



**U.S. DIRECT CONSUMABLES  
TERMS & CONDITIONS OF SALE  
Effective January 1, 2025**

*Excludes BD Biosciences Products*

**1. General Terms.**

1.1. These U.S. Direct Customer (“**Customer**”) general Terms and Conditions of Sale effective January 1, 2025 (“**Terms and Conditions of Sale**”), exclusively govern the sale by Becton, Dickinson and Company on behalf of itself and its related legal entities (“**BD**”) of all consumables Products to Customer from the following BD business units: **BD Medical:** (*Medication Management Solutions: Dedicated Infusion Disposables, Non-Dedicated Disposables, and IV Fluids; Medication Delivery Solutions: Hazardous Drug Safety, Line Prep/Maintenance and Injection/Catheters, and Bard Access Systems including Advance Peripheral, and Central Lines, and Vascular Access Technologies, and Peripheral Line Draw Solutions*), **BD Life Sciences:** (*Diagnostic Solutions and Specimen Management*) and **BD Interventional:** (*Peripheral Intervention: Peritoneal and Pleural Drainage and Surgery: Infection Prevention and Drainage*) (collectively the “**BD Products**”); and C. R. Bard, Inc. and its subsidiaries, including Bard Medical Division, Bard Peripheral Vascular, Inc. and Davol Inc. (collectively the “**Bard Products**”); collectively together the BD Products and Bard Products are referred to as the “**Products**”. The sale of BD Bioscience products shall be governed by the BD Bioscience Terms and Conditions of Sale, and not these Terms and Conditions of Sale. No additions to or modifications of these Terms and Conditions of Sale will be binding on BD unless agreed to in writing and signed by an authorized representative of BD. BD objects to all other terms and conditions that may be proposed by the Customer. Acceptance by BD of Customer’s purchase order(s) is expressly conditioned on Customer’s assent to all of the Terms and Conditions of Sale contained herein. All prices and terms are subject to change.

1.2. Defined Terms shall have the meaning set forth in the applicable Customer Agreement unless otherwise defined herein.

**2. Pricing Policy.**

2.1. Orders will be priced and invoiced at the BD Customer price. Price discrepancy claims or deductions for other than BD-caused errors or omissions will be denied. BD commits to the accuracy of pricing but reserves the right to correct any errors or omissions at any time.

2.2. Customer may only purchase those products which are authorized by BD for Customer purchasing.

2.3. All orders will be invoiced at the prices in effect on the day the order is accepted and acknowledged by BD. For clarity, orders accepted by BD prior to 5:59PM EST will be invoiced at the price within BD’s system on that calendar date. Orders accepted at 6:00PM EST or later will be invoiced at the price within BD’s system on the next business day.

2.4. Orders containing future-dated lines, including standing orders, must not include requested delivery dates that carry over into a new calendar year. Separate orders must be placed and will be priced accordingly at the adjusted new year price.

2.5. Prices and specifications on Products are subject to change. The price of all Products not manufactured by BD is subject to change. Prices are exclusive of all taxes. Customer shall be responsible for payment of all applicable state/local sales, use, and/or gross receipts tax resulting from transactions with BD regardless of placement of liability for the tax by law.

2.6. BD reserves the right to impose a market conditions surcharge reflecting increases in costs resulting from inflation or supply constraints not occurring in the ordinary course.

**3. Reporting of Discounts.** The value of any rebates, discounts or incentives provided to Customer may constitute a “discount or other reduction in price” under Section 1128B(b)(3)(A) of the Social Security Act [42 U.S.C. Sec. 1320a-7b(b)(3)(A)]. BD and Customer shall satisfy any and all requirements imposed on buyers or sellers, as applicable, relating to discounts or reductions in price, including, when required by law, to disclose all discounts or other reductions in price received from BD and to accurately report under any state or federal health care program the net cost actually paid by Customer.

**4. Purchase Orders.**

4.1. Purchase orders for all BD products, as outlined in Section 1.1, should be combined with other BD Medical products using the BD Medical Vendor Number. Purchase orders for Bard Access System products should

use the BD Medical Vendor Number and may be placed separately or combined with other BD Medical products. Purchase orders for Bard Products should be placed using the current Bard Vendor Number. Contact BD Customer Support or refer to the Key Contact List for additional details.

4.2. All orders must be placed in BD’s saleable unit of measure quantity.

4.3. Only the Products and quantity shall be acknowledged by BD. Any modifications regarding pricing, terms of sale, specific shipping instructions or general ordering information, shall not be in effect unless accepted in writing by an authorized representative of BD.

4.4. Inquiries regarding order and shipment status, are available on-line using BD’s Order Lookup website. To register or to conduct quick searches refer to the web site at [www.bd.com/customer-care](http://www.bd.com/customer-care).

4.5. All Customer locations are assigned a GeoZone designated day of the week for non-rush order placement. Non-compliance with scheduled order days may result in longer lead times. For combined purchase orders which include Bard Access System products, the BD assigned order day will apply; for purchase orders only for Bard Access products, the assigned order day does not apply.

