



Haemonetics Corporation  
400 Wood Road  
Braintree, MA  
02184  
United States  
[www.haemonetics.com](http://www.haemonetics.com)

Tel:781-848-7100  
Fax:781-348-7738

## RENTAL TERMS AND CONDITIONS

### ARTICLE 1 – EQUIPMENT

#### 1.1 Equipment Use Fees

To use the Equipment in accordance with the terms of this Agreement, Customer agrees to pay a Monthly Rental Fee per Device for the Term of the Agreement. Such per device fee, the Total Monthly Rental Fee for all device(s), and the Total Rental Fee for the Term of the Agreement are set forth in the Equipment Rental Matrix above.

#### 1.2 Ownership of Equipment

Haemonetics retains, and will continue to retain, absolute and exclusive ownership of, and all right, title and interest to, the Equipment and every component thereof. Customer agrees that it will cooperate with Haemonetics in providing notice and acknowledgment of Haemonetics' absolute ownership of the Equipment, including allowing Haemonetics to affix labels to the Equipment or any part, as may be practicable; providing written notice of Haemonetics' ownership of the Equipment to any party claiming a security interest in any assets owned by Customer; and filing or allowing Haemonetics to file one or more Uniform Commercial Code financing statements giving notice of Haemonetics' ownership of the Equipment, and Customer agrees to execute the financing statements. Upon termination or expiration of this Agreement, the Equipment shall be returned to Haemonetics.

#### 1.3 Location of Equipment

The Equipment shall remain at the locations set forth in Equipment Matrix. Customer will notify Haemonetics, in advance whenever possible and otherwise as soon after as possible, each time Customer moves the Equipment to another location. Haemonetics has the right to inspect the Equipment, as it may desire from time to time. At Haemonetics' request, Customer shall provide (i) contact information for an individual or department with responsibility of asset control and (ii) confirmation of the location of the Equipment.

### ARTICLE 2 – DELIVERY AND PAYMENT TERMS

#### 2.1 Payment Terms

Payment is due 30 days from date of invoice. Amounts which are not paid when due are subject to a service charge of 1½% per month (18% simple interest per annum) on the outstanding principal balance.

#### 2.2 Delivery Terms

Delivery is F.O.B. Origin, Haemonetics place of shipment. Freight expenses are prepay & add and handling expenses are paid by Customer. Freight and handling costs associated with the initial installation of Equipment at a Customer location and for movement of Equipment between Customer locations shall be borne by Customer.



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### 2.3 Shipment Stoppages

If Customer is in violation of the payment terms, then Haemonetics may discontinue filling any orders until full payment of any past due amounts, require a full or partial payment in advance, suspend its performance until any past due payments are made, or cancel the Customer's order(s).

### 2.4 Survival

The foregoing delivery and payment terms shall survive the expiration of this Agreement.

## ARTICLE 3 – SECURITY AGREEMENT AND TAXES

### 3.1 Security Agreement

To secure the payment and performance of this Agreement, Customer hereby grants to Haemonetics a security interest which includes: 1) all Equipment provided under any agreement between Customer and Haemonetics, including without limitation this Agreement, any consumables sale agreement, equipment lease or usage plan; 2) all consumables purchased under any such agreements. In addition, Customer will execute any financing statements supplied by Haemonetics, and agrees that Haemonetics may file such statements and perform all other acts and do all things reasonable or necessary to carry out this Security Agreement or to perfect or protect Haemonetics' security interest in the collateral.

### 3.2 Taxes

Customer is responsible for the payment of any taxes assessed on the transactions contemplated by this Agreement. Customer shall pay when due all such taxes, whether due from Customer or collected by Customer, such as sales or withholding taxes. Customer shall provide all applicable tax exemption certificates immediately upon Haemonetics' request.

## ARTICLE 4 – TRAINING, REPAIR AND MAINTENANCE

### 4.1 Training

Following initial delivery of Equipment, Haemonetics shall provide a single training session on how to operate the Equipment at the location and to staff identified by Customer.

### 4.2 Equipment Maintenance and Repair

Haemonetics is solely responsible for the maintenance and repair of the Equipment during the Term of the Agreement. Haemonetics reserves the right to use new or refurbished parts to perform repairs or maintenance. Customer agrees to indemnify and hold harmless Haemonetics for direct or indirect damages resulting from maintenance or repairs on the Equipment by any person not authorized by Haemonetics.



