

These Terms and Conditions are for In-Center and Hospital orders only. Any Home Patient orders placed for in-home use are subject to Vantive's Online Terms and Conditions for Vantive Products (Home Patient Use) found at the following link:

<https://www.vantive.com/contact-support/partners-suppliers>.

DIRECTORY OF SERVICES

Customer Service / Order Entry (Hospitals & Centers) **1-800-284-4060**

Hours: Monday through Friday 7:00 am - 6:00 pm CST

NOTE: Hospital and Center orders are required to be placed electronically.

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eServices/EDI Support **1-800-284-4060**

[http:// eservices.vantive.com](http://eservices.vantive.com)

eservices@vantive.com

ucan.edi@vantive.com

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Sales Inquiries **1-800-284-4060**

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Parts and Equipment Service **1-800-553-6898**

On-site Service

Hours: 8:00 am - 5:00 pm local time

Emergency On-site Service (7 days a week)

Hours: 8:00 am -10:00 pm EST

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Vantive Orders, Returns and Inquiries **1-800-284-4060**

us.customerservice@vantive.com

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Global Technical Services **1-800-553-6898**

Peritoneal Dialysis Operational Support (24/7/365 days a year)

Hemodialysis Technical Support

1-800-525-2626

Hours: 8:30 am - 5:00 pm EST

Acute CRRT Technical Support (24/7/365)

1-833-542-2778

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Clinical Support **1-888-736-2543**

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Product Surveillance **1-888-736-2543**

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Hardware Billing **1-800-553-6898**

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Credit and Collections **1-855-857-0005**

Hours: 7:00 am - 5:00 pm CST

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Pharmacy Services **1-800-417-1434**

Hours: Monday through Friday 7:00 am - 6:00 pm CST

1. General Terms and Conditions of Sale

ALL VANTIVE US HEALTHCARE LLC (“VANTIVE”) SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE (THE “TERMS AND CONDITIONS”), WHICH ARE ACCEPTED BY, AND SHALL BE DEEMED BINDING ON, THE PURCHASER UPON PLACING AN ORDER FOR PRODUCT(S) (“PRODUCT”). VANTIVE’S TERMS AND CONDITIONS, AS AMENDED FROM TIME TO TIME, ARE AVAILABLE ONLINE AT <https://www.vantive.com/contact-support/partners-suppliers>, WHICH IS ACCESSIBLE BY PURCHASER. **VANTIVE RESERVES THE RIGHT AT ANY TIME TO CHANGE THESE TERMS AND CONDITIONS WITHOUT NOTICE.** VANTIVE WILL UPDATE ITS WEBSITE AS THESE TERMS AND CONDITIONS ARE CHANGED; SUCH CHANGES SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING OF THE MODIFIED TERMS AND CONDITIONS. IT IS PURCHASER’S RESPONSIBILITY TO REVIEW THE LATEST VERSION OF THESE TERMS AND CONDITIONS PRIOR TO SUBMITTING AN ORDER. VANTIVE HAS NO RESPONSIBILITY TO NOTIFY PURCHASER OF ANY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE CHANGES. ANY ORDERS PLACED AFTER THESE TERMS AND CONDITIONS ARE CHANGED SHALL BE SUBJECT TO SUCH AMENDED TERMS AND CONDITIONS. NO VARIATION OF THE TERMS AND CONDITIONS WILL BE BINDING UPON VANTIVE UNLESS AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED EMPLOYEE OF VANTIVE.

1.1. No Reselling, Transfer or Export

Purchaser agrees that Product purchased from Vantive is not for: a) resale, transfer, barter or trade to any entity or person; b) use in the further processing, packaging or filling of other drugs, therapies or devices; or c) export. Purchaser shall not transfer any Product to any other person or entity except to the person for whom the prescription is written. Any unused Product, once dispensed or delivered to Purchaser, cannot be transferred to any other patients and must be destroyed in accordance with applicable state or local regulations or returned to Vantive per the guidelines outlined in Vantive’s Returned Goods policy, listed in Exhibit A to these Terms and Conditions.

