



**THE CARDIO GROUP**

**MAX PULSE PURCHASE ORDER AGREEMENT**

**Seller:**        **The Cardio Group, LLC “TCG”, Highland, UT 84003 Phone: 877-863-0659**

**Buyer (hereafter “BUYER”):**

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Print Name

Complete Shipping Address

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Phone number

Email Address

TCG is pleased to sell a Max Pulse unit, to Buyer for the sum of \$ \_\_\_\_\_ USD, based on the Terms and Conditions of Sale (see reverse side of this document). In addition, the Buyer is purchasing in-house training for the sum of \$ \_\_\_\_\_ USD for a total purchase price of \$ \_\_\_\_\_ USD.

Buyer shall immediately report any breach of warranty to TCG during the warranty period, and if properly reported TCG shall undertake prompt action to cause the Max Pulse to be properly repaired. Buyer shall be responsible for any repairs and/or maintenance to the Max Pulse after the expiration of the manufacturer’s warranty.

This agreement shall be governed by the laws of the State of Utah regardless of where the sale takes place and Buyer consents to the exclusive jurisdiction of Utah courts in any action that may be filed. In the event of default, Buyer shall be required to pay all court costs and TCG’s reasonable attorney fees.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of TCG Sales Rep

\_\_\_\_\_  
Name of Buyer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**MAX PULSE CREDIT CARD AUTHORIZATION**

I authorize The Cardio Group, LLC of Highland, Utah 84003 to debit my account in the amount \$ \_\_\_\_\_ USD signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Credit Card Number: \_\_\_\_\_

Expiration Date: \_\_\_\_/\_\_\_\_

CVV Code: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Billing Address (if different from Shipping Address): \_\_\_\_\_

## THE CARDIO GROUP - TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale apply to all sales transactions between The Cardio Group, LLC, a Utah Limited liability company and any purchaser of any product from Vendor.

### 1. DEFINITIONS.

The term "Buyer" refers to the person or entity listed in the Purchase Order (as defined below) or other invoice(s), as the case may be. "Vendor" means The Cardio Group, LLC a Utah limited liability company. "Purchase Order" includes the original purchase order issued by Buyer in connection with the transaction contemplated hereunder, any amendments to such original purchase order made as provided herein, and any attachments issued by Buyer. "Product" or "Products" mean goods, products, materials, equipment, supplies, parts, assemblies, technical data, intellectual property, drawings, or any other items covered by the Purchase Order. All trade or shipping terms herein shall be defined in accordance with Incoterms 2000, without regard to usage of trade, course of performance or course of dealing. For each order requiring Vendor to arrange shipment the term "Ship To Address" means the "ship to" address specified above, and "Receipt Date" means the date specified above on or by which such Products must be received by Buyer at the Ship To Address.

### 2. OFFER AND ACCEPTANCE OF PURCHASE ORDER.

This Purchase Order constitutes Buyer's offer to Vendor, and shall become a binding contract upon the earlier of (1) Buyer's receipt of Vendor's written acknowledgment of this Purchase Order, unless such written acknowledgment contains a different price, Receipt Date, or Product type or description, in which case there shall be no binding contract until Buyer issues an amended Purchase Order that accepts the different price, Receipt Date or Product type or description, or (2) for FCA shipments, Vendor's completion of delivery and loading (as applicable) of conforming Products to the specified location for shipment (and where applicable, already cleared for export). All Products supplied by Vendor hereunder shall be deemed to be accepted by Buyer (A) upon Buyer's issuance of a written notice of acceptance, or (B) thirty (30) days after Buyer's receipt of those Products.

### 3. CHANGES TO OR CANCELLATION OF PURCHASE ORDER.

Each of the terms and conditions of sale contained in this Purchase Order is an essential, integral part of Buyer's offer to purchase the Products. No additions, deletions, substitutions, or other modifications to this Purchase Order shall be made except pursuant to an amended Purchase Order issued by Buyer that contains Buyer's revision number and date and restates all terms and conditions hereof.

### 4. CORRESPONDENCE AND COMMUNICATIONS.

All correspondence, acknowledgments, notices, consents, and other communications related to this Purchase Order shall be in writing, and shall be addressed to Buyer's Purchasing Representative or Vendor, respectively, at the corresponding addresses shown on the purchase order or invoice, unless notice of a different address has been provided in writing. A Notice or other communication shall be deemed effective upon receipt or in the case of refusal to accept or inability to deliver the notice or other communication, the earliest of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

### 5. SHIPMENT OF GOODS, RISK OF LOSS AND TRANSFER OF TITLE.

All Products shall be shipped to Buyer and risk of loss or damage shall transfer from Vendor to Buyer based on FCA (Free Carrier) Vendor's warehouse or business address, as the case may be. Title to the goods shall transfer from Vendor to Buyer at the same point in time when risk of loss transfers.

### 6. VENDOR WARRANTIES.

Vendor warrants that all Products will be merchantable, of good workmanship and materials, fit for the particular purpose or purposes for which intended, and free from defect, claim, encumbrance or lien for twelve (12) months from the time that Buyer obtains possession of the Products. Vendor warrants the Products will be free from design defect and suitable for the purpose intended by Buyer. If Products furnished by Vendor do not meet the warranties specified or otherwise applicable, and Buyer provides written notice of such non-conformance to Vendor within the twelve (12) month warranty period, then Vendor shall, at its sole expense, repair or replace those non-conforming Products, or shall provide Buyer with a full refund of the purchase price for those Products and any related freight costs borne by Buyer, as Buyer shall elect.

