

Terms of Sale

1 APPLICATION

- 1.1 These Terms of Sale apply to every order for products, including Gastric Alimetry™ medical devices and associated software, and documentation (**Products**) that you place with Alimetry Limited (**we, us or our**), including through our website at www.alimetry.com (**Website**), unless there is a separate written agreement signed by both parties which excludes these terms. If there is such an agreement and it does not exclude these terms, both these terms and the terms of that agreement apply, and these terms prevail if there is any inconsistency.
- 1.2 Each order for Products, once accepted by us as set out below, forms a binding agreement on these terms, the terms set out in our quote for those Products (if any) and (if applicable) any other agreement referred to above (**Terms**).
- 1.3 The Terms apply to the exclusion of any standard or other terms you may have for the purchase of goods.
- 1.4 The Alimetry app and the cloud services are provided on the terms set out at <https://www.alimetry.com/terms-of-sale-and-use>.

2 ORDER ACCEPTANCE

When you place an order for Products, including through the Website:

- a you confirm that you are aged 18 years or over and you are legally entitled to purchase those Products;
- b you understand the Products have been sold in accordance with regulatory approval in the jurisdiction being sold, and you agree to use the Products in accordance with their authorized intended use and indications and to take full responsibility for any use that is not in compliance with this authorization;
- c you are making an offer to buy the Products, and we are not bound by that order until we have accepted it;
- d our acceptance of your order occurs on the earlier of when we supply the Products to you or notify you by email that we accept your order; and
- e we can reject an order for any reason. Once accepted, an order cannot be altered or cancelled without our prior written consent.

3 PRICE AND PAYMENT

- 3.1 The prices for the Products will be as set out on the Website or (if applicable) in a quote. Prices set out in a quote are only valid until the expiry date listed in that quote or, if none is stated, for 30 days from the date of the quote.
- 3.2 If, following your submission of an order or receipt of a quote for the Products, there is a price increase that is

beyond our control, we reserve the right to increase the price as we consider necessary.

- 3.3 Unless set out in a quote or we agree otherwise in writing, you must pay the price for the Products plus any applicable freight and insurance charges in full on submission of your order.
- 3.4 Unless stated otherwise, all prices are in United States dollars and all payments must be made in United States dollars.
- 3.5 Prices exclude sales tax, GST, VAT and taxes of a similar nature (if applicable), which will be added to the price if applicable.

4 DELIVERY

- 4.1 We will ship the Products to the shipping address stated in the quote or otherwise agreed in writing. Unless otherwise set out in a quote or stated when you place an order through the Website, all Products will be sold and delivered FCA (Incoterms 2020) our premises or our distributor's or manufacturer's location. Where we are arranging shipment, freight and insurance charges will be stated on the Website or in our quote.
- 4.2 Any stated time for delivery is an estimate only. You must accept and pay for the Products regardless of any delay. We will not be liable for any loss or damage resulting from any delay, however caused.
- 4.3 Title to the Products passes to you on the later of delivery and payment in full for the Products. Risk in the Products passes to you when we ship the Products.

5 WARRANTIES

- 5.1 We warrant that Gastric Alimetry™ medical devices (**Alimetry Devices**) will:
 - a at the time of delivery, meet the specifications in the quote or otherwise agreed in writing in all material respects; and
 - b for 12 months from delivery, be free from material defects in design, workmanship and materials.
- 5.2 If an Alimetry Device does not meet the warranty in clause 5.1, we will, at our discretion:
 - a replace the Alimetry Device;
 - b provide you with a credit for the price for the Alimetry Device, which you can apply against future orders; or
 - c refund the price paid.

Our obligation under this clause 5.2 is your sole remedy against us for breach of warranty.

- 5.3 The warranties in clause 5.1 are return-to-base. If you wish to make a warranty claim, you must contact us at support@alimetry.com to obtain a return merchandise authorization (**RMA**) number. Unless we agree otherwise, you will be responsible for all costs of shipping the defective Alimetry Devices to the service location advised by us when you obtain your RMA number and shipping the replacement back to your chosen shipping address.