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#### 4.3 Reimbursement for Damage

The Customer and its employees and contractors shall not misuse or abuse the Equipment and shall not permit any of the Equipment to be used in a manner not conforming to the Equipment's Operator's Manual, other instructions for use or the procedures established in the Haemonetics' training program. If the Equipment or any part or component of it fails or is damaged due to the negligence, abuse, or misuse of Customer, its employees or contractors, including, without limitation, any damage incurred due to maintenance by Customer or any third-party without the authorization of Haemonetics, then the Customer, not Haemonetics, will be responsible for the cost and expense of the Equipment, part or component and for the expense of repair of any item so misused or abused.

#### ARTICLE 5 – TERM

The term of this Agreement begins on the Effective Date and continues in effect for the term first set forth in the Equipment Rental Matrix (the "Initial Term"). After the Initial Term, the Agreement will be automatically renewed from year to year unless otherwise terminated. (a "Successive Term"). The Initial Term together with any Successive Term is referred to as the "Term." To terminate this Agreement on expiration of the Term, written notice must be given not later than 30 days prior to the Term's expiration. During the Term, this Agreement may only be terminated for default. All terms and conditions of this Agreement shall remain in effect during any Successive Term.

#### ARTICLE 6 – WARRANTY

##### 6.1 Proper Use

Customer shall use and store the Products in a careful and proper manner consistent with Haemonetics' written instructions. Customer shall comply with all federal, state, municipal, and other applicable laws, ordinances, and regulations relating to the possession, maintenance, storage, use or disposal of the Products. Failure to use the Products in compliance with this clause or use of consumables with the Equipment that are not supplied by Haemonetics shall void all warranties.

##### 6.2 Equipment Warranty

Haemonetics warrants that the Equipment when delivered F.O.B. Haemonetics' place of shipment (a) is free from material defects in material and workmanship, and (b) has been manufactured in a manner consistent with the United States Food and Drug Administration's current Good Manufacturing Practices. These warranties apply for 12 months from the Equipment's shipment date. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

##### 6.3 Warranty Claims

All warranty claims must be made in writing within 30 days of Customer's discovery of alleged defect. Such claims must be verified by an authorized representative of Haemonetics. On verification of the claims, Haemonetics shall correct such nonconformity by repair or replacement of the defective Equipment. Prior to returning any defective Equipment, Customer must obtain shipping instructions from Haemonetics.



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## **6.4 Limitation of Liability**

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF A HAEMONETICS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT AT HAEMONETICS' ELECTION. FOR ALL OTHER CLAIMS, HAEMONETICS' LIABILITY IS LIMITED TO AMOUNTS RECEIVED FROM CUSTOMER IN THE 12 MONTHS PRECEDING THE CLAIM. EACH PARTY HEREBY WAIVES ANY IMPLIED REMEDIES, WARRANTIES, OR GUARANTIES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR TORT DAMAGES, HOWEVER OCCASIONED.

## **ARTICLE 7 – DEFAULTS**

### **7.1 Default**

Upon the occurrence of any event of material default under this Agreement, the non-defaulting party will notify the other party, in writing, of the material default and the defaulting party will have 30 days to cure such material default. In the event the material default is not cured within 30 days, the non-defaulting party shall have the right to terminate this Agreement.

### **7.2 Surrender of Equipment**

Upon the termination of this Agreement for any reason, Customer shall surrender all Equipment to Haemonetics, and Haemonetics shall remove the same from the Customer location. Customer will reimburse Haemonetics for the full list price of any Equipment not so returned. Customer irrevocably waives any bonds and any surety or security required by any statute, court rule or otherwise as an incident to such possession and waives any demand for possession prior to the commencement of any suit or action to recover possession. If Customer disputes Haemonetics' determination that a default has occurred, Customer's sole remedy will be to surrender the Equipment and assert a claim in accordance with the terms of this Agreement. In no event shall Customer contest or interfere with Haemonetics' right to remove the Equipment.

## **ARTICLE 8 – CONFIDENTIALITY**

The parties acknowledge that the terms and provisions hereof are confidential and the parties agree not to disclose this Agreement or any term or condition thereof to any person except as required by law. The parties agree to make the contents of this Agreement known only to those employees who, by the nature of their jobs, are required to have such knowledge. This provision shall not be deemed to constitute an agreement by either party not to seek and obtain review of this Agreement by their respective legal counsel. In addition, in connection with the negotiation or performance of this Agreement, the parties may obtain proprietary information of the other party. The parties agree to maintain as confidential any information of the other party so obtained which is either specifically designated as confidential or which a reasonable person would understand to be confidential.

The provisions of this Article 8 shall survive termination of this Agreement for any reason unless disclosure is otherwise required by law.



