

PRODUCT SALES AGREEMENT

This Product Sales Agreement (this "Agreement") is made as of the ___ day of _____, 201___, by and between Georgia Tech Applied Research Corporation, a Georgia non-profit corporation ("Seller"), with an address of 505 Tenth Street, Atlanta, GA 30332, and _____ (the "Customer"), with an address of _____.

WITNESSETH

WHEREAS, Seller wishes to sell solely for educational and demonstration purposes, a certain product, as described below (the "Product"), to Customer; and

WHEREAS, Customer desires to purchase the Product from Seller pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby duly acknowledged, Seller and Customer covenant and agree as follows:

- A. Description of the Product. Seller shall sell to Customer, and Customer shall purchase from Seller, the Product which is a pair of gloves designed to simulate the effects and/or certain physical conditions of arthritis.
- B. Use. Customer shall use the Product solely for educational and/or demonstration purposes and shall not transfer or resell the Product to any other person or entity without Seller's prior written consent (please contact Lauren MacLanahan, Office of Technology Licensing, lauren.maclanahan@gtrc.gatech.edu, 404-894-6900 for consent) or without requiring the other person or entity to agree in writing to abide by the Product Sales Agreement and Terms and Conditions of Sale in Exhibit A.
- C. Price. Customers shall pay Seller \$ _____ for the Product.
- D. Delivery. The Product shall be shipped to Customer by Seller after payment for the Product and shipping is made in full (the "Shipment Date").
- E. Terms and Conditions. The Terms and Conditions of Sale attached hereto as Exhibit "A" are incorporated into this Agreement by reference as if fully set forth herein.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date first set forth above.

SELLER:

CUSTOMER:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1. Terms and Conditions. These Terms and Conditions of Sale (these “Terms”) apply to the sale and delivery by Seller to Customer of the Product as set forth in the Agreement to which these Terms are attached. These Terms are incorporated into the Agreement and, in combination therewith, constitute the entire agreement between the parties with respect to the sale and delivery of the Product. The Agreement is expressly limited to these Terms, and any and all terms or provisions submitted by Customer which add to, conflict with, or otherwise modify these Terms or the Agreement are expressly rejected.
2. Price. The price for the Product shall be as set forth in the Agreement (the “Price”). Unless otherwise stated, the Price is for delivery by the appropriate shipper or courier service and exclusive of all taxes, customs, duties and insurance. Any and all current or future taxes, fees, or governmental charges applicable to the sale, delivery or shipment of the Product that Seller is required to pay or collect shall be payable by Customer either directly or if paid by Seller, paid by Customer within ten (10) days of the date of invoice from Seller of such additional costs and not subject to any offset or reduction for any reason.
3. Risk of Loss. Risk of loss of the Product shall transfer to Customer on the Shipment Date.
4. Invoices; Payment. Customer shall be responsible for and pay, if applicable, (a) all taxes (excluding income taxes) arising out of the sale of the Product, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs, and (b) all fees and expenses incurred by Seller in connection with the delivery of Product. Any amounts not paid by credit card shall be due as invoiced and shall not be subject to offset or reduction for any reason. Product will not be shipped until payment for the Product and shipping is made in full. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars.
5. Title. Notwithstanding delivery of the Product or any other provision of these Terms, title to the Product shall not pass to Customer until Seller has received payment in full for the invoiced amount for the Product and payment of all other monies then due or owing to Seller. Until such time as title in the Product passes to Customer, Customer shall hold the Product as Seller’s fiduciary and bailee and shall keep the Product separate from those of Customer and third parties, properly stored, protected and insured and identified as Seller’s property; provided Customer shall be entitled to use the Product as provided in the Agreement.
6. No Warranty. THE PRODUCT IS PROVIDED “AS IS, WHERE IS” AND WITH ALL FAULTS. SELLER MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO NON-INFRINGEMENT, TITLE, PATENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION; ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY CUSTOMER. Seller’s representatives are not authorized to enter into agreements outside these Terms or to make any warranties or representations of any kind with respect to the Product.

7. Consequential Damages; Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, Seller and Customer waive all claims against each other (and against each other's parent company, affiliates, contractors, subcontractors, consultants, agents and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages (including but not limited to, loss of actual or anticipated profits, revenues or product; or loss of use), and regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability or any other legal theory. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE PRICE FOR THE PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

8. Indemnification. Customer covenants and agrees to indemnify, defend and hold harmless Seller and its affiliates, subcontractors, vendors, officers, directors, employees, agents, consultants and representatives (collectively, the "Indemnitees") from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), causes of action, proceedings, losses, expenses, damages or penalties, including without limitation court costs and reasonable attorneys' fees (collectively, "Claims"), arising or resulting from its use of the Product.