4.6. In the event of supply shortages, or in the event of pandemic or other national/regional emergency response or Force Majeure, BD may alter order quantities. BD may notify Customer of any changes to order quantity prior to shipment.

4.7. Electronic Orders. BD offers electronic ordering method EDI, including Global Healthcare Exchange (GHX). Customers interested in EDI or GHX may contact BD at [E\\_Business\\_Prod@bd.com](mailto:E_Business_Prod@bd.com).

4.8. BD reserves the right to cancel open purchase order lines greater than 12 months from purchase order issue date. BD will notify Customer of such cancellation via email.

**5. Rush Orders.**

5.1. Rush orders (any initiated rush request) carry a \$100 Rush Shipping and Handling charge. Quantities should be limited to 65 kgs or less. Freight will be prepaid and charged at time of invoicing.

5.2. Rush manual orders placed via phone, e-mail or fax will be processed in the order they were received and there may be a delay in shipping.

5.3. Rush orders are prohibited for the IV Fluids Products.

5.4. Orders that are considered heavyweight air (>65 kgs) may incur additional processing time and may not be able to be delivered next day.

Business Unit:	BD and Bard Products
Cut-off time for rush order receipt:	12:00 PM local time at primary DC location for heavyweight orders (>65 kgs) (NC/IN/MD - EST; CA -PST; TX - MST)
	12:30 PM EST for parcel shipments from Four Oaks, NC
	1:30 PM local time at primary DC location for parcel shipments (IN - EST, CA -PST, TX - MST)
	5:00 PM EST for parcel shipments from Covington, GA (Bard Access System products)
3:00 PM EST for parcel shipments from Sparks, MD (Diagnostic System products)	

**6. Hazmat Orders.** Orders containing DOT-regulated hazardous materials will include a \$40 hazmat charge per order. Refer to <http://regdocs.bd.com/regdocs> for regulatory documents.

**7. Make-To-Order, Custom and All One Lot Requests** The following applies to BD Medical and BD Life Science: Diagnostic Solutions Products:

**7.1.** Some specially manufactured Products are designated as Make-To-Order due to low/infrequent demand or are custom formulations which may be subject to separate terms and conditions of sale.

**7.2.** Estimated delivery dates for Make-To-Order Products are determined according to the combined total of manufacturing and delivery lead times. There may be occurrences in the manufacturing process of these Products for which a greater or lesser amount is produced and therefore orders for these materials are subject to a shipping tolerance of +/-10% of the total quantity ordered.

**7.3.** Notification of these yield adjustments will be provided prior to shipment so that purchase order quantities remain aligned within both party's systems. Deductions or claims for Make-to-Order quantity differences will be denied.

**7.4.** Order cancellations, requested delivery date changes or quantity reductions of Make-To-Order Products will only be honored within one (1) business day of order placement, after which time no cancellations, requested delivery date changes or quantity reductions are allowed. These products do not qualify for return privileges.

**7.5.** Requests for All One Lot must be specified in the Message segment of an EDI purchase order. If for any reason, the requested All One Lot quantity cannot be fulfilled, notification will be made and one of the following options selected: (1) hold for one lot [default]; (2) supply up to two lots; or (3) cancel the order line.

**8. Special Services / Non-Standard Orders.** BD reserves the right to assess a service fee for any special service request not specifically mentioned in this document.

#### **9. Shipment Terms.**

**9.1.** Terms are FOB Shipping Point method of shipment shall be selected by BD. BD shall endeavor to ship all accepted orders within a commercially reasonable time. Shipping, handling and freight charges will be prepaid (only to origin port/airport for Puerto Rico) and added at time of invoicing if charges are applicable.

**9.2.** Failure to reimburse BD for shipping and handling charges outlined above may result in the delay of future shipments while claims are being investigated.

**9.3.** Freight Collect billing to the Customer's carrier account is available by request, with valid bill-to account number(s) and an executed Freight Collect Letter Agreement. Handling Fees apply. Customer will be responsible for any and all shipping and handling charges, insurance, and including but not limited to, damaged-in transit or lost-in transit product. No freight charges will be applied by BD however a \$100 Rush processing fee will be added at time of invoicing for any Customer-initiated expedite requests. Customer's paying via credit card are not eligible for the Freight Collect program.

**9.4.** Customer is responsible for all specialized services such as special handling by a driver, carrier detention, "sort and segregate" services, or lumper unloading charges. If a Customer should choose to arrange for such services, it is with the understanding that the Customer will be responsible for the full burden of the cost.

**9.5.** Deliveries should not be refused. Any refused deliveries will be subject to a 25% restocking fee. Re-delivery of refused Products will be subject to additional transportation charges. Customers are not to return any Product to BD without first contacting BD Customer Care for a Return Material Authorization, including but not limited to Product damaged while in transit.

**9.6.** For BD products that are not manufactured by BD and are shipped direct from the vendor, Customer is subject to the vendor's shipment terms, minimum order policy, shipping and handling charges and any applicable service fees.

