

## NIRx Terms and Conditions for Purchases

### Definitions

NIRx: NIRx Medical Technologies, NIRx Medizintechnik GmbH and their parent, sister or daughter companies  
QUOTATION: an official document listing which includes NIRx product/service pricing/specifications for an ACCOUNT and/or CONTACT directly provided by NIRx  
CONTACT: The individual for whom NIRx originally generated the quote, listed as contact in a QUOTATION.  
ACCOUNT: The business, organization, or individual that the CONTACT works for, or represents, that will be receiving and paying for the goods and services purchased.  
PURCHASER: The individual who signs and/or creates the purchase order that is sent to NIRx.  
DATE RECEIVED: The starting date by which all time-based policies NIRx offers with its products, including: warranty duration, support contract duration, software update duration. Specifically, it is the date that the respective good purchased is received by the ACCOUNT, as confirmed by tracking information from NIRx's shipment carrier.  
CONFIRMATION (CONFIRMED): A dated affirmation between the ACCOUNT and NIRx via written (email, letter, fax) means which details that which has been agreed upon between the parties on that official date.  
MAJOR SYSTEMS: Consists of every configuration of NIRScout, NIRSport, and DYNOT

### General Terms and Conditions

Any QUOTATION and any agreement resulting thereof shall be governed by the laws of The United States of America, with jurisdiction in New York courts.

All terms in a QUOTATION supersede and/or replace any conflicting and/or varying terms made in all official PURCHASE ORDERS (PO) received by NIRx in relation to the respective QUOTATION, should the terms differ in the PO and the QUOTATION. NIRx has the right to modify the terms and conditions of the offer before an official purchase is received. NIRx will notify the CONTACT if any modifications are made.

### Purchase orders

By creating a PO to NIRx, the PURCHASER takes full responsibility as an authorized representative of the CONTACT, or ACCOUNT, named on the QUOTATION. As such, the ACCOUNT will be held responsible to comply with all terms stated within a quotation. NIRx will accept a signed QUOTATION, or POs generated from a QUOTATION, as an official PO. All POs generated from use of any other QUOTATION from NIRx must explicitly refer to the QUOTATION number listed. NIRx reserves the right to reject any POs at its discretion.

### Currency, shipment and taxes

All prices are listed in the currency as mentioned on the first page of this offer, and do not include VAT, sales tax, duties, shipment, insurance or any other local taxes, unless specified.

### Payment Terms

Payments not received by the invoice due date will incur a late fee of \$10 or 0.2% of the due balance (whichever is larger) per calendar day late. If it is not possible to pay NIRx the full balance within the stated due date and you would like to alter or extend the payment terms in order to avoid any late fee, we require that you contact us and receive written (email, mail, or fax) consent before the stated payment date.

### Accepted Payments

NIRx will accept payments in the form of checks, and electronic funds transfers (EFTs). EFTs will incur a \$50 surcharge. Order totals less than \$10,000 may be paid by credit card, and will incur a 3% surcharge.

### Date of Purchase

The date of purchase is defined as the date NIRx notifies the PURCHASER of receiving the PO or signed quote. This invariably will be no earlier than the date NIRx receives the PO or signed quote from the ACCOUNT.

### Shipping and Billing Address Information

NIRx will ship and bill to the ACCOUNT's address stated above unless otherwise noted in the PO. If any changes to either address should be made, it is the responsibility of the ACCOUNT to notify NIRx.

### System Setups, Safe Use, and Maintenance

NIRx explicitly ensures compatibility between certain products in product user manuals.

The necessary specifications for setup (i.e. hardware and software interacting with products sold), safe use, and maintenance for all systems and software sold by NIRx are listed in each of the systems' and software's user manuals and covered in purchased training. NIRx requires training for all of its systems and software (listed below in Installation and Training), to ensure that all systems and software are safely used and maintained.

NIRx includes the most up-to-date user manuals with each of its systems and software sold, and provides them in hardcopy and digital form.

In order to ensure safe and compliant product usage, and to keep product warranties valid, NIRx requires that any hardware changes to the system, or to "3<sup>rd</sup>-party" components that may directly interact with the NIRx system, be CONFIRMED by a NIRx technical expert. Even if outside of the warranty period, NIRx requires that any changes to a hardware setup be CONFIRMED by a NIRx technical expert before proceeding with hardware setup changes. NIRx explicitly prohibits any modification, tinkering, tampering, or other changes to the internal electronics and mechanics of its systems by ACCOUNTS and CONTACTS, unless a CONFIRMATION in regard to the specific changes is made in advance.

In some instances, an error in hardware setup may void a product warranty (e.g. improper power supply connection, incorrect gel used that damages hardware, etc.), make a system non-compliant with product regulations, or even potentially endanger the end-users and/or subjects in contact with the system. Because of this, NIRx must stress the necessity for the ACCOUNT to ensure that initial and ongoing system and hardware setups are safely compatible and pass any necessary regulations for use.

Getting questions answered (e.g. product compatibility, regulatory restrictions, maintenance, etc.) regarding non-NIRx products (i.e., 3<sup>rd</sup>-party devices) that interact with NIRx systems and software setups will be the full responsibility of the ACCOUNT, though NIRx will attempt to aid in communication, if prompted by the ACCOUNT, with related 3<sup>rd</sup>-parties. NIRx only takes responsibility for clearly communicating the required specifications for NIRx MAJOR SYSTEM setups, safe use, and maintenance via user manuals and, as needed, written (email, mail, or fax) communication.

NIRx will not correct, replace, nor fix any components, or provide services for the necessary corrections to be made, free of charge for any issues relating to non-NIRx products that are not explicitly addressed in quotations or in a CONFIRMATION regarding said corrections and services.

