



TERMS OF DISTRIBUTION FOR WELCH ALLYN PRODUCTS

UNITED STATES

EFFECTIVE: November 1st, 2017

Terms of Distribution for Welch Allyn Products

1. Discounts, Shipping, and Payment Terms

- 1.1 The discounts described in this Section 1 apply only to products that are purchased on orders with a total list price of **at least \$2,500.00** (the Discount Order Requirement). No discounts or pre-paid freight apply to orders with a total list price under \$2,500.00.
- 1.2 The table in Exhibit 1 lists products that are subject to coded fixed discounts when the Discount Order Requirement is met (Coded Products).
- 1.3 For non-Coded Products, including the Partners in CareSM services offerings (the Services Programs), the following discounts apply when the Discount Order Requirement is met:
 - 1.3.1 **40%** on orders with a **total list price of \$2,500.00 to \$9,999.00**.
 - 1.3.2 **45%** on orders with a **total list price of \$10,000.00 or more**, except for disposable products (including lamps and batteries), which are subject to a maximum discount of 40%. The total list price of disposable products, however, when ordered with durable products, will count toward the total list price of the order for purposes of determining whether the 40% or the 45% discount applies.
 - 1.3.3 **25%** off the published repair parts price list for replacement parts for durable products.
 - 1.3.4 **30%** on orders of Comprehensive Partnership Services Programs and **10%** on orders of BioMed Partnership Services Programs.
- 1.4 All shipments of Products will be CPT the distributor destination (Incoterms® 2010). Welch Allyn will pay standard shipping costs for orders that meet the Discount Order Requirement when Welch Allyn selects the means of shipment and carrier and delivery is to a distributor facility. The distributor will pay shipping costs for: a) orders with a total list price under the Discount Order Requirement; b) orders for which the distributor requests expedited shipment or selects a means of shipment or carrier different from the means of shipment or carrier selected by Welch Allyn; and c) orders that are drop-shipped to an end-user customer. Title and risk of loss will transfer to the distributor upon delivery of Products to the first carrier.
- 1.5 Welch Allyn may offer additional discounts under authorized promotional programs, including volume discounts on Services Programs, subject to limitations on the maximum total amount of such additional discounts.
- 1.6 Payment terms are **1% 15 DAYS, NET 30 DAYS**. Welch Allyn does not accept credit cards for payment of distributor accounts.

2. Product Return Policy

- 2.1 Products may be returned to Welch Allyn for 100% credit, at the distributor's option, if the distributor determines in good faith that: a) Welch Allyn erred in order fulfillment or shipping; b) the product or product packaging is damaged upon delivery; or c) the product is outdated or expired upon delivery.
- 2.2 The following products may not be returned unless they meet one or more of the criteria in subsection 2.1, above: a) single-use products, including blood pressure cuffs, thermometer probe covers, and disposable stethoscopes; and b) consumables, including lamps, batteries, and paper.
- 2.3 A product may be returned only if the product is: a) in current production (i.e. not obsolete); b)

unused and in the original packaging; and c) returned within 12 months of the date on which it was shipped.

- 2.4 A Return Material Authorization (RMA) must be obtained before returning any product to Welch Allyn, and the product must be returned to the Welch Allyn facility identified in the RMA.
- 2.5 A return is subject to a restocking fee in the amount of 20% of the price of the product. No restocking fee is imposed if the return meets one or more of the criteria in subsection 2.1, above.
- 2.6 Welch Allyn will pay shipping charges for the return of a product pursuant to subsection 2.1 only. Shipping charges for all other returns are the responsibility of the distributor.
- 2.7 Welch Allyn will issue credit (net of any applicable restocking fee) to the distributor's account upon inspection and verification of the condition of the returned product.

