

## Terms and Conditions

Last updated: October 4, 2017

Please read these Terms and Conditions ("Terms", "Terms and Conditions") carefully before (a) requesting a sample of or purchasing the Surgi-Sign® Marking System from OR-6 LLC ("us", "we", or "our") either through the Surgi-Sign website at [www.surgisign.com](http://www.surgisign.com), [www.surgisign.com](http://www.surgisign.com), by phone, or by mail. or (b) using the Surgi-Sign Marking System (the "Service").

Your access to and use of the Service is conditioned upon your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who wish to access or use the Service.

By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the Terms then you do not have permission to access the Service.

### Samples and Purchases

#### 1. Price

All prices published by us or quoted by our representatives may be changed at any time without notice. All prices quoted by us or our representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Services will be as specified by us or, if no price has been specified or quoted, will be our price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of our original price quotation. List prices may vary from the price displayed on the website for certain Services. View a complete list of these Services.

#### 2. Taxes and Other Charges

Prices for the Services exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Services covered hereby, all of which taxes and duties must be paid by you. If You claims any exemption, you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

#### 3. Payment terms

We accept Visa, Master Card, American Express and Electronic Banking.

All online orders are credit card, electronic banking, or Paypal terms. Invoice payments are net 30 days from date of invoice.

Commencing with the 46<sup>th</sup> day after invoice date (shipment), unpaid invoices will be charged a finance charge at an annual rate of 18% or monthly periodic rate of 1.5% (or, if lower, the highest rate permitted by law), with a minimum charge of \$0.50 per month, together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by us in collecting such overdue amounts or otherwise enforcing our rights hereunder. We reserve the right to require from you full

or partial payment in advance, or other security that is satisfactory to you, at any time that we believe in good faith that your financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

#### **4. Delivery; Cancellation or Changes by Buyer**

The Services will be shipped to the destination specified by Buyer, F.O.B. Our shipping points. We will have the right, at our election, to make partial shipments of the Services and to invoice each shipment separately. We reserve the right to stop delivery of Services in transit and to withhold shipments in whole or in part if you fail to make any payment to us when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and we will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond our reasonable control. In the event of a delay due to any cause beyond our reasonable control, we reserve the right to terminate the order or to reschedule the shipment within a reasonable period of time, and you will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Services as to which delivery is delayed due to any cause within your control may be placed in storage by us at your risk and expense and for your account. Orders in process may be canceled only with Our written consent and upon payment of Our cancellation charges. Orders in process may not be changed except with our written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Services returned without the prior written consent of Seller.

#### **5. Title and Risk of Loss**

Notwithstanding the trade terms indicated above and subject to our right to stop delivery of Services in transit, title to and risk of loss of the Services will pass to you upon delivery of possession of the Services by us to the carrier; provided, however, that title to any software incorporated within or forming a part of the Services shall at all times remain with us or the licensor(s) thereof, as the case may be.

The delivery of healthcare has inherent risk. Because of the complexity and variations among healthcare providers in delivering healthcare, no single marking system, including the Surgi-Sign Marking System can prevent every medical error including wrong site errors from happening. Users of the Surgi-Sign Marking System should be aware this risk and take all necessary steps to prevent a wrong site error from occurring.

#### **6. Inspection/Acceptance; Returns.**

You must inspect delivered Services and report claims for defects, damages, shortages or receipt of wrong Services which are discoverable on a visual inspection within 48 hours of delivery or the Services will be deemed irrevocably accepted and such claims will be deemed waived. However, shipping damage claims must be made by you directly with the shipping company in accordance with such company's policies, which generally require such claims to be made prior to the time the carrier of the Services leaves the delivery destination. You will advise us of such claims.

We want you to be completely satisfied with your purchase. Please see our Refund and Returns Policy for details.

## **7. Billing or Sample Request Information**

If you request a sample through the Service ("Sample") or purchase any product or service made available through the Service ("Purchase"), you may be asked to supply certain information relevant to your Sample or Purchase including, without limitation, your name, your institution, your phone number, your credit card number, the expiration date of your credit card, your billing address, and your shipping information.

You represent and warrant that: (i) you have the legal right to use any credit card(s) or other payment method(s) in connection with any Purchase; and that (ii) the information you supply to us is true, correct and complete.