If Seller or any other Indemnitee seeks indemnification from Customer pursuant to this Section 8, Seller shall give Customer prompt notice of such Claim. Customer shall defend the Indemnitees from any such Claim at Customer's sole cost and expense using counsel reasonably acceptable to the Indemnitees and shall keep the Indemnitees informed as to the progress of the defense of any such claim or suit. The Indemnitees shall have the right to participate, at their own expense, with respect to any third party claim, demand, action or proceeding. The Indemnitees shall reasonably cooperate with the Customer in such defense at Customer's cost and expense. Customer shall have the right to control the defense and disposition; provided, however, that, if Customer assumes control of such defense and the Indemnitees reasonably conclude, based on advice from their counsel, that Customer and the Indemnitees have conflicting interests with respect to such Claim, Customer shall be responsible for the reasonable fees and expenses of counsel to the Indemnitees solely in connection therewith, except that in no event shall Customer be responsible for the fees and expenses of more than one counsel for all Indemnitees. Customer shall not agree to any settlement of such action, suit, proceeding or claim that does not include a complete and unconditional release of the Indemnitees from all liability with respect thereto or that imposes any liability or obligation on the Indemnitees, without the prior written consent of the Indemnitees

9. Default; Cancellation and Remedies. The occurrence of any one or more of the following matters, and the continuation of the same for seven (7) days after Customer's receipt of written notice thereof from Seller, shall constitute a default under the Agreement (a "Default"): (a) failure by Customer to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, (b) the insolvency, dissolution, or liquidation of Customer, or the filing of a petition in bankruptcy by or against Customer or the adjudication of Customer as bankrupt, or any general assignment by Customer for the benefit of its creditors, or the application for, or consent to, the appointment of any receiver, trustee, custodian, or similar officer by Customer; or (c) failure (or admission in writing of inability or unwillingness) by Customer to pay amounts due and payable to Seller hereunder. In the event of a Default, Seller may avail itself of any and all rights or remedies available at law or in equity.

10. Cancellation; Additional Remedies for Customer's Default. The Agreement is not subject to cancellation except by mutual written agreement of the parties.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia, without regard to conflicts of law principles or the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties irrevocably agrees and consents (a) to the exercise of personal jurisdiction over it by the State or superior courts of the State of Georgia or by the United States District Court for the Northern District of Georgia; and (b) that if it brings an action, such action shall be instituted exclusively in one of the courts specified in (a) above. Service of process provided in accordance with Section 13 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action.
12. Assignment. Neither Seller nor Customer may assign, convey or transfer the Agreement, or any part thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that Seller may assign this Agreement without the prior written consent of Customer to a person or entity controlling, controlled by or affiliated with Seller. The Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
13. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or by reputable overnight courier service, or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses in the Agreement or to such addresses as a party may designate from time to time pursuant to this Section 13. All notices shall be deemed received on the date of delivery or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail.
14. Severability. Whenever possible each provision and term of the Agreement and these Terms will be interpreted in a manner to be effective and valid, but if any provision or term of the Agreement or these Terms are held to be prohibited, invalid or unenforceable, then such provision or term will be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting in any manner whatsoever the remainder of such provision or term or remaining provisions hereof. To the extent permitted by law, the parties hereto waive any provision of law that renders any such provision prohibited or unenforceable in any respect. If any of the covenants set forth in the Agreement or these Terms are held to be unreasonable, arbitrary, or against public policy, such covenants will be considered divisible with respect to scope, time, and geographic area, and in such lesser scope, time and geographic area, will be effective, binding and enforceable against the parties hereto.
15. Authority to Execute. Each party represents and warrants to the other that the Agreement has been duly authorized, executed and delivered by and on behalf of each such party and constitutes the legal, valid and binding agreement of said parties. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.
16. No Waiver. No course of dealing or failure of Seller or Customer to strictly enforce any term, right or conditions of this Agreement shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

17. Compliance with Laws and Regulations. Customer is responsible for complying with any and all applicable federal, state and local laws, codes, ordinances, rules, regulations, and administrative orders, including, without limitation, export and import laws, rules and regulations and any and all other product safety laws, rules and regulations.
18. Headings. The headings contained in these Terms are included solely for convenience of reference and shall not affect the language included herein.
19. Time. Time is of the essence in the performance of this Agreement.
20. Modification. Notwithstanding anything contained herein, these Terms may be modified or changed only by a written amendment to the Agreement signed by Seller and Customer.
21. Termination. If Customer uses the Product for any use other than as specified herein, this Agreement shall be null and void and Customer's right to use the Product shall immediately cease without further action by Seller.
22. Use of Name. Except as expressly provided herein, Customer shall not use the names Georgia Institute of Technology, Georgia Tech, Georgia Tech Research Corporation, Georgia Tech Research Institute, or Georgia Tech Applied Research Corporation or any of their respective affiliates or divisions or any derivations thereof in any advertisement, publications, or sales materials without the prior written consent of Seller.