1.2. Drug and Service State Licensing Requirements

Purchaser agrees to maintain all state-mandated licenses and permits required to purchase, use, and dispense Vantive Product. Purchaser shall provide all applicable licenses and permit information to Vantive promptly upon request.

1.3. Tax, Tax-Exempt Status and Other Fees

Purchaser agrees to pay all applicable federal, state, and local taxes (including property taxes); license and registration fees; and all other fees and costs based on Purchaser’s lease, rental, purchase, possession or use of Product. A Purchaser that is exempt from taxation is required to provide valid certification of its exempt status.

1.4. No Prohibited Use of Product

Purchaser will not knowingly use, resell, transfer or distribute any Product directly or indirectly for the development, production or proliferation of weapons of mass destruction, or missile delivery systems and/or for any terrorist activities.

2. Definitions

The following definitions apply to these Terms and Conditions:

- 2.1. **AFTER HOURS DELIVERY** shall mean any Order placed (i) outside of Normal Business Hours or (ii) on Vantive designated holidays.
- 2.2. **DISPOSABLE** shall mean any product manufactured or sold by Vantive, other than Equipment or Parts.
- 2.3. **EQUIPMENT** shall mean durable medical devices, hardware, instruments and instrumentation used primarily or in support of dialysis, multi-organ extracorporeal support therapy for critically ill patients, liver support therapy, ultra filtration treatment of fluid overloads and/or multiple intensive care therapies which are manufactured, provided as a rental or sold by Vantive for its intended use.

- 2.4. **EXPEDITED ORDER** shall mean any order, which may be filled in Vantive's sole discretion, placed for delivery with less Lead Time than outlined in Sections 2.7 and 3 of these Terms and Conditions.
- 2.5. **FORCE MAJEURE EVENT** shall mean nonperformance or delay of performance caused by strikes, lockouts, concerted acts of workers or other industrial disturbances, fires, explosions, floods, or other natural catastrophes, civil disturbances, riots, or armed conflict, whether declared or undeclared, curtailment, shortages of power or materials, rationing or allocation of normal sources of supply, labor, materials, transportation, energy, or utilities, accidents, acts of God, sufferance of or voluntary compliance with acts of government or governmental regulation, (whether or not valid) embargoes, discontinuation of a Product or any other cause which is beyond the commercially reasonable control of Vantive.
- 2.6. **HOME PATIENT** shall mean an individual for whom Purchaser (i) holds an active prescription on file with Vantive and (ii) is providing CAPD, APD or HD therapy in such individual's home.
- 2.7. **LEAD TIME** shall mean the time from Order placement to delivery of Product. Orders must be placed no later than 12:00 pm local time in the time zone of Purchaser's local Vantive distribution center to be deemed placed on that business day. Orders placed after 12:00 pm local time will be deemed placed on the following business day.
- 2.8. **NORMAL BUSINESS HOURS** shall mean Monday through Friday, 7 AM to 6 PM CST.
- 2.9. **OFF-SCHEDULE ORDER** shall mean requested Orders outside a Purchaser's Order cycle.
- 2.10. **ORDER** shall mean any order for Product placed through Vantive or an authorized distributor.
- 2.11. **PART** shall mean a component manufactured or sold by Vantive for Equipment.
- 2.12. **PRODUCT** shall mean Disposable, Equipment, Part, ancillaries or any combination thereof.
- 2.13. **PURCHASER** shall mean the legal entity purchasing Product for the provision of Automated Peritoneal Dialysis ("APD"), Aquapheresis Therapy ("AQS"), Continuous Ambulatory Peritoneal Dialysis ("CAPD"), Continuous Renal Replacement Therapy ("CRRT"), Hemodialysis ("HD") therapy, Molecular Absorbent Recirculatory System ("MARS") and/or Therapeutic Plasma Exchange ("TPE"). Such entities include, but are not limited to, hospitals and/or hospitals and their affiliated outpatient dialysis clinics ("Hospitals") and other licensed, outpatient dialysis centers ("Centers").
- 2.14. **SCHEDULED DELIVERY** shall mean the day and estimated time of delivery for each Scheduled Order (excluding deliveries made by third party companies such as UPS) to a Hospital or Clinic. Standard delivery schedules are set forth in Schedule 1.
- 2.15. **SCHEDULED ORDER** shall mean an Order placed for delivery to a Hospital or Clinic per the established Order schedule.