**9.7.** All Customer shipments for IV Fluids Products will be shipped with temperature loggers. IV Fluids Products will ship in a mode that will allow the product to stay within the acceptable temperature range. Customer will receive instructions for action needed in case a temperature logger alarm is triggered at time of receipt.

**9.8.** IV Fluids Products has a product orientation requirement to stay in

the upright position at all times during any mode of shipment. IV Fluids Product is to be stored under USP controlled temperature conditions.

#### **10. Payment Terms**

**10.1.** Payment is due no later than 30 days from the date of invoice. No fee-based credit card (after point of sale) or third-party payment methods will be accepted by BD.

**10.2.** BD may charge interest at the rate of one and one-half percent (1-1/2%) per month, or at such lesser rate as may be required by law, or any amount that is unpaid on the due date and is not disputed by Customer in good faith.

#### **11. Reporting Discrepancies**

**11.1.** Customer shall count and inspect all deliveries prior to acceptance from the carrier or clearly note "Subject to Count" on the carrier bill of lading. "Subject to Count" does not eliminate the Customer's responsibility to count and inspect a delivery. Discrepancies or visible damage shall be clearly noted on the freight document and countersigned by the carrier's driver. The following discrepancies (billing charges, shortages, overages, wrong Product, missing documents, damages, etc.) must be reported to BD within 45 calendar days of invoice date via email to [claims\\_resolution@bd.com](mailto:claims_resolution@bd.com). Pricing Claims may be submitted up to 30 days from invoice date for consideration. Failure to provide timely notification as specified here will result in the denial of the claim at BD's discretion. Invoice deductions inconsistent with this paragraph will not be allowed and BD reserves the right, but not the obligation, to net monies due in order to offset outstanding debt due to BD.

**11.2.** In order for a Claim to be accepted by BD, the request must include the following information:

- Purchase order number
- Customer name and address
- Type of discrepancy or issue and requested resolution.
- BD catalog number, lot/batch or serial number
- Quantity per the packing list unit of measure terms
- Contact name, email, telephone number
- Copy of carrier bill of lading or delivery receipt signed by Customer which includes number of pallets received, any visible damage noted, and the seal number if a full truckload shipment
- If the above information is not provided in total, BD reserves the right to deny the claim.

**11.3.** To facilitate the claim investigation, if possible, provide digital photos to BD for any damaged, incorrect or otherwise discrepant material.

**11.4.** Requests for tracking numbers or proof of delivery must be made within 15 days of invoice date. Proof of delivery requests are subject to a \$100 service fee.

**11.5.** To dispute a denied claim or reopen a closed claim, additional supporting information should be directed to [denied\\_claims@bd.com](mailto:denied_claims@bd.com).

**11.6.** Service-related complaints such as Supplier Corrective Action Report (SCARs) for missed appointments as example, (not quality, overage, shortage, damage or pricing), can only be submitted within 12-months of invoice date.

**11.7.** Upon rejection and communication of price issue, BD may assess a fee of \$100 per claim submitted for the same BD Material Number.

#### **12. BD Product Return Material Policy.**

Product returns will be accepted only to the extent that such Products were purchased directly from BD, and are subject to the following requirements:

**12.1.** Returns will not be accepted for full credit without a Return Material Authorization ("RMA") issued by BD, including returns which are the result of a BD error.

**12.2.** In order for an RMA to be issued, the request must include the following information:

- Purchase order number
- Customer name and address
- Reason for return
- BD catalog number, lot/batch number, expiry date or serial number (if applicable)
- Quantity per the packing list unit of measure terms
- Contact name, email, telephone number

**12.3.** All Product returns must have a copy of the RMA attached with return paperwork.

**12.4.** An RMA will not be issued, nor will credit be given by BD for the following:

- Product returned without authorization.
- Product not purchased directly from BD.
- Products that contain pharmaceuticals, including without limitation over-the-counter drugs and prescription pharmaceuticals such as lidocaine and IV Fluids Products, except for FDA recalls.
- Products with temperature-sensitive/controlled label storage requirements, including, but not limited to, room temperature-controlled products such as ChloroPrep® and IV Fluids Products
- Products that would otherwise be characterized as a hazardous waste or as hazardous waste pharmaceuticals at end-of-life (i.e., because the products will not be resold by BD or they are expired).
- Sterile materials
- Make-to-Order or Custom Products
- Products returned with conditions that prevent resale. Examples include but are not limited to:
  - Obsolete or discontinued Products
  - Opened or resealed Products
  - Expired Product or Product outside minimum dating requirements
  - Units of measure less than original unit of issue, for example partial cases/shelf packs

**12.5.** If such non-resale Product is returned a credit will not be issued and the Product will be destroyed.

**12.6.** Notwithstanding the foregoing, BD may, at its sole discretion, and upon documented authorization for the Bard Access System products (Vascular Access Division): temperature-sensitive/controlled label and/or characterized as hazardous, credit may be issued, but the physical return of product to BD is not allowed.

**12.7.** An RMA will only be issued to the original Customer ship-to location, or in the case of a drop ship order the Customer sold-to location that originally purchased the Product.

