

TERMS AND CONDITIONS OF ACCEPTANCE OF ORDER BY APOLLO PHYSICAL THERAPY PRODUCTS (APOLLO)

These are the terms upon which APOLLO sells the laser devices (goods) manufactured and/or distributed by it (the goods) to you:

1. **PURCHASE PRICE** - The Purchase Price of the goods is as set forth in the Sales Order and does not include shipping and taxes. UNLESS OTHERWISE STATED APOLLO shall be entitled to receive payment in full of the Purchase Price within 30 days of the date of the Sales Order, or prior to shipping, whichever is sooner. Only signed orders supplied on APOLLO's Sales Order form are accepted, and all sales are final 30 days after shipment of goods to the customer.
2. **RETURNS & REFUNDS** - The goods may be returned within 30 days subject to the following conditions: 1. Goods are to be returned to APOLLO in original condition via UPS 2nd Day Air at customer's expense; 2. Goods are to be securely and protectively packed in the original packaging. For goods returned within 7 days of original shipment a full refund of the purchase price will be promptly issued. For goods returned after 7 days and within 30 days a refund of the purchase price of the goods minus a 10% restocking fee will be promptly issued. No refunds will be issued for goods not returned in accordance with these conditions or if returned after a period of 30 days from initial shipment to the customer. No refunds issued on books or accessories.
3. **DELIVERY** - The parties agree that risk shall pass to you or to your nominated carrier for transportation upon APOLLO either delivering the goods to you or upon APOLLO delivering the goods in accordance with your directions. Under these circumstances, delivery shall be complete and you shall be deemed to have accepted the goods notwithstanding that you are not physically present at the place or time of delivery and notwithstanding that there has been no receipt obtained for the goods upon delivery. The expected date for delivery or installation is an approximation only and while APOLLO shall use its best endeavors, at all times, to meet such dates, you shall not be entitled to claim damages, compensation, or to rescind the Agreement if APOLLO fails to deliver the goods on the stated dates AND FURTHERMORE APOLLO shall not be liable to you or to any other person for any loss or damage whether directly or indirectly caused or arising out of any delay or failure to deliver the goods on the date specified. Where delivery of any goods requires an export license or other authorization before shipment, APOLLO shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization. In the event that APOLLO is unable to deliver the goods within a period of thirty (30) days from the date specified, APOLLO may, by giving written notice to you, terminate this Agreement prior to delivery and neither party shall have any right of action or claim for damages as against the other. Notwithstanding any provision to the contrary herein contained ownership and title to the goods shall not pass to you and shall remain with APOLLO until such time as the goods have been paid for in full.
4. **REPRESENTATIONS AND WARRANTIES** - The parties to this Agreement specifically agree that all the terms, conditions, and warranties herein contained shall represent the whole of the Agreement as between the parties AND FURTHERMORE you acknowledge that you do not rely upon any other representation made by APOLLO or any other persons representing APOLLO or any person concerning the merchantability or fitness for purpose of the goods. APOLLO's intended purpose for the goods is to emit energy in the visible and infrared spectrum to provide topical heating for the purpose of elevating tissue temperature for the temporary relief of minor muscle and joint pain and stiffness, minor arthritis pain, or muscle spasm; the temporary increase in local blood circulation; and/or temporary relaxation of muscle. By signing the Sales Order you confirm that you are licensed by law to use or order the use of the goods AND FURTHERMORE that you comply or intend to comply with all State and/or Federal regulations and laws as may apply in respect of your ownership and/or use of the goods including professional credentialing, licensing and/or registration.
5. **WARRANTIES** - (a) APOLLO hereby warrants that the goods including every major component part thereof is free from defects in materials and workmanship at the time of delivery and such materials and workmanship shall be warranted for the warranty period and it shall be the responsibility of you to enquire as to the warranty period for the goods hereby sold and as to the other terms of the warranty given. APOLLO shall upon request supply you with full details of the warranty period, the terms of the warranty and the extent to which the warranty covers the parts, labor and the goods themselves. (b) APOLLO's liability for breach of any warranty or term or condition contained in Part A hereof shall be limited (at APOLLO's option) to the repair or replacement of the goods by APOLLO and APOLLO, except to the extent provided in this sub clause, shall not be liable to you or any third party whatsoever arising either directly or indirectly from any such breach of warranty or from any defective or faulty components or materials or workmanship in the goods or with respect to their installation. (c) Subject to any qualification in the warranty APOLLO shall be required to service free of charge any defect in materials or workmanship which may occur during the warranty period PROVIDED HOWEVER that in the event of APOLLO servicing the goods and concluding that the cause of such service is not any defect in materials or workmanship then you shall pay the costs of APOLLO providing such service. (d) You shall notify APOLLO of any defect in the material or workmanship of the goods within seven (7) days of becoming aware of such defect and such notification shall be or shall be confirmed in writing (for the purpose of this Clause writing shall include any letter or fax and shall show: 1. the date of delivery of the goods; 2. full details of the alleged defects and faulty parts). You shall not use the goods in any way whatsoever after you become aware of any defect or fault in the goods until the goods have been repaired or replaced by APOLLO. In the event of you using the goods after you become aware of any fault or defect and prior to the goods being repaired by APOLLO then you shall indemnify APOLLO and keep APOLLO indemnified from any claim made by any person whatsoever against APOLLO for damages arising out of injury to any person or property where such injury to any person or property is a direct or indirect result of the use or misuse of the goods and you shall have no claim against APOLLO with respect to such defects or any consequential damage or liability flowing there from. (e) You shall not take any steps to repair the faulty goods or any part thereof without the express written consent of APOLLO. In the event of you endeavoring to carry out such repairs without APOLLO's consent then, in such circumstances, APOLLO's liability to repair the goods will no longer apply and APOLLO shall be under no obligation whatsoever to you to repair or replace the said faulty goods.
6. **EXCLUSION OF OTHER WARRANTIES** - All other warranties which would otherwise be included by law, whether those warranties are expressed or implied pursuant to general law, or by virtue of any statute, are hereby excluded. The warranties given in these Terms and Conditions are the only warranties given by APOLLO PROVIDED HOWEVER to the extent to which by any statute (whether State or Federal) there is a warranty which applies to this sale of goods irrespective of the agreement of the parties to exclude the same then, this paragraph shall not be interpreted as purporting to exclude the operation of such warranty or warranties and such warranties shall apply.
7. **DEFECT OR DAMAGE TO THE GOODS CAUSED BY THE CUSTOMER** - The warranties given in the Agreement by APOLLO shall not apply to any defect, fault or malfunction of the goods where it is a direct or indirect result of: lack of proper maintenance or care of the goods; incorrect or unreasonable use of the goods; failure by you to carry out or to observe instructions or directions given by APOLLO; unauthorized modifications or repairs attempted or carried out by you or some other person on your behalf; faulty or defective electrical wiring, walls or structures where the goods are used.
8. **SAFETY WARNINGS** - You shall communicate, transmit or otherwise provide safety warnings to Persons purchasing, using, prescribing use or receiving treatment of the Product as defined in Apollo Operating Manual for Product. You shall advise the purchaser of the Product of their sole and complete responsibility to safely use, prescribe, recommend, apply or otherwise dispense patient treatments using the Product.
9. **APPLICABLE LAW** - The applicable law to this Agreement shall be the law of the State of California. You agree to comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities, and NOT to export or re-export the Product or any direct product thereof.