without the combination with such other products, equipment, software, or data; or (4) any modification of the SunMedica technology Product used by SunMedica to configure or deliver the ordered product to Customers, other than by SunMedica or its authorized agents or contractors, THIS SECTION STATES SUNMEDICA’S ENTIRE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

Customer shall defend, at its own expense, any claim, suit or action against SunMedica to the extent that such claim, suit, or action is based upon an allegation of (1) any material breach of this Agreement by Customer; (2) any use of the ordered product not in accordance with this Agreement or SunMedica specifications and instructions; (3) any use of the ordered product in combination with products, equipment, software, or data not supplied by SunMedica; or (4) any modification of the SunMedica products by Customer (“**SunMedica Claim**”). Customer shall indemnify and hold SunMedica harmless from and against all losses, damages, liabilities, costs, and expenses (including reasonable attorneys’ payments) (“**Losses**”) incurred by SunMedica specifically attributable to such SunMedica Claim, including those costs and damages agreed to in a monetary settlement of such SunMedica Claim. The foregoing obligations are conditioned on SunMedica: (a) promptly notifying Customer in writing of such SunMedica Claim; (b) giving Customer sole control of the defense thereof and any related settlement negotiations (provided Customer will not enter into any settlement of any claim, suit, or proceeding that does not contain a full release of SunMedica’s liability without SunMedica’s prior written approval, which approval will not be unreasonably withheld, conditioned or delayed); and (c) cooperating and, at Customer’s request and expense, assisting in such defense; provided, in each of the foregoing cases, that Customer’s obligation under this section shall be limited or reduced only to the extent it is materially prejudiced by SunMedica’s failure to satisfy the foregoing conditions.

Limitation of Liability

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR PRODUCT, OR ANY OTHER PECUNIARY LOSS), INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE PRODUCTS OR ORDERED PRODUCT, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, SUNMEDICA’S MAXIMUM CUMULATIVE LIABILITY AND FINANCIAL RESPONSIBILITY FOR ANY OBLIGATIONS OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND THE ORDERED PRODUCT, WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO SUNMEDICA BY CUSTOMER PURSUANT TO ORDERS IN THE 12 MONTH PERIOD PRECEDING THE ACCRUAL OF SUCH LIABILITY OR OBLIGATIONS, EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.



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Warranty Disclaimer

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PRODUCTS AND THE ORDERED PRODUCT ARE PROVIDED “AS IS”, AND SUNMEDICA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OF IMPLIED, INCLUDING WITHOUT LIMITATION OF ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, IN EACH CASE ARISING FROM OR RELATED TO THIS AGREEMENT THE ORDERED PRODUCT.