**12.8.** Returned Product must be received in its original, unopened packaging and in salable condition within 15 days of the issuance of the RMA to be eligible for full credit, minus the restocking fee. If returned Product is received after the 15-day expiration of the RMA, BD reserves the right to refuse to accept the return or charge additional restocking fees, even if the Product is in saleable condition.

**12.9.** Returns are to be shipped only to the designated BD location indicated on the RMA form.

**12.10.** The Customer pays the freight charges for all returns except as otherwise noted in Section 12.11 below.

**12.11.** Product shipped in error by BD will be accepted for return, freight-collect using a BD designated carrier. BD reserves the right to issue a Certificate of Destruction (“COD”) in place of returning said product and applicable credit, if any, will be issued. The restocking fee will not apply.

**12.12.** For 3rd party vendor drop-shipped Products, Customer is to follow all 3rd party vendor return guidelines.

**12.13.** Returns requested within 0-90 Days from BD’s original shipment date are subject to a 25% Restocking Fee. Returns requested 91 days or more from BD’s original shipment date will be denied, such Product is not returnable, nor will credit be issued.

### **13. Bard Product Return Policy.**

**13.1. Full Credit Returns.** Product returns receive full credit (less any rebate paid or credits issued by Bard to customer with respect to such product) provided (i) defective product is returned within applicable warranty period, (ii) the product is subject to a Recall, or (iii) product shipped in error by Bard and received by Bard and is in saleable condition and in original packaging within 30 day of invoice.

**13.2. Full Credit Returns (All Other).** Products returned (other than those outlined in Section 13.1 above, within 30 business days of invoice date will receive full credit (less any rebate paid, or credits issued by Bard to customer with respect to such product). Products returned within 31- 90 days of corresponding Bard invoice date will receive full credit (less any rebate paid,

or credits issued by Bard to customer with respect to such product) minus a 30% restocking fee.

**13.3. Ineligible Returns.** Bard products are ineligible for return under any of the following circumstances: (i) product was shipped in error and returned and received by Bard more than 30 days after the date of the applicable Bard invoice, (ii) non-defective Bard product is returned in a quantity less than Bard’s original unit of sale, (iii) non- defective product is returned more than 90 days after the date of corresponding Bard invoice unless (A) part of a Recall, or (B) product with a shelf life of over one year has expired, in accordance with its labeling, within one year of the applicable Bard invoice date, OR product with a shelf life of less than one year has expired within six months of the applicable Bard invoice date, and in either case is returned within 90 days after expiration; provided that products returned under (B) may only be returned for replacement, (iv) defective product returned after expiration date of applicable product warranty period, unless part of a Recall, (v) product sold for single use that has been reused or reprocessed, (vi) product that has been altered, further manufactured, packaged, processed, re-sterilized, abused, or misused, (vii) product that has been modified, serviced or repaired by anyone other than Bard or an authorized Bard representative, (viii) product that is a “custom” device unless such product is defective for a reason other than manufacture to customer’s specifications, (ix) product damaged in transit if prior to transfer of title, (x) products purchased as part of a product bundle, (xi) the product contains pharmaceutical product that will not be returned to salable inventory due conditions such as: package contamination or damage, lack of records showing proper temperature exposure history, inadequate or improper transaction history, or inadequate shelf life, or (xi) products that would otherwise be characterized as a hazardous waste or as hazardous waste pharmaceuticals at end-of-life (i.e. because the products will not be resold by Bard or they are expired).

**13.4. RMA.** Customer must obtain an RMA number from Bard or a Bard account representative before any Bard product can be returned for repair, replacement, or credit. Call Bard divisional Customer Service to obtain RMA number. To obtain return RMA number, customer must provide Bard with (i) the Bard catalog number and quantity of Bard product to be returned/repared; (ii) the reason for the return/repair; (iii) a description of the product being returned/repared; (iv) the name and telephone number of a customer contact who may be called if further information is required; (v) at least one of the following: (a) the applicable customer purchase order number (even if product provided at no charge), (b) the corresponding Bard invoice number, and (c) the applicable Bard product lot or serial number. All authorized return products must reference the assigned RMA number and must be shipped freight prepaid by customer with confirmation that the product has been stored according to label storage conditions where applicable. Any authorized returned product sent freight collect will be refused by Bard and returned to customer at their expense. Bard will, at its discretion, refund or credit customer for all freight charges incurred in connection with the return of authorized return products. If product is being returned for repair that is covered by a written limited product warranty, a copy of the original invoice must be sent with the product. The cost of any repair not covered by a written limited warranty must be paid by the customer.

**13.5.** See Schedule A for Exceptions and Special Handling.

### **14. Medical Device Recalls**

**14.1.** In cases of Medical Device recalls initiated by BD, Customers are required to support reverse logistics as directed by BD, including but not limited to the following actions: immediately cease distribution or use of Product subject to recall, placing all affected inventory on secure hold.

**14.2.** Upon receipt of recalled product, BD shall issue credit to Customer not to exceed the full value of the product purchased (net of any rebates or other discounts granted) and return freight if applicable.