3. Order/Delivery

3.1. Orders

All Orders for Product shall be subject to these Terms and Conditions and shall not be subject to the terms, conditions, or provisions of any Order confirmation or Purchaser purchase order, except to the extent that such document specifies quantities.

- a. All Products are subject to discontinuation at Vantive's sole discretion. Products are subject to availability based on Vantive's current Product portfolio.
- b. Purchaser agrees that, upon reasonable notice to Purchaser, Vantive may allocate Product among Purchasers in Vantive's reasonable judgement.
- c. Vantive may, at Vantive's sole discretion, substitute any Product ordered with Substitute Product at equivalent pricing. "Substitute Product" shall mean clinically suitable alternative replacement product in terms of safety, efficacy, indications, and usage, which may be marketed, sold, and/or distributed in the United States pursuant to an approval, clearance, allowance, Emergency Use Authorization, temporary importation authorization, or other regulatory discretion determination issued by the U.S. Food and Drug Administration (the "FDA").

In lieu of any other warranties, Vantive warrants that Substitute Product will meet, at the time of sale, all conditions required by the FDA for its approval, clearance, allowance, Emergency Use Authorization, temporary importation authorization, or other regulatory discretion determination. The FDA may, at any time, rescind or modify any Emergency Use Authorization, temporary importation authorization, or other regulatory discretion determination.

- d. All Orders require a valid purchase order supplied by the Purchaser. In the event of a conflict between a purchase order and these Terms and Conditions or the underlying purchase agreement between the parties, these Terms and Conditions and the underlying purchase agreement shall control.
- e. Any modification by Purchaser to a contract regarding pricing, terms of sale or any other terms or conditions shall not be effective unless accepted in advance and in writing by an authorized representative of Vantive.
- f. Order quantities must be in the selling unit of measure indicated. Pack factors are noted for reference only.

3.2. **Force Majeure**

Vantive will use commercially reasonable efforts to fill Orders, but Vantive shall not be liable for nonperformance or delays caused by a Force Majeure Event.

3.3. **Lead Time**

Disposable Orders require a five (5) business day Lead Time. Equipment Orders may require up to a thirty (30) business day Lead Time. Product Orders requiring expedited delivery at Purchaser's request may be subject to an Expedited Order charge as described in Sections 3.7. Orders placed by Purchasers past the Lead Time cut-off may be subject to a late fee of fifty dollars (\$50.00).

3.4. **Minimum Order Charge**

All Orders that are less than two hundred fifty dollars (\$250.00) may be subject to a charge of forty (\$40.00) dollars. Exemptions may be permitted for deliveries required to correct Vantive error (except as otherwise noted herein).

3.5. **Scheduled Orders**

- a. Recognizing that Hospitals and Centers have unique delivery and service requirements, the parties will set a mutually agreeable delivery schedule as determined by Vantive Customer Service subject to Off-Schedule Order and Expedited Order fees. Accessorial services may be subject to additional fees.
- b. Purchaser Order frequency and scheduling will be maintained in Vantive's transaction management system.

3.6. **Off-Schedule Orders to Hospitals or Centers**

Off-Schedule Orders to Hospitals or Centers that can ship ground may be subject to a delivery fee of fifty dollars (\$50.00).

3.7. **Expedited Orders to Hospitals or Centers**

Expedited Orders placed to Hospitals or Centers may be subject to an Expedited Order processing charge as follows: one hundred fifty dollars (\$150.00) if placed during Normal Business Hours and two hundred fifty dollars (\$250.00) if placed outside of Normal Business Hours, plus freight.