3. Resale by the Distributor

- 3.1 **The distributor is authorized to promote, sell, and deliver products only in the United States.** If the distributor fails to comply with the foregoing territorial restriction, Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.
- 3.2 If the distributor sells products to a dealer or sub-distributor that has not consented to these Terms of Distribution or entered into a distribution agreement with Welch Allyn, the distributor must: a) require such dealer or sub-distributor to agree to the provisions contained in Sections 3 and 5 of these Terms of Distribution; and b) deliver to such dealer or sub-distributor copies of Welch Allyn's sales and advertising policies. If the distributor fails to comply with the conditions set forth in the foregoing a) or b), Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.
- 3.3 Welch Allyn will provide the distributor with price lists that contain suggested prices of products, but the distributor has sole discretion to determine the prices at which it resells the products. Welch Allyn's suggested prices also serve as the baseline for the application of discounts in Welch Allyn's calculation of net distributor prices. Welch Allyn reserves the right to change suggested prices by sending the distributor revised price lists that will be effective no fewer than 30 days after the date on which they are sent.
- 3.4 The following restrictions apply to sales of Services Programs:
 - 3.4.1 Services Programs may be sold only in conjunction with the distributor's direct sales of associated products to end user customers.
 - 3.4.2 All Services Programs must be coordinated to complement the express warranty for the associated products. Services Programs agreements are between Welch Allyn and end user customers and Welch Allyn will provide all services thereunder and manage renewals thereof.

4. Welch Allyn's Rights and Responsibilities

- 4.1 Welch Allyn will train the distributor's sales personnel on the products, emphasizing new products, and provide general instruction on the sale of the products. Upon completion of training, the distributor will have the right to use Welch Allyn's trademarks, service marks, and logos (collectively, Trademarks) in connection with the marketing and sale of the products, including, without limitation, any Trademark used to identify distributors authorized by Welch Allyn to distribute the products. Welch Allyn grants the distributor a non-exclusive license to use the Trademarks solely in connection with the marketing and sale of the products pursuant

to these Terms of Distribution and reserves all other rights in the Trademarks. The foregoing license is granted only to the distributor and may not be sublicensed to any dealer or sub-distributor to which the distributor may sell products.

- 4.2 Welch Allyn will carry out nationwide advertising campaigns to keep the medical profession aware of the clinical benefits of Welch Allyn products.
- 4.3 Welch Allyn will provide the distributor with product catalogs and sales literature.
- 4.4 Welch Allyn, in its sole discretion, will repair or replace products that Welch Allyn determines to be defective (other than as a result of accident, abuse, misuse, neglect, improper maintenance, unauthorized modification or service, or shipping) in accordance with, and for the period set forth in, the limited warranty packaged with each product (Limited Warranty). Repair or replacement of the products is the distributor's sole remedy for Welch Allyn's breach of the Limited Warranty. EXCEPT AS SET FORTH IN THE LIMITED WARRANTY FOR EACH PRODUCT, WELCH ALLYN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 4.5 Out-of-warranty repairs will be subject to Welch Allyn's standard charges for labor, parts and shipping. Welch Allyn will transact repairs/replacements with end-user customers directly unless the parties agree that the distributor will act as an intermediary. Welch Allyn will, at its expense, repair or replace any products subject to recall.
- 4.6 Upon written notice to the distributor with immediate effect, Welch Allyn may terminate the distributor's distributorship in the event: a) the distributor fails to comply with subsections 3.1 or 3.2, or any of the subsections of Section 5 (with the exception of subsection 5.3), and b) the distributor undergoes a change of control (change of control means: i) any person or group is or becomes the beneficial owner, directly or indirectly, of 50% or more of the voting equity issued by the distributor, or ii) the occurrence of a transaction requiring shareholder approval and involving the sale of all or substantially all of the assets of the distributor or the merger of the distributor with or into another entity). Welch Allyn may terminate the distributor's distributorship without cause upon 120 days' written notice.
- 4.7 Termination of the distributor's distributorship will not limit Welch Allyn from exercising any and all rights and remedies available to it at law or in equity. Welch Allyn's remedies may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed to preclude the exercise of any other remedy.