**15. Customer Complaints.** BD shall be responsible for addressing complaints (“Customer Complaints”) relating to the Product whether received from Customer, a patient or otherwise. Customer shall seamlessly transfer to BD to ProductComplaints@BD.com any Customer Complaints that it receives concerning any Product. In the event Customer receives or becomes aware of a Customer Complaint about any Product, Customer shall be responsible for promptly (i) collecting, documenting and recording all relevant information

regarding such Customer complaint (e.g., Customer name, address, telephone number, date of incident, Product, reorder number, mfg code, lot control number) and a Customer report of the incident, and such other information as may be reasonably warranted under the circumstances, and (ii) notifying BD of such Customer Complaint and promptly forwarding such collected information to BD. BD shall be responsible for communicating with Customers regarding any Customer Complaint about any Product, unless otherwise agreed upon by the parties during specific complaint investigation. Each party shall provide the other party with the telephone numbers and names of contacts for this purpose. BD shall be responsible for investigating any Customer Complaint about the Products, implementing corrective action where necessary, and responding directly to the Customer about its complaint.

**15.1.** Customer is responsible for the safe return of products to BD following regional and national requirements regarding potentially hazardous or contaminated product, or safe destruction of such products at the direction of BD. As manufacturer and applicant license holder, per FDA requirements, BD is responsible for addressing and reporting adverse events and other safety related information concerning the Products whether received from Customer, a patient, healthcare provider or otherwise. Adverse Events are defined as any untoward medical occurrence in a patient administered the Products.

**15.2.** In the event Customer receives or becomes aware of any adverse events or other safety information regarding the Products, Customer shall comply with Section 15 and immediately forward such information to BD (ProductComplaints@bd.com) within one (1) business day, but no later than within five (5) calendar days, from Customer's initial receipt of the information. Customer shall cooperate with BD reasonable requests to obtain additional information related to reports of adverse events or other safety information.

**16. License Reporting.** For Customers buying prescription drugs, prescription devices and/or OTC drugs, the purchasing and receiving facilities must hold the proper state and federal licenses / registrations or permits required to purchase and distribute these items. This information must be provided to BD before placing orders for these prescription items. Any changes including status, scope, or identification number must be sent to BD within 30 days through the e-mail address ISC\_Support@BD.com or by contacting BD Customer Care. Customers must also verify that operation within their network that are handling these products are properly registered to handle prescription drugs and / or device as required by state and federal law.

## **17. Warranty.**

**17.1. Limited Warranty.** BD warrants to the Customer that, provided Customer uses, stores and maintains the Products in accordance with the "Documentation", (defined as the user guide, user manual, labeling, release notes, technical specifications, Product Security White Papers and other, similar information applicable to a Product, written in natural language, that BD makes generally available to end user purchasers, lessees, and licensees of the Products) all Products will meet the specifications stated in the Documentation in all respects, and that all Products shall be free from defects in material and workmanship for either the warranty period or expiration date stated in the Documentation for such Products, or for Products without a stated warranty period or expiration date, 6 months (the "Warranty Period"). BD further warrants that its employees have the skills and qualifications necessary to perform support and maintenance services in a professional manner in accordance with the generally accepted industry standards. Customer's sole and exclusive remedy for any breach of this warranty shall be (i) repair or replacement of the non-conforming Products, or (ii) a refund of the amount paid to BD for non-conforming Products, with such remedy to be at BD's option. Customer must provide written notice of any such non-conformance to BD within the Warranty Period. Any alteration, abuse, misuse, further manufacture, packaging, processing, adjustment or repair by any person or entity other than BD or a person or entity authorized in writing by BD shall void the warranty above.

### **17.2. Disclaimers.**

a) THE LIMITED WARRANTY PROVIDED UNDER THIS SECTION ARE THE ONLY WARRANTIES PROVIDED BY BD AND IS IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING TITLE, NON-INFRINGEMENT,

NON-INTERFERENCE, INTEROPERABILITY, QUALITY OR CONDITION, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECT, WHETHER LATENT OR PATENT.

b) *MEDICAL PROVIDERS ARE RESPONSIBLE FOR THE PERFORMANCE OF ITS RESEARCH AND THE CARE OF ITS PATIENTS AND DETERMINING THE APPROPRIATENESS OF THE PRODUCTS FOR ITS USE; CUSTOMER ACKNOWLEDGES THAT BD IS NOT RESPONSIBLE FOR THE DELIVERY OF MEDICAL CARE OR MEDICAL SERVICES TO CUSTOMER'S CUSTOMERS, PATIENTS OR ANY OTHER PERSON. THE PRODUCTS ARE TOOLS TO BE USED BY CUSTOMERS BUT DO NOT REPLACE PROFESSIONAL SKILL OR JUDGMENT. BY PROVIDING PRODUCTS TO CUSTOMER, NEITHER BD NOR ANY EMPLOYEE OF BD IS ENGAGED IN THE PRACTICE OF MEDICINE. THE MEDICAL PROVIDER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS. MEDICAL PROVIDER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION. BD IS NOT RESPONSIBLE FOR THE PERFORMANCE, SUPPORT, OR ANY OTHER ASPECT OF MEDICAL PROVIDER'S TECHNOLOGY ENVIRONMENT;*

c) CUSTOMER ACKNOWLEDGES THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. BD DOES NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR, NOR DOES BD GUARANTEE ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS.