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## **ARTICLE 9 – MISCELLANEOUS**

### **9.1 Successors and Assigns**

In the event Customer experiences a “change in control,” Customer shall assign this Agreement, subject to the consent of Haemonetics, to such successor to Customer’s assets or business, if applicable, or take such action and do all things necessary to vest the rights and obligations of Customer in this Agreement in and to Customer’s successor. In the event Haemonetics experiences a “change in control”, Haemonetics may assign this Agreement without Customer’s consent. A “change in control” is deemed to have occurred (i) whenever a party becomes the affiliate of a person or entity who was not the affiliate of such party on the Effective Date, (ii) upon any sale, exchange or other transfer of all or substantially all of a party’s assets to an unaffiliated third party, including by merger, consolidation, or otherwise, or (iii) a sale, exchange or other transfer by a party of all or substantially all of the business activities involved in this Agreement, including by merger, consolidation, or otherwise. Except as herein provided, neither party has the right to assign this Agreement without the advance written consent of the other party, which shall not be unreasonably withheld. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.

### **9.2 No Waiver**

None of the terms of this Agreement is waived by any party unless such waiver is in writing duly executed by the party to be charged with such waiver and such writing recites specifically that it is a waiver of the terms of this Agreement. The waiver by either party of any breach of any Agreement, warranty or covenant contained in this Agreement shall not be construed to act as a waiver of any subsequent breach. The failure or delay of either party to exercise any right, power or remedy does not operate as a waiver thereof, and all rights, powers and remedies will continue in full force and effect. All rights, powers and remedies of both parties provided for in this Agreement are cumulative and non-exclusive, except as otherwise expressly provided.

### **9.3 No Invalidity**

Unenforceability or invalidity of any one or more provision hereof does not render any other provision herein contained unenforceable or invalid.

### **9.4 Entire Agreement/Amendments**

This Agreement constitutes the entire agreement between the parties relating to the subject matter herein and all prior proposals, understandings, course of conduct and writings by and between the parties and relating to the subject matter herein are superseded. In the event of a conflict between the provisions of any other agreement or document, including without limitation any purchase order or invoice, and the terms of this Agreement, the terms of this Agreement shall govern and the terms of this Agreement may only be amended in a writing duly executed by all parties to this Agreement which specifically states that it is an amendment to this Agreement.



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**9.5 Notices**

Any notice required or contemplated by this Agreement and any request made by Customer are effective only if such notice or request is in writing, duly delivered, if delivered in person or sent as follows by facsimile transmission, certified United States mail or by a non-governmental carrier which provides confirmation of delivery:

If to Haemonetics:	Thomas McCurdy Vice President – Patient Division Haemonetics Corporation 400 Wood Road Braintree, Massachusetts 02184  Manager, Contract Administration Haemonetics Corporation 400 Wood Road Braintree, Massachusetts 02184
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**9.6 Arbitration**

Any claim or dispute arising out of, or relating to, this Agreement or any alleged breach thereof, including without limitation any claim concerning the interpretation or validity of this Agreement shall be determined, solely and exclusively, by arbitration upon written demand by a party. Each party shall bear its own expenses of the arbitration, including its own attorneys’ fees, unless the arbitration award states that the expenses shall be otherwise assessed. Notwithstanding the foregoing, in the event both parties hereto are named as defendants by an arms length third party plaintiff asserting a claim against both Haemonetics and Customer, then and in such event, either Haemonetics or Customer may seek the resolution of their respective rights and obligations, arising from such claim in said proceedings.

In no event shall Haemonetics’ right to remove the Equipment described above be prevented by or conditional upon any arbitration pending pursuant to this Agreement or any award resulting therefrom. The issue of removal or Haemonetics’ right of removal of the Equipment shall be non-arbitrable in any event. In any conflict between the provisions of this section and the provisions of Article 7.2 of this Agreement, the provisions of Article 7.2 controls.

The provisions of this Article 9.6 shall survive termination of this Agreement for any reason.

**9.7 Compliance with Law**

Each party shall comply with all applicable laws, statutes, rules and regulations of the United States of America and its constituent states, including, without limitation, the Arms Export Control Act, the Export Administration Act, the Foreign Corrupt Practices Act, U.S. economic sanctions regulations, U.S. anti-boycott laws and any applicable laws, regulations or rules respecting Anti-Kickback or Medicare Fraud and Abuse.



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#### 9.8 **Force Majeure Events**

Failure of either party to perform its obligations under this Agreement shall not subject such party to any liability to the other party if such failure is caused by any cause beyond the reasonable control of such nonperforming party, including, but not limited to, acts of God, fire, explosion, flood, drought, war, riot, sabotage, terrorism, embargo, strikes or other labor trouble or a national health emergency.

#### 9.9 **Survival**

The provisions of Article 7, 8 and 9.6 shall survive termination of this Agreement.

#### 9.10 **Choice of Law**

This Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Massachusetts except its rules in regard to choice of law.