5. Distributor's Responsibilities

- 5.1 The distributor must pay invoices in accordance with subsection 1.6, and submit financial statements upon request by Welch Allyn. If the distributor fails to comply with the foregoing requirements, Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.
- 5.2 The distributor must provide Welch Allyn with sales tracing reports identifying: a) the complete name and complete street address (post office boxes or isolated drop locations will not be accepted) of each acute or ambulatory end-user customer **where products will actually be used**, and b) if applicable, the name and complete billing address (post office boxes will not be accepted) of the customer responsible for payment of each acute or ambulatory end-user customer's account (the Tracing Report). The Tracing Report must include for the applicable reporting period: i) all products (including any private label products and special orders) sold (or provided free of charge); ii) all credits and re-billings; iii) all drop-shipments; and iv) all distributors or other vendors from whom the distributor acquired all products contained in the Tracing Report to the extent the distributor did not acquire products from Welch Allyn. Welch Allyn will furnish the distributor with a complete list of all required Tracing Report data elements.

All required data must be provided in a single Tracing Report; Welch Allyn will not accept supplemental files requiring matching, merging, or duplicate detection. The distributor must submit each Tracing Report via Electronic Data Interchange (EDI) utilizing transaction set 867 (Product Transfer and Resale Report). Welch Allyn will not accept the Tracing Report submitted in the form of a spreadsheet attached to electronic mail. The distributor must provide the Tracing Report at least monthly, and may provide the Tracing Report more frequently as its system permits; weekly or bi-weekly Tracing Reports are preferred. **Where the applicable reporting period is the previous month, the Tracing Report must be submitted no later than the 5th business day of each month.** If the distributor is unable to submit the Tracing Report for the previous month by the 5th business day of each month, the distributor must submit the Tracing Report weekly or bi-weekly. If the distributor fails to provide the Tracing Report as and when required, Welch Allyn may, in its sole discretion, place the distributor's account on ship hold until the distributor complies, or terminate the distributor's distributorship. Quarterly, Welch Allyn may provide the distributor with a scorecard rating the distributor's compliance with the foregoing; key metrics will be 1) completeness and accuracy of sales trace data, and 2) timely submission of the Tracing Report.

- 5.3 The distributor must implement electronic ordering and invoicing via: a) EDI utilizing transaction sets 850 (Purchase Order) and 810 (Invoice); or b) at minimal or no cost to the distributor, utilize Welch Allyn's Purchase Order Automation (POA) software provided the distributor can receive invoices transmitted by electronic mail or facsimile. Welch Allyn will review the distributor's compliance with this subsection 5.3 for 90 days from, as applicable, the date these Terms of Distribution are effective or the date Welch Allyn authorizes the distributor under these Terms of Distribution (Compliance Period). If during the Compliance Period the distributor orders and invoices at least **80%** of its purchases in accordance with the foregoing a) or b), then the distributor will not be assessed a fee for purchases going forward as long as the distributor maintains such 80% compliance. If during the Compliance Period the distributor does not order and invoice at least 80% of its purchases in accordance with the foregoing a) or b), then, for the next 90 days, the distributor will be assessed a fee of **2%** of the net sales price of each purchase. The 2% fee will appear as a line item on the applicable invoice. Thereafter, Welch Allyn will review the distributor's compliance quarterly, or upon the distributor's reasonable request, until, in any given quarter, the distributor orders at least 80% of its purchases in accordance with the foregoing a) or b), whereupon the distributor will no longer be assessed a fee for purchases going forward as long as the distributor maintains such 80% compliance. For the avoidance of doubt, the distributor will not be subject to retroactive fees for non-compliant transactions; the distributor will only be subject to fees for transactions during the quarter following one in which the distributor did not achieve or maintain 80% compliance.
- 5.4 Each calendar year the distributor must use commercially reasonable best efforts to purchase products with a minimum aggregate dealer net in the amount of **\$75,000.00** (the Minimum Purchase Target). The distributor acknowledges that satisfaction of the Minimum Purchase Target is a material obligation necessary to justify Welch Allyn's ongoing administrative support of the distributorship. If the distributor fails to satisfy the Minimum Purchase Target in any calendar year, Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.
- 5.5 At its sole expense, the distributor must send appropriate sales personnel to attend periodically scheduled Welch Allyn sales meetings.
- 5.6 The distributor must notify Welch Allyn immediately whenever it becomes aware of any adverse event associated with use of the products on patients, and provide all reasonable and necessary information and assistance to Welch Allyn in connection with the investigation and handling of such event, including, without limitation, contact information for the initial reporter of such event. The distributor must cooperate fully with Welch Allyn in dealing with end-user customer complaints concerning the products and must take such action as may be reasonably requested by Welch Allyn to resolve any such complaints. The distributor must cooperate with Welch Allyn in any recall of the products, including, without limitation, assisting with notification