**17.3. Exclusions.** The foregoing warranties will not apply to failure of any Products caused by (i) Customer's abuse, neglect or misuse of the Product or failure to maintain the Product in accordance with its Documentation or resulting from any failure to comply with the Customer responsibilities as may be set forth in this or Customer's Agreement with BD; (ii) implementation, repair, modification, alteration, adjustment, or relocation of the Product other than as expressly authorized by BD; (iii) malfunction or failure of any element of Medical Care Provider's Technology Environment or use of the Product with any element of Medical Care Provider's Technology Environment other than as expressly authorized by BD; (iv) failure to maintain the physical environment for the Product (including air quality, temperature, and humidity) specified in the Documentation; (v) malicious software not introduced by BD; or (vi) failure to permit installation of an update.

## **18. Indemnification**

**18.1. General Indemnification.** Customer and BD shall defend against and indemnify the other party for any loss, damages, or liability, including reasonable attorneys' fees, resulting from any third-party claim ("Claim") to the extent arising from the indemnifying party's (a) negligence or willful misconduct, and (b) breach of its representations, warranties and covenants under these Terms and Conditions of Sale. In addition, BD shall defend against and indemnify Customer for any Claim to the extent arising from the breach by BD of its express warranty provided hereunder, and Customer shall defend against and indemnify BD for any Claim to the extent arising from, (x) the negligence or willful misconduct of Customer in performing services under the terms of these Terms and Conditions of Sale or its customer agreement with BD. The indemnified party shall give prompt notice of the Claim to the indemnifying party; however, any delay in giving notice will not excuse the indemnifying party's obligations under this section, except to the extent the indemnifying party has been prejudiced by the delay. The indemnified party shall cooperate with the indemnifying party in the defense of the Claim and in any settlement of the Claim; however, the indemnified party may employ separate counsel, at its expense, to provide or participate in the defense, and the indemnifying party may not settle a Claim unless the settlement completely and forever releases the indemnified party from all liability with respect to the Claim.

## 18.2. Infringement Indemnification.

a) BD Obligations. Notwithstanding the general indemnification section, and subject to the exceptions noted below, BD shall defend Customer against any Claim that BD's manufacture or sale of a Product infringes any patent or copyright of such person enforceable in the U.S. or misappropriates any trade secret of such person ("Infringement Claim"). On the occurrence of any Infringement Claim, or in the event BD believes an Infringement Claim is likely, BD may, at its option (i) modify the Product to make it non-infringing, or substitute functionally equivalent hardware or software; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the Product in question.

b) Exceptions. BD will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Product with products, services, hardware, software, technology, data or other materials not furnished or approved by BD; (ii) modification of the Product, except as expressly authorized by BD in writing; or (iii) use of the Product other than in accordance with the documentation in violation of these Terms and Conditions of Sale, the customer agreement executed with BD, or any applicable law or regulation, or after notice from BD that Customer should cease selling the Product.

c) Sole Remedy. The obligations set forth in this section will constitute BD's entire liability and Customer's sole remedy for any actual or alleged Infringement Claim.

## 19. Limitation of Liability.

19.1. Liability Limitation. Excluding claims for the total fees due under a Purchase Order, the total liability of a Party in connection with any matter arising from or relating to a Purchase Order (whether in contract, tort, negligence or otherwise) will be limited to the amount of all fees paid or to be paid by Customer under the Purchase Order(s) to which the matter relates during the twelve-month period immediately preceding the event giving rise to such liability.

19.2. Excluded Liabilities. NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) REPROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL.

19.3. Liability Limitation. Excluding claims for the total fees due under these Terms and Conditions of Sale, the total liability of a Party in connection with services giving rise to such liability or relating to these Terms and Conditions of Sale (whether in contract, tort, negligence or otherwise) will be limited to the amount of all fees paid or to be paid by Customer under these Terms and Conditions of Sale to which the matter relates during the twelve month period immediately preceding the event giving rise to such liability.

19.4. Exceptions. The exclusions set forth in Section 19.2 {Excluded Liabilities} and the limitation set forth in Section 19.3 {Liability Limitation} will apply to the fullest extent permitted by law, but will not apply to any liability arising from: (i) indemnification obligations hereunder related to death or bodily injury; or (ii) a Party's fraud, gross negligence or willful misconduct.

## 20. Confidential Information; Retention of Rights.

20.1. Publicity. A party shall obtain the other party's prior written consent, before (i) issuing any press release or other public disclosure regarding the Terms and Conditions of Sales or customer agreement or (ii) using the other party's name, trademark, service mark, logos, or trade dress (collectively, "Marks"). Each party must comply with the other party's requirements for use of either party's Marks in any press release or other promotional material.