3.8. **Proof of Delivery**

The Vantive invoice and packing list must be retained as proof of delivery. Subject to availability and within thirty (30) days following the date of shipment, requests for additional documentation of delivery (e.g., carrier delivery logs) may be subject to a service charge of forty dollars (\$40.00).

Delivery to a Hospital or Center shall be made to a receiving or loading dock.

3.9. **Accessorial Services to Hospitals and Centers**

Special services related to packing and/or shipping for Hospitals and Centers may be subject to commensurate service fees per occurrence, and may include the following:

- Lift gate: fifty dollars (\$50.00)
- Inside delivery: seventy-five dollars (\$75.00)
- Custom Palletization: seventy-five dollars (\$75.00)
- Additional deliveries (in addition to standard deliveries under Schedule 1): one hundred fifty dollars (\$150.00)

4. Freight, Distribution and Shipping

4.1. Freight and Distribution

Published prices for Equipment and Parts do not include delivery, handling and installation. These charges will be arranged and billed separately, if applicable.

Purchaser is responsible for all freight and distribution charges for Products when Expedited Order processing and delivery is required, unless specifically provided in these Terms and Conditions.

All shipments are considered "contiguous USA only" unless otherwise mutually agreed to in writing by Purchaser and Vantive.

4.2. Shipping Terms and Risk of Loss

- Except as otherwise permitted herein, Disposable items are shipped FOB Destination (freight prepaid by Vantive), and the risk of loss on any Disposable shall pass to Purchaser when Purchaser receives the Disposable. Notwithstanding the foregoing, all Disposables shipped to Purchasers in Alaska and Hawaii may be subject to a twenty percent (20%) price premium above contracted price to cover shipping and handling charges.
- Equipment is shipped FOB Origin (freight charges are prepaid by Vantive and shall be added to Purchaser's invoice as separate line item charges). The risk of loss on Equipment passes to Purchaser upon Vantive's shipment from Vantive's shipping point. Purchaser agrees, at Purchaser's own cost and expense, to keep the Equipment fully insured against destruction and loss from the date of shipment of the Equipment until the amounts owed are paid in full. Upon Vantive's request, Purchaser will provide Vantive with proof of such insurance.
- Notwithstanding the foregoing, Vantive reserves the right at any time to ship Disposable items FOB destination, Freight Collect (Purchaser will be responsible for shipping and handling; the costs prepaid by Vantive and added to Purchaser's invoice).
- Title to all Products except for Equipment shall pass to Purchaser upon receipt by Purchaser. Title to Equipment shall pass to Purchaser upon full payment of all applicable fees under the applicable Equipment agreement. Notwithstanding the foregoing, title to HomeChoice, HomeChoice Pro, HomeChoice Claria, and AMIA automated peritoneal dialysis system cyclers shall remain with Vantive.

5. Billing and Payment

5.1. Terms of Sale

All Orders are subject to credit approval and acceptance at Vantive's home office. Standard payment terms are net thirty (30) days from the date of invoice. Payment terms are in effect as of the date of the order. Payment is made to the "remit to" address indicated on the invoice. Credit card payments are subject to approval by Vantive's Credit and Collections department.

A service charge of one and one-half percent (1½%) per month (or the highest amount allowed by applicable law, if lower) may be added to all amounts past due. Additionally, Vantive reserves the right to require payment in advance of shipment.

5.2. Prices

Product is priced at the amount indicated for the selling unit of measure ordered. Prices and specifications are subject to change without notice. All shipments are billed at the price in effect on the date of the order.

Product, with the exception of Equipment, is billed upon shipment. Equipment is billed after implementation. Product prices are exclusive of all taxes, discounts or rebates.