### Installation and Training

NIRx requires onsite training for each of its MAJOR SYSTEMS. The goal of onsite training is to ensure that end-users of the aforementioned systems fully understand the safe use and proper maintenance of these systems as outlined by the manufacturer. NIRx requires end-users to assume full responsibility for the safe use and maintenance of their SYSTEMS. To this end, NIRx will not provide support/updates until installation and training is fulfilled for NIRx SYSTEMS, and may be required to notify a regulatory body or the ACCOUNT if the training is not fulfilled. The sole exception to this is for existing customers of NIRx that have previously received training on new systems purchased, though it may be necessary for NIRx to require additional training for the new system if significant updates or changes have occurred since the customer first received

training.

Installations and trainings will be scheduled as early as possible by NIRx based on coordination with customers and NIRx Support Engineers. Onsite installation and training is not included in the purchase of products, unless otherwise explicitly stated in the NIRx quotation.

### Start date of Warranty, Support, and Update Period

NIRx will include a detailed packing list in all shipments, including details on backordered items. This should be treated as a prompt to evaluate the goods purchased and sent; specifically, that they are present and in good condition. Once the goods purchased have arrived, it will be the responsibility of a member of the ACCOUNT to notify NIRx if there are any discrepancies with the respective goods shipped in the shipment confirmation document.

NIRx requires CONFIRMATION from the ACCOUNT on discrepancies in the packing list within 15 days after the original DATE RECEIVED. For all goods needing to be replaced or returned, this would alter the DATE RECEIVED. All other not being replaced or returned will maintain the original DATE RECEIVED. 15 days after the finalized DATE RECEIVED, NIRx may still replace goods under warranty but will not accept returns.

If the ACCOUNT or CONTACT would like to have the warranty period start at a later date than the date received, this needs to be explicitly stated in this quotation or in a CONFIRMATION between NIRx and the ACCOUNT or CONTACT. This may be desirable for end-users who will not install or use the equipment for some time after the shipment is received. NIRx may require an additional charge to extend the warranty and reserves the right to reject any request for extension.

### Order Cancellation, Returns and Exchanges

NIRx will accept all order cancellations made within 5 days of a CONFIRMATION for receiving the PO. Cancellations placed 5 business days after a CONFIRMATION for receiving the PO will be subject to review by NIRx management and will incur a minimum of a 2% processing fee.

All custom work orders involving prepayment will *not* be eligible for cancellation or product return after 5 days of CONFIRMATION for receiving the purchase order.

Returns may be made within 15 days of the DATE RECEIVED for all items not considered custom or a special request. A minimum of a 5% restocking and processing fee will be charged for all returns. For NIRScout Extended SYSTEMS, a minimum of a 10% restocking fee will be charged for all returns.

Outside of 15 days, NIRx reserves the right to reject any product returns, unless the product is defective. In this case, NIRx uses a return merchandise authorization (RMA) form to evaluate and approve or reject any product returns for repair, replacement, or credit.

### Warranty

NIRx warranty agreements apply only to hardware sold. See update and software support for details on ongoing software coverage.

All items covered under warranty explicitly state the duration of their warranty in the product's description and/or in the product's user guide. In general, the warranty period is 36 months (after the equipment DATE RECEIVED) for all NIRx systems. NIRx measuring caps will be guaranteed a 12-month warranty. Items generally excluded from any warranty include consumable items (e.g. gel, needles, etc.) and small accessories.

NIRx will accept product exchanges within 15 days of the DATE RECEIVED for all defective items not under warranty.

A warranty extension of the respective hardware item's warranty can be made for a total warranty of up to 4 years. If you would like to extend the warranty, it must be done within 15 days of the DATE RECEIVED.

The warranty for all items is only valid if the use, cleaning, and maintenance of the items follow the prescribed methods in the most up-to-date version of the respective user manual of the products in question. NIRx includes up-to-date user manuals when shipping all SYSTEMS. Additionally, all user manuals are available for download, fax, or mail. It will be the responsibility of the ACCOUNT to retain and check up-to-date user manuals.

NIRx requires detailed reports of problems with hardware on a RMA form which must be turned in, reviewed, and approved by any warranty claim to be fully compensated. Even if the RMA form is completed and turned in, the approval of it will be based upon a detailed review of the hardware itself. NIRx will honor all warranty claims within the coverage period for hardware that has been treated in accordance with respective up-to-date user manuals.

### Warranty Extensions

Extended warranties may be purchased before delivery, or after shipment of a system to NIRx for recertification at NIRx's discretion if the warranty period is up. Warranty extensions will be charged as a % of the cost of the system at the time the *extension* is purchased. % are as follows: year-4 extension – 7%, year-5 extension – 10%, year-6 extension – 13%, year-7+ extensions – price determined by NIRx on a case-by-case basis.

### Technical support

Standard Support: Assistance with safe and basic system use and maintenance for life of NIRx system. Includes basic upgrades to software.

Extended Support: Advanced assistance with experimental design, multi-modal integration, and data analysis for 18 months. Includes advanced upgrades to software. Support Communication: Telecom-based support (phone/email/video conference/remote access), response within 2 business days.

### Advanced Technical support

Advanced support is additional support on the use of the system, most often related to the customization of the system, or advanced training. Advanced Technical Support is carried out by an expert member of the NIRx support team and development engineers. In general, these activities involve intensive online training session(s), programming, and/or development hours. Advanced Technical Support is not included in the support contract and must be purchased before assistance.

### Countries of origin

All hardware and software is made and assembled in Germany and The United States of America