The Service may employ the use of third party services for the purpose of facilitating payment and the completion of Samples and Purchases. By submitting your information, you grant us the right to provide the information to these third parties subject to our Privacy Policy. Please refer to our Privacy Policy for full details.

We reserve the right to refuse or cancel your order at any time for reasons including but not limited to: product, sample, or service availability, errors in the description or price of the product, sample, or service, error in your order or other reasons.

We reserve the right to refuse or cancel your sample request or order if fraud or an unauthorized or illegal transaction is suspected.

## **8. Availability, Errors and Inaccuracies**

We are constantly updating product and service offerings on the Surgi-Sign website. We may experience delays in updating information on the Surgi-Sign website and in our advertising on other web sites. The information found on the Surgi-Sign website may contain errors or inaccuracies and may not be complete or current. Services or services may be mispriced, described inaccurately, or unavailable on the Surgi-Sign website and we cannot guarantee the accuracy or completeness of any information found on the Surgi-Sign website.

We therefore reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice.

## **9. Disclaimer**

**Your use of the Service or the use or application of the Surgi-Sign Marking System or any of the Surgi-Sign Marking System components by you or your designee in any way is your decision and subject to the Limitations of Liability.**

OR-6 LLC does not dispense medical advice and recommends that all users be trained in the use of any particular product before using it for any procedure. All users must rely on their

own professional clinical judgment when deciding whether to use a particular product when caring for any patient. **OR-6 LLC, its directors, employees, partners, agents, suppliers, or affiliates will not be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses arising from but not limited to use of the Service or the user's decision to use the Surgi-Sign Marking System.**

All users must always refer to the package insert, product label and/or instructions for use before using any of OR-6 LLC's Services. **OR-6 LLC, its directors, employees, partners, agents, suppliers, or affiliates will not be liable for any and all damages arising from but not limited to failing to completely follow the package insert, product label and/or instructions for use, or from any individual user error that results in patient injury.** Services may not be available in all markets because product availability is subject to the regulatory and/or medical practices in individual markets.

The Service and the Surgi-Sign Marking System are provided on an "AS IS" and "AS AVAILABLE" basis. **The Service and the Surgi-Sign Marking System are provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.**

OR-6 EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, AND OR-6 DOES NOT REPRESENT OR WARRANT THAT ANY PRODUCT WILL MEET YOUR REQUIREMENTS.

OR-6 LLC its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

## 10. Exclusions

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

## 11. Accounts

When you create an account with us, you guarantee that you are above the age of 18, and that the information you provide us is accurate, complete, and current at all times.

Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account with OR-6 LLC.

You are responsible for maintaining the confidentiality of your account and password, including but not limited to the restriction of access to your computer and/or account. You agree to accept responsibility for any and all activities or actions that occur under your account and/or password, whether your password is with our Service or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than you, without appropriate authorization. You may not use as a username any name that is offensive, vulgar or obscene.

We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in our sole discretion.

## **12. Copyright Policy**

We respect the intellectual property rights of others. It is our policy to respond to any claim that Content posted on the Surgi-Sign website infringes on the copyright or other intellectual property rights ("Infringement") of any person or entity.

If you are a copyright owner, or authorized on behalf of one, and you believe that the copyrighted work has been copied in a way that constitutes copyright infringement, please submit your claim via email to [wade@surgisign.com](mailto:wade@surgisign.com), with the subject line: "Copyright Infringement" and include in your claim a detailed description of the alleged Infringement as detailed below, under "DMCA Notice and Procedure for Copyright Infringement Claims"

You may be held accountable for damages (including costs and attorneys' fees) for misrepresentation or bad-faith claims on the infringement of any Content found on and/or through the Surgi-Sign website on your copyright.

## **13. DMCA Notice and Procedure for Copyright Infringement Claims**

You may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright's interest;

a description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;

identification of the URL or other specific location on the Surgi-Sign website where the material that you claim is infringing is located; your address, telephone number, and email address;

a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;

a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

You can contact our Copyright Agent via email at [wade@surgisign.com](mailto:wade@surgisign.com)

#### **14. Intellectual Property: Trademarks**

The Surgi-Sign website and its original content, features and functionality are and will remain the exclusive property of OR-6 LLC and its licensors. The Surgi-Sign website and the "Surgi-Sign" logo are protected by copyright, trademark, and other laws of both the United States and foreign countries. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of OR-6 LLC.