20.2. Confidentiality Obligations. Except as provided below, neither Customer nor BD shall disclose "Confidential Information" (defined as any confidential or proprietary information of a party, however disclosed or recorded (including, with respect to Customer, Customer Data, and, with respect to BD, BD Data) to any other person, or entity other than the Federal Government, a party's advisors for purposes consistent with a customer agreement, or as required by law. In the event a party in receipt of Confidential

Information ("Receiving Party") is requested or becomes compelled, by a court of competent jurisdiction, administrative agency or other governmental body, to disclose Confidential Information of the party that disclosed the Confidential Information ("Disclosing Party"), the Receiving Party will provide the Disclosing Party with prompt notice. BD's obligations in this paragraph and the exceptions in the paragraph below supersede any obligations of BD or any BD representative contained in any confidentiality agreement or statement executed or acknowledged at the entry of any Customer facility, which agreements or statements are void.

20.3. Exceptions. The obligations of this confidentiality section do not apply to information that: (i) was in the public domain or was known to the Receiving Party before the information was received by the Receiving Party; (ii) is developed by the Receiving Party or on its behalf independently of the information disclosed by the Disclosing Party as shown by written record; (iii) is acquired by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; or (iv) becomes public knowledge without breach by the Receiving Party of any obligations of confidence to the Disclosing Party.

20.4. Retention of Rights. BD owns or has rights to all Intellectual Property embodied or embedded in, or practiced by, the Products, Documentation, or BD Data (as defined in a Schedule), and all rights therein. No services, including design technical support or advisory services, will be performed as works made for hire and BD retains full rights to design or market the same or similar designs for other customers. Customer acknowledges that BD is in the business of, among other things, creating custom Products for its customers. BD may create or sell any product or service to another customer provided that it will not use the Confidential Information of Customer in so doing. Some Products are sold subject to the terms of a label license. If Customer gives to BD any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("Feedback"), Customer gives to BD, without charge, royalties or other obligation to Customer, the right to make, have made, create derivative works, use, share and commercialize Customer Feedback in any way and for any purpose. Customer will not give Feedback that is subject to a license that requires BD to license its software, technologies or documentation to any third party because BD includes Customer Feedback in them.

21. Compliance with Applicable Law. Customer and BD hereby represents that it: (i) is a business entity duly organized and validly existing and in good standing under the laws of its jurisdiction of organization; (ii) is qualified or licensed to do business and in good standing in every jurisdiction where such qualification or licensing is required; and (iii) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under the Terms and Conditions of Sale and/or a customer agreement and (iv) is not excluded from participation from any federally funded health care program (including, without limitation, Medicare and Medicaid) (each, a "Program"). If either Party becomes excluded from any Program, then such Party will promptly notify the other Party. Each Party hereby represents that it shall comply with all Applicable Laws, including legal notification requirements. Both Customer and BD hereby represents that it shall comply with, and give all notices required by, all applicable laws, ordinances, rules, regulations and lawful orders of any public authority or agency (including child labor laws) bearing on the performance of the Terms and Conditions of Sale and/or customer agreement.

22. Governing Law and Jurisdiction. This Agreement and all disputes arising hereunder and/or related to the BD Products purchased by Customer will be governed by and interpreted in accordance with the internal laws of the State of New Jersey. The parties also shall submit all such disputes to the exclusive jurisdiction of the courts of the State of New Jersey.

23. Debarment. BD may immediately stop shipping Products to Customer, if the Customer's key personnel is convicted of an offense related to health care or listed by a federal agency as being debarred, excluded, or otherwise ineligible for federal healthcare program participation. In the event that an entity is no longer a Customer, BD may terminate immediately such entity's access to any BD Product hereunder.

**24. Force Majeure.** Except for the obligation to pay fees when due, the performance by any Party of any obligations herein is excused when a Party's performance is hindered or delayed by any act or cause beyond its reasonable control including acts of nature, pandemic, the public enemy, terrorism, insurrections, riots, labor disputes (including lockouts or boycotts), fire, explosion, flood, acts of government, power outage, failure of the internet, acts of third parties, inability to obtain supplies and raw materials at reasonable prices, or natural disaster (each, a "Force Majeure Event") for as long as such Force Majeure Event continues. The Party so affected by the Force Majeure Event must give prompt written notice to the other Party and, to the extent practicable, describe in reasonable detail the nature of the Force Majeure Event.

**25. Defense Production Act.** Notwithstanding anything to the contrary herein, it is understood that BD may not be able to fulfill quantities ordered or committed as a result of obligations BD may have under the Defense Production Act, including any obligation to prioritize government orders over commercial orders. As such, BD will not be penalized or in breach of this Agreement in the event orders are diverted pursuant to the Defense Production Act, nor will any failure to supply provision hereunder be triggered.