of all affected end-user customers using materials prepared by Welch Allyn. If the distributor fails to comply with the foregoing requirements, Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.

- 5.7 The distributor must use commercially reasonable best efforts to enhance the goodwill associated with the products. Where an end-user customer orders or requests a quote for a product, the distributor will not quote or sell a substitute product, whether generic or branded, of another manufacturer.
- 5.8 The distributor must not make any false or misleading representations with respect to Welch Allyn or the products, nor extend any warranties with respect to the products other than those authorized in writing by Welch Allyn.
- 5.9 The distributor must comply with all applicable laws, rules, and regulations in connection with these Terms of Distribution. Any discount provided to end-user customers in connection with their purchase of products from the distributor may constitute a discount or other reduction in price (Discount) for purposes of the anti-kickback statute discount exemption at 42 U.S.C. §1320a-7b(b)(3)(A) (the Discount Exemption). The distributor must comply with the Discount Exemption by disclosing the specified dollar value of any Discount provided to end-user customers and advise end-user customers who report their costs on a cost report required by a federal or state healthcare program that they must comply with the four standards set forth in 42 C.F.R. §1001.952(h)(1)(ii). If the distributor fails to comply with the foregoing requirements, Welch Allyn may, in its sole discretion, terminate the distributor's distributorship.

6. Confidentiality

- 6.1 For purposes of these Terms of Distribution, Confidential Information means information disclosed by the disclosing party (the Disclosing Party) to the receiving party (the Receiving Party) that: a) is marked "confidential" or similar legend; b) if not in written form, is identified as confidential by the Disclosing Party at the time of disclosure and confirmed as confidential in a writing sent to the Receiving Party within 10 days of disclosure; or c) whether or not marked or identified as confidential, is of such a nature that the Receiving Party knows or reasonably should know is confidential. Confidential Information includes the terms of these Terms of Distribution. The Receiving Party shall not use Confidential Information except in the performance of these Terms of Distribution and shall protect Confidential Information in the same manner as it treats its own confidential information (using at least commercially reasonable efforts). The Receiving Party shall give Confidential Information only to those of its employees and agents who have a need to know and who are subject to obligations of confidentiality at least as stringent as those contained in these Terms of Distribution. These Terms of Distribution impose no obligation upon the Receiving Party with respect to information that the Receiving Party can prove: i) was in the Receiving Party's rightful possession on or before receipt from the Disclosing Party, free of any obligation to keep it confidential; ii) is or becomes a matter of public knowledge through no action or inaction of the Receiving Party; iii) is rightfully received by the Receiving Party from a third party without a duty of confidentiality; or iv) is independently developed by the Receiving Party without use of or reference to Confidential Information of the Disclosing Party. If the Receiving Party receives a request or demand to disclose all or any part of Confidential Information under the terms of a subpoena or order issued by a court of competent jurisdiction or authorized governmental agency, the Receiving Party may comply with such request or demand only if the Receiving Party: 1) asserts the privileged and confidential nature of Confidential Information against the third party seeking disclosure; 2) promptly notifies the Disclosing Party in writing of any such requirement or order to disclose prior to the disclosure of Confidential Information; and 3) upon the Disclosing Party's request and at the Disclosing Party's expense, reasonably cooperates with the Disclosing Party to protect against any such disclosure and/or obtain a protective order narrowing the scope of such disclosure and/or use of Confidential Information. Upon expiration or termination of these Terms of Distribution or at any time upon the Disclosing Party's written request, the Receiving Party shall destroy and provide written certification to the