5.3. Discount Disclosure Statement

Any discounts, rebates, incentives, or other reductions in price issued by Vantive to Purchaser under these Terms and Conditions may constitute a discount within the meaning of 42 U.S.C. §1320a-7b(b)(3)(A) and/or 42 U.S.C. §1320a-7b(b)(3)(C). Purchaser may have an obligation to properly disclose and appropriately reflect such discount to any state or federal program that provides cost or charge based reimbursement to Purchaser for the items to which the discount applies. Purchaser agrees to make proper disclosures of any and all discounts, rebates, credits, reimbursement and other like programs. Purchaser agrees to comply with all applicable laws when seeking reimbursement from any government entity for Products supplied under these Terms and Conditions. Vantive will report all discounts on the invoices, coupons or statements submitted to Purchaser. Where the value of a discount is not known at the time of sale, Vantive will report the existence of the discount program on the invoices, coupons or statements submitted to Purchaser, and when the value of the discount becomes known, provide Purchaser with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied.

For Product provided to Purchaser, Purchaser acknowledges the value of such Product. Purchaser further acknowledges that this dollar value is a "discount or other reduction in price" on the Product under Section 1128B(b)(3)(A) of the Social Security Act (42 U.S.C. 1320-a-7b(b)(3)(A)). Purchaser shall disclose the discount or other reduction in price under any state or federal program which provides cost or charge-based reimbursement to Purchaser.

5.4. Credit and Disputes

- a. Only amounts which are disputed in good faith may be withheld from payment pending resolution. Any portion of an invoice not in dispute must be remitted within the payment terms of each sale. All disputes must be submitted in writing to Vantive's Credit and Collections Department (contact information noted on page 1 of these Terms and Conditions) within thirty (30) days from the date of invoice. All disputes or rights are waived unless the Purchaser's complaint has been received by Vantive within such thirty (30) day period.
- b. If Purchaser disputes an invoice or portion of an invoice and such dispute is invalid or incorrect, Purchaser may pay additional charges referenced above (in Section 5. Billing/Payment) on any unpaid amounts in dispute. Such charges will begin to accrue on the date payment was originally due.
- c. Vantive reserves the right to place a hold on Product deliveries to Purchaser in accordance with Vantive's Customer Order Hold Procedure (available on request) should Purchaser continue to withhold payment after multiple attempts to obtain an approved payment commitment.

6. Warranties

6.1. DISPOSABLE PRODUCT WARRANTY

Vantive warrants that Disposable Product manufactured by Vantive, when used in accordance with the directions on the labeling, is fit for the purposes and indications described on the labeling. The applicable manufacturer under the manufacturer's warranty will cover Disposable Product not manufactured by Vantive, and Vantive provides no warranty for Disposable Product not manufactured by Vantive.

The warranty does not apply to any Disposable Product that is misused, abused, neglected, tampered with or damaged intentionally by accident, flood, water, fire or other hazard. If Disposable Product is not used in accordance with manufacturer's instructions, Disposable Products warranties are void and of no effect. There are no other express or implied warranties, including any warranty of merchantability or fitness for a particular purpose. Vantive shall not be liable for proximate, incidental, or special damages.

All warranties in these Terms and Conditions shall be construed to comply with the warranty Safe Harbor found at 42 C.F.R. 1001.952(g).

THE WARRANTY IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER WARRANTY EXPRESSED OR IMPLIED OR STATUTORY RESPECTING DISPOSABLE PRODUCT, AND VANTIVE MAKES NO IMPLIED

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER'S SOLE AND EXCLUSIVE REMEDY IN CONTRACT, TORT OR UNDER ANY OTHER THEORY AGAINST VANTIVE WITH RESPECT TO DISPOSABLE PRODUCT AND ITS USE SHALL BE THE REPLACEMENT OR REPAIR OF THE DISPOSABLE PRODUCT AND NO OTHER REMEDY OR DAMAGES THAT ARE OR INCLUDE LOST REVENUES, LOST PROFITS, COST OF REPLACEMENT OR COMMERCIAL LOSS, OR ANY OTHER PROXIMATE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES SHALL BE AVAILABLE TO PURCHASER. VANTIVE SHALL HAVE NO FURTHER OBLIGATION OR LIABILITY WITH RESPECT TO DISPOSABLE PRODUCT, OR ITS SALE, OPERATION AND USE, AND VANTIVE NEITHER ASSUMES, NOR AUTHORIZES THE ASSUMPTION OF, ANY OBLIGATION OR LIABILITY IN CONNECTION WITH SUCH DISPOSABLE PRODUCT.