**26. Entire Agreement.** These Terms and Conditions of Sale together with the current applicable Customer Agreement between Customer and any BD Entity, is the entire agreement between the parties governing the subject matter herein and supersedes any other oral or written communications, advertisements or understandings with respect to the subject matter hereunder; (ii) supersede any and all pre-printed or other terms on any purchase orders (other than the quantity, type of Product and US delivery location), proposals, quotations and other similar documents; and (iii) supersede any Distributor provided "click-through" agreements, "browse-wrap" agreements, "shrink-wrap" agreements, and any other electronic agreements (if any). Terms and Conditions of Sale apply unless otherwise noted in the applicable Customer Agreement. BD reserves the right to modify these Terms and Conditions of Sale without prior notice, including the addition of a surcharge to all invoices.

**27. Headings.** The section headings contained in these Terms and Conditions of Sale are for reference purposes only.

**28. Key Contact List**

Activity	BD Business Unit	Email	Fax	Phone
<b>Manual Order Placement</b>	BD Medical, BD Life Sciences: Preanalytical Systems, and BD Interventional	customer_support@bd.com	800.847.2220	<b>1-844-8-BD LIFE</b>
	BD Life Sciences: Pharma Microbiology	industrial_cs@bd.com	410.316.4770	
	BD Life Science: Diagnostic Solutions (Women's Health & Cancer Only)	tripathcustomerservice@bd.com	336.513.4012	
	Bard Access System Products	SLC.CS@BD.com		
<b>Custom Manufactured Orders</b>	BD Medical	customer_support@bd.com	800.804.7489	<b>1-800-523-0502 1-800-323-9088 1-844-8-BD-LIFE</b>
	BD Life Sciences: Diagnostic Solutions	industrial_cs@bd.com	410.316.4770	
<b>Shipment Status</b>	BD and Bard	www.bd.com/customercare		
<b>E-Business (EDI or GHX)</b>	BD and Bard	E_Business_Prod@bd.com		
<b>Billing Inquiries</b>	BD and Bard	invoices@bd.com		
<b>Product Complaints</b>	BD and Bard	ProductComplaints@bd.com		
	Bard Access System Products	SLCCS@bd.com		
<b>Initiate a Claim or Request for a Return Authorization</b>	BD and Bard	claims_resolution@bd.com		
<b>Dispute a Denied Claim</b>	BD and Bard	denied_claims@bd.com		

**29. Mailing Addresses**

Activity	Mailing Address
<b>Order Placement, Claims Resolution BD Medical, BD Life Sciences, and BD Interventional</b>	BD U.S. Customer Care - Mail Code 217 Attn: NASSC Team Leader 5859 Farinon Drive San Antonio, TX 78249
<b>BD Medical Custom Manufactured Order Placement</b>	BD U.S. Customer Care - Mail Code 217 Attn: NASSC Team Leader 5859 Farinon Drive San Antonio, TX 78249
<b>BD Life Sciences: Diagnostic Solutions Custom Manufactured Order Placement</b>	BD U.S. Customer Care – Mail Code 700 Attn : Customer Care Team Leader 7 Loveton Circle Sparks, MD 21152
<b>BD Life Sciences: Diagnostic Solutions Women's Health &amp; Cancer Order Placement</b>	BD U.S. Customer Care Attn : Customer Care Team Leader 780 Plantation Drive Burlington, NC 27215
<b>BD Credit and Collections</b>	BD Credit and Collections Attn: AR 5859 Farinon Drive San Antonio, TX 78249

*Unless otherwise noted, BD, the BD Logo, and all other trademarks are property of Becton, Dickinson and Company.*

**Schedule A – Bard Products  
Exceptions and Special Handling**

<b>Product</b>	<b>Returnable/ Non- Returnable</b>	<b>Special Handling Policy</b>
<b><i>Bard Peripheral Vascular</i></b>		
LUTONIX™ Drug Coated Balloon PTA Catheter	Returnable	Non-returnable after 15 days of the corresponding Bard invoice date.
<b><i>Davol</i></b>		
AlloMax™ and AlloMax™ 1mm Surgical Grafts	Returnable	Bard can only ship this product via overnight carrier on a day other than Friday or the day before a Federal Holiday. Product returned to Bard must be shipped overnight carrier on a day other than Friday or the day before a Federal Holiday.
XenMatrix™ Surgical Graft		
Phasix™ Mesh	Non- returnable	Bard can only ship this product via overnight carrier on a day other than Friday or the day before a Federal Holiday
Phasix™ ST Mesh with Echo 2™ Positioning System		
Phasix™ ST Mesh with Open Positioning System		
Phasix™ ST Mesh with Open Positioning System		
OPTIFIX™ Absorbable Fixation System	Non- returnable	Bard can only ship this product via overnight or 2-day service Monday through Wednesday, or Thursday overnight. Product cannot be shipped on a Friday or the day before a Federal Holiday.
SORBAFIX™ Absorbable Fixation System		
PROGEL™ Pleural Air Leak Sealant		
Tridyne™ Vascular Sealant		
<b><i>Bard Medical Division</i></b>		
ARCTIC SUN™ Temperature Management System Equipment, Pads and Accessories	Non- returnable	
TheraSeed™ Palladium Seeds (Registered trademark of Theragenics)	Non- returnable	Returnable for storage and decay only.
BrachySource™ I-125 Seeds		