Disclosing Party of such destruction, or return to the Disclosing Party, all Confidential Information, including, without limitation, all memoranda, reports, analyses, notes, and other tangible embodiments prepared by the Receiving Party based on or including the Disclosing Party's Confidential Information. Destruction or return of Confidential Information by the Receiving Party includes expunging and destroying all Confidential Information in electronic form residing on any computer, server, or other device or medium in its possession, custody or control.

7. Limitation of Liability, Governing Law, Entire Agreement and Acknowledgment

- 7.1 IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THESE TERMS OF DISTRIBUTION TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWSOEVER ARISING, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2 These Terms of Distribution will be solely governed by and interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of laws, whether designated by federal or state laws, and in all instances without regard to the United Nations Convention on Contracts for the International Sale of Goods.
- 7.3 These Terms of Distribution comprise the entire agreement between Welch Allyn and the distributor and will apply to all orders submitted by the distributor on or after the date the distributor signifies its consent to these Terms of Distribution by executing the Terms of Distribution Acknowledgment (Acknowledgment) below. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between Welch Allyn and the distributor with respect to these Terms of Distribution are of any force or effect. Notwithstanding any acknowledgment by Welch Allyn of a purchase order submitted by the distributor, any condition or provision in any such purchase order or in any other memoranda, policies, rules, instructions or guidelines of the distributor that is in any way a) inconsistent with the provisions of these Terms of Distribution, or b) supplements or adds to the provisions of these Terms of Distribution (irrespective of whether or not such supplemental or additional condition or provision conflicts with the provisions of these Terms of Distribution), is null and void. The terms of these Terms of Distribution that, by their nature, do, or that, in order to be effective for their intended purpose, must, survive the termination of the distributor's distributorship, including, without limitation, subsections 4.4, 4.7, 5.2, 5.6, 5.9, 6.1, 7.1, 7.2, and 7.3, will survive the termination of the distributor's distributorship.
- 7.4 The distributor must signify its consent to these Terms of Distribution by executing the Acknowledgment below and sending the original signed Acknowledgment via mail or overnight courier to Welch Allyn, Inc., 4341 State Street Road, Skaneateles Falls, NY 13153, Attn: Dan Mitchell, or transmitting a copy via facsimile to (315) 685-3687 or via e-mail to dan.mitchell@welchallyn.com. In the event that the distributor's signature is sent via facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature will create a valid and binding obligation of the distributor with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

Exhibit 1

Distribution Discount Table

<u>Price List Code</u>	<u>% of Discount</u>
(blank)	45%
1D	20%
2D	25%
3D	30%
4D	35%
5D	40%
6D	45%
7D	0%
8D	33%
9D	10%
10D	5%

Discounts of 45% apply to non-Coded Products under single orders to be shipped at one time and to one destination having a total list price of \$10,000.00 or more.

Discounts of 40% apply to non-Coded Products under single orders to be shipped at one time and to one destination having a list price between \$2,500.00 and \$9,999.99.

No discount applies to orders having a total list price under \$2,500.00, regardless of price list code.

Terms of Distribution for Welch Allyn Products: United States
Effective November 1, 2017

ACKNOWLEDGMENT

CONSENTED, ACKNOWLEDGED AND AGREED:

Distributor Name

By: _____

Name: _____

Title: _____

Date: _____

The original signed Acknowledgment may be transmitted via facsimile to (315) 685-3687 or via e-mail to dan.mitchell@welchallyn.com, or sent via mail or overnight courier to:

Welch Allyn, Inc.
4341 State Street Road
Skaneateles Falls, NY 13153
Attn: Dan Mitchell