6.2. **EQUIPMENT WARRANTY**

Vantive will, at its option, replace or repair, at no charge to Purchaser, any Part of the Vantive Prismaflex Dialysis Control Unit which is found to be defective in factory material or workmanship during the twelve (12) months from date of installation or six thousand (6,000) hours of operation, whichever comes first.

Vantive will, at its option, replace or repair, at no charge to Purchaser, any Part of the Vantive PHOENIX Dialysis System which is found to be defective in factory material or workmanship during the first twelve (12) months from the date of installation, regardless of the hour meter reading.

Vantive will, at its option, replace or repair, at no charge to Purchaser, any Part of other Equipment not listed above which is found to be defective as a result of manufacturing defects only. In no event shall this warranty apply should Vantive determine in good faith that Parts or Equipment has been abused, misused, neglected, tampered with or damaged intentionally.

Optional feature components that are installed after a machine has been placed in service are subject to a separate warranty applicable to such components.

Certain components, such as fuses, bulbs, and filters, which are subject to normal wear, are not covered by this limited Equipment warranty. In addition, this Equipment warranty does not include replacement or repair of any Part that fails because of misuse, accident, neglect, or failure to use and maintain the unit in accordance with instructions provided in the applicable operator's manual, or because of alterations made by other than Vantive authorized service personnel. Repairs required as a result of abuse or misuse of the Equipment, as determined by Vantive in good faith, will be charged to the owner.

Parts installed that have been purchased from vendors other than Vantive shall void all applicable warranties.

Performance of scheduled preventive maintenance procedures, as described in the operator's manual, is the responsibility of Purchaser and is not covered by this Equipment warranty. Failure to perform preventative maintenance procedures will invalidate this Equipment warranty.

The applicable manufacturer under the manufacturer's warranty will cover Equipment and/or Parts not manufactured by Vantive, and Vantive provides no warranty for EQUIPMENT and/or Parts not manufactured by Vantive.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL VANTIVE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OF THE EQUIPMENT AND/OR PARTS. Some states may not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Purchaser. This warranty gives Purchaser specific legal rights and Purchaser may also have other rights, which vary from state to state.

To request service under this Equipment warranty, please call the Technical Service Response Center at the telephone number below. The caller should be ready to provide the name, model number and serial number of the Equipment.

Vantive US Healthcare LLC
7511 114th Ave

6.3. **EXALIS™ SOFTWARE WARRANTY**

Vantive warrants that the Exalis™ Software is free from defects in material and workmanship under normal use for a period of ninety (90) days following the delivery date.

Vantive makes no other express or implied warranty of any kind with respect to the Exalis™ software, and specifically disclaims all other warranties, express, implied or statutory, including, but not limited to, any implied warranties of merchantability; of fitness for a particular purpose; of accuracy, completeness or results; of workmanlike effort; of lack of viruses; and lack of negligence. Vantive makes no warranty of title, quiet enjoyment, quiet possession, and correspondence to description, or non-infringement with regard to the Exalis™ software. If an implied warranty of condition is created by Purchaser's state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, Purchaser has an implied warranty of condition but only as to defects discovered during the period of this limited warranty (ninety (90) days). As to any defects discovered after the ninety (90) day period, there is no warranty of any kind.

If Vantive provides Purchaser with any enhancements after the expiration of the ninety (90) day limited warranty period, such enhancements are not covered by any warranty, express, implied or statutory.