### 7. BUYER WARRANTIES.

Buyer warrants that it is an authorized end user of the Products or that it shall only sell the Products to authorized end users. Authorized users are those individuals or entities authorized to purchase and use the Products as approved under the Food and Drug Administration's ("FDA") 510(k) approval letter for the Max Pulse screening device, dated June 13, 2011; regulations found in the Code of Federal Regulations, Title 21, Parts 800 to 898; or any other regulation, statute, law or rule applicable to the sale of Photoelectric, Pneumatic, or Hydraulic Plethysmographs, as defined by the FDA. If Buyer is the end user of the Product, Buyer shall provide Vendor with evidence of such authorization by attaching to this Purchase Order a blank medical prescription

page containing the end user's letterhead on the same. If Buyer sells Product to other end users, Buyer warrants that it will request evidence of such authorization from its end users. Buyer shall be liable for any incidental and consequential damages resulting from a knowing misstatement of its unauthorized use or distribution of Product.

### 8. PAYMENT TO VENDOR.

Buyer shall have the legal obligation to pay the purchase price or any portion thereof, for any Products covered by this Purchase Order once Buyer: (1) for each order of Products made herein, verifies receipt of conforming Products delivered or shipped in accordance with the terms of this Purchase Order; or (2) receives from Vendor an invoice that complies with the following minimum requirements: (a) the invoice is received by Buyer at the "Bill To" address indicated above, (b) the invoice pertains only to this Purchase Order, and (c) the invoice includes the Purchase Order number, the quantity of Products shipped, the unit price of the Products and a description of the Products in the same form as contained in this Purchase Order. Any invoices from Vendor that do not comply with these minimum requirements may be returned to Vendor by Buyer for correction, and Buyer shall be under no obligation to make payment on such non-compliant invoices.

### 9. EXCLUSIVE RIGHT OF OWNERSHIP BY BUYER.

Vendor warrants that the Products do not infringe or violate any intellectual property or other proprietary right of any third party. To the maximum extent permitted by applicable law, Vendor agrees that all right, title and interest in and to, including the right of immediate possession of, all Products shall be and remain with Buyer. To the maximum extent permitted by applicable law, Buyer shall retain such right, title and interest at all times in and to such Products, all of which, including copies, upon Buyer's request or upon Vendor's completion of performance under this Purchase Order, shall be promptly returned to Buyer by Vendor.

### 10. INDEMNIFICATION BY BUYER.

Buyer agrees to defend, indemnify and hold harmless Vendor and its officers, agents, employees and representatives from and against any and all claims, lawsuits, damages legal or otherwise, arising out of or in any way connected with (i) any unauthorized change made by Buyer to the Product, (ii) any violation of law or regulation by Buyer, or (iii) any negligent or willful misconduct caused by Buyer, its officers, agents, employees or representatives.

### 11. ASSIGNMENTS AND SUBCONTRACTS.

Neither this Purchase Order nor any resulting duty or right shall be delegated or assigned by either Vendor or Buyer without the prior written consent of the other party. Vendor or Buyer shall not unreasonably withhold its consent for the other party to assign any claims for monies due or to become due under this Purchase Order, provided the assigning party notifies the other party in writing of its intent to make such assignment and the assignee can legally accept payment.

### 12. DISCLOSURE, ENDORSEMENT, SOLICITATION.

Vendor and Buyer shall not disclose to any third party the terms and conditions of, or any other information related to, this Purchase Order. Neither Vendor nor Buyer shall claim or imply in any way whatsoever to any third party the endorsement by Buyer or Vendor of any Products sold by Vendor.

### 13. COMPLIANCE.

Vendor may at any time insist upon strict compliance with these terms and conditions, notwithstanding previous custom, practice, or course of dealing to the contrary.

### 14. SEVERABILITY.

To the extent any provision of this Purchase Order shall be held, found or deemed to be unlawful or unenforceable, then any such provision or portion thereof shall be modified to the extent necessary so that any such provision or portion thereof shall be legally enforceable to the fullest extent permitted by applicable law. Any court of competent jurisdiction shall, and the parties hereto do hereby expressly authorize any court of competent jurisdiction to, enforce any such provision or portion thereof or to modify any such provision or portion thereof so that any such provision or portion thereof is enforced to the fullest extent permitted by applicable law.

### 15. ENTIRE AGREEMENT.

This Purchase Order, when accepted by Vendor in accordance with the terms hereof, constitutes the entire agreement between the parties with respect to the purchase and sale of the Products covered hereby.

### 16. GOVERNING LAW; JURISDICTION AND VENUE.

This Purchase Order shall be governed by the laws of the State of Utah, United States of America, without regard to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply to this Purchase Order. The state and federal courts located in Salt Lake City, Utah, , United States of America, will have exclusive jurisdiction over all controversies that may arise under, or in relation to, this Purchase Order, and Buyer and Vendor each consent to service and personal jurisdiction therein and waive any and all rights to any other venue to which they might be entitled to seek recourse by virtue of domicile, habitual residence or otherwise.

17. TIMING. Time is of the essence under this Purchase Order.