- 5.4 The warranties in clause 5.1 do not apply if the serial number has been removed or defaced, or if a defect is attributable to:
- a repair or modification by anyone other than us;
 - b handling, storage or use in a manner other than in accordance with our specifications and instructions for use or not within our reasonable contemplation;
 - c accidental or deliberate damage caused by anyone other than us; or
 - d fire, water or other events outside our control after the date the Alimetry Devices are shipped to you.
- 5.5 TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY SET OUT IN CLAUSE 5.1, THE PRODUCTS ARE PROVIDED "AS IS" AND THE WARRANTIES SET OUT IN THIS CLAUSE 5 ARE EXPRESSLY IN LIEU OF, AND WE EXPRESSLY DISCLAIM, ANY AND ALL OTHER CONDITIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO MERCHANTABILITY, QUALITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

6 INTELLECTUAL PROPERTY

- 6.1 We (and our licensors) own all intellectual property rights in the Products and any accompanying documentation (the "Documentation"). Subject to the terms and conditions of this Agreement, we grant you a nonexclusive, worldwide, nonsublicensable, and nontransferable license to use (a) the software on the Alimetry Devices (the "Software"), solely as set forth on the Alimetry Devices and solely for your internal business purposes and (b) the Documentation, solely for your internal business purposes.
- 6.2 We reserve all rights not expressly granted in the Terms. Nothing in the Terms acts to assign or license any of our (or our licensors') intellectual property rights to you, whether by implication, estoppel, or otherwise, except as expressly set forth herein. All references in the Terms to the "purchase" or "sale" of the Products means, with respect to all parts of the Products which are covered by intellectual property rights owned by us (or to which we have rights), the acquiring or granting, respectively, of a license to use such parts, and to exercise any other rights pertaining to such parts which are expressly set forth in this Agreement.
- 6.3 Except to the extent expressly permitted by law that cannot be excluded by the Terms, you must not copy, modify, deconstruct, decompile, reverse-engineer, re-sell, sublicense or otherwise deal in the Products (including, without limitation, the Software and the Documentation) without our written consent.
- 6.4 If you wish to publish, present or otherwise publicly disclose any data or results of any research carried out using the Alimetry Devices or any conclusions or discoveries that are based on such data or results, you must:
- a submit the proposed publication, presentation or disclosure to us for review at least 30 days before the intended date of submission for publication, presentation or disclosure (as applicable); and
 - b if notified by us within 20 days of submission of the proposed publication, presentation or disclosure to us:
 - i delay submission for publication, presentation or disclosure (as applicable) for up to 60 days from receipt of our notice to

enable the filing of patent or other applications to protect any registrable intellectual property rights in any subject matter in which we have an interest;

- ii amend the proposed publication, presentation or disclosure (as applicable) as reasonably requested by us to ensure the Alimetry Devices are represented accurately and any references to our technology and intellectual property rights are accurate; and
- iii remove any of our commercially sensitive confidential information from the proposed publication, presentation or disclosure (as applicable).

7 WAIVER OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

OUR MAXIMUM AGGREGATE LIABILITY TO YOU IN CONNECTION WITH THE PRODUCTS WILL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCTS. WE ARE NOT LIABLE TO YOU FOR ANY LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, DATA, GOODWILL, OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGE OR LOSS OF ANY KIND.

8 EXPORT CONTROL

You must comply with all applicable export and import control laws and not export, re-export, or import Products or technical data you receive other than in compliance with the applicable export or import control laws. You are responsible for obtaining any required licenses to export, re-export or import Products or technical data.

9 GENERAL

- 9.1 Any waiver by us must be in writing and signed by us.
- 9.2 Any illegality, unenforceability or invalidity of a provision of the Terms does not affect the legality, enforceability or validity of the remaining provisions.
- 9.3 Any variation to the Terms must be in writing and signed by both parties.
- 9.4 The Terms set out everything agreed in relation to the supply of the Products and supersede and cancel anything discussed, exchanged or agreed prior to their start. If there is any inconsistency between the quote and the other Terms, the other Terms prevail.
- 9.5 You must not assign or transfer your obligations without our prior written consent.
- 9.6 The Terms are governed by and interpreted in accordance with, the laws of Delaware. Each party irrevocably submits to the exclusive personal jurisdiction and venue of any Delaware state or United States federal court sitting in Wilmington, Delaware (a "Court") in any dispute arising out of or in connection with the Terms and further irrevocably waives any claim of inconvenient forum or other challenge to venue in any Court.