Vantive shall not be responsible for any loss or damages to Purchaser or any third parties caused by the installation or use of the Exalis™ Software. Vantive shall not be liable for any direct, indirect, special incidental or consequential damages, whether based on contract, tort or any other legal theory, arising out of any use of the Exalis™ Software or any performance of any agreement relating to the Exalis™ Software, even if Vantive has been advised of the possibility of such damages.

Vantive's entire liability and Purchaser's exclusive remedy for breach of the foregoing limited warranty or any other Vantive obligations relating to the Exalis software shall be the replacement of any magnetic media not meeting the limited warranty set out herein. Vantive shall not be obligated to correct, cure or otherwise remedy any error or defect in the Exalis™ Software resulting from any (i) modification of the Exalis™ Software by any entity other than Vantive; (ii) accident, abuse, misapplication, abnormal use or a virus; or (iii) failure of Purchaser to notify Vantive of the existence and nature of such nonconformity or defect promptly upon its discovery. Any replacement software will be warranted for the remainder of the original warranty period or thirty (30) days from shipment of the replacement product, whichever is longer.

Purchaser specifically agrees that any liability on the part of Vantive arising from breach of contract, negligence, strict liability, or in tort shall not exceed the aggregate amounts paid by Purchaser to Vantive in connection with or related to the Exalis™ Software.

6.4. **PRISMAFLO IIS™ and PRISMATHERM II™ BLOOD WARMERS WARRANTY**

The warranties for PrismaFlo IIS™ and PRISMATHERM II™ blood warmers are provided by the manufacturer, STIHLER Electronic GmbH, Stuttgart, Germany.

STIHLER, will, at its option, replace or repair, at no charge to Purchaser, any part of the PrismaFlo IIS™ and/or Prismatherm II™ blood warmer which is found to have been defective in factory material or workmanship during the first twelve (12) months from date of Purchaser purchase.

Please contact STIHLER's authorized U.S. service representative, FUTUREMED America, Inc. for warranty service at (818) 830-2500.

7. **Indemnification**

Purchaser hereby agrees to indemnify, defend, and hold harmless Vantive, its affiliates and subsidiaries, and the officers, directors, employees, agents and insurers of each of them ("Vantive Indemnified Parties"), from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys' fees and investigative costs, and including claims for personal injury, death or property damage) (together, "Claims") incurred by Vantive, arising from, in connection with or as a consequence of (i) any negligent, or wrongful act or omission by Purchaser; (ii) Purchaser's transfer, use or sale of Product, except to the extent that such suit or demand arises out of the failure

of Product to meet Vantive's express warranty(ies); and/or (iii) Purchaser's improper possession, operation, maintenance, delivery, return, handling or storage of Product.

Schedule 1
STANDARD DELIVERY SCHEDULES

For Customers located fewer than 150 miles from local Vantive Distribution Center		Number of Weekly Deliveries from Local Distribution Center				
Weekly minimum number of cases of Disposable Products from local Vantive distribution center	900 + cases	1	2	3	4	5
	450 – 899 cases	1	2	3	4	4
	245 – 449 cases	1	2	3	3	3
	90 – 244 cases	1	2	2	2	2
	0 – 89 cases	1	1	1	1	1
		0 - 1,999	2,000 - 5,399	5,400 - 9,999	10,000 - 19,999	20,000 +
		Weekly minimum weight (in pounds) from local distribution center				

For Customers located 150 miles or more from local Vantive Distribution Center		Number of Weekly Deliveries from Local Distribution Center				
Weekly minimum number of cases of Disposable Products from local Vantive distribution center	1,600 + cases	1	2	3	4	5
	820 – 1,599 cases	1	2	3	4	4
	450 – 819 cases	1	2	3	3	3
	140 – 449 cases	1	2	2	2	2
	0 – 139 cases	1	1	1	1	1
		0 - 3,499	3,500 - 10,999	11,000 - 19,999	20,000 - 39,999	40,000 +
		Weekly minimum weight (in pounds) from local distribution center				