You may use the "Surgi-Sign," name and OR-6' product names solely for the purpose of accurately identifying the OR-6 -branded Services that you market or sells. You agree that any such use will be in accordance with all guidelines provided by OR-6 and you agree to change or correct, at its own expense, any label, material, or activity that OR-6 decides is inaccurate, objectionable, or misleading, or constitutes, in OR-6 's sole discretion, a misuse of OR-6 's name, trademarks, service marks, logos, or copyrighted works. You may not use the OR-6 name or OR-6 's product names for any other purpose. You may not register or use any domain name or business name containing, or confusingly similar to, any name or mark of OR-6. All brochures, advertising and marketing materials and other documents related to Services that are prepared or used by you (other than those supplied by OR-6) must be approved in writing by OR-6 prior to use.

#### **15. No License.**

The sale of the Services by us does not constitute a license, implied or otherwise, for the use of any patents or know-how of others, nor does it constitute a license, implied or otherwise, on our patents or know-how, except to the extent that the intended use of such Product by you yourself is covered by the claims of a Us patent.

#### **16. Confidential Information.**

Except for information that you demonstrate was in your possession prior to receipt from us, you agree that all information of Us, whether written or oral, that is furnished by us to you concerning our business and affairs or is learned by you during discussions or communications between you and us, is proprietary to us, and you will hold such information in confidence and will not use or disclose such information without our prior written consent, except for the fulfillment of this Agreement.

## 17. Links to Other Web Sites

Our Service may contain links to third party web sites or services that are not owned or controlled by OR-6 LLC

OR-6 LLC has no control over, and assumes no responsibility for the content, privacy policies, or practices of any third party web sites or services. We do not warrant the offerings of any of these entities/individuals or their websites.

You acknowledge and agree that OR-6 LLC shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such third-party web sites or services.

We strongly advise you to read the terms and conditions and privacy policies of any third-party web sites or services that you visit.

## 18. Limitation of Liability

You agree that the use of the Service or the application of the Surgi-Sign Marking System or any of its components in every instance is completely voluntary by the user or their designee and is done based entirely on their sole discretion and judgment including and without limitation to applicability, purpose, or safety.

In no event shall OR-6 LLC, nor its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any third party on the Service; (iii) **any content, samples, or Services obtained by you and/or provided to your designee, from the Service;** (iv) **your use of the Service;** (v) **the use or application of the Surgi-Sign Marking System or any of its components by the user or their designee that differs in any way from their intended purpose;** (vi) **user error;** and (vii) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

UNDER NO CIRCUMSTANCES WILL OR-6 HAVE ANY LIABILITY TO THE YOU FOR, AND THE YOU HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. YOU AGREE THAT UNDER NO CIRCUMSTANCES WILL OR-6' LIABILITY RELATING TO ITS SALE OF SERVICES TO YOU FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY YOU FOR THE PARTICULAR SERVICES INVOLVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

## **19. Indemnification**

You agree to defend, indemnify and hold harmless OR-6 LLC and its licensee and licensors, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees), with respect to bodily injury liability to third parties or any other liabilities, damages or injuries resulting from or arising out of, a) your use and access of the Service, by you or any person using your account and password, b) a breach of these Terms. c) your modification of or addition to the Services, misuse or abuse of the Services, d) Your failure to abide by all applicable laws, rules, regulations, and orders that affect the Services; e) Your gross negligence or willful misconduct; or f) intentional harm to any person or property caused by Buyer.

## **20. Export.**

You acknowledge that the Services sold under this Agreement, and the transaction contemplated by this Agreement, are subject to U.S. customs and export control laws and regulations and may also be subject to the customs and export laws and regulations of the country in which the Services are received. You acknowledge and agree that it is your sole responsibility to comply with and abide by those laws and regulations as applicable. Further, You acknowledge and agree that under U.S. law, the Services shipped pursuant to this Agreement may not be sold, leased, or otherwise transferred to restricted countries, any person or entity on the Specially Designated Nationals and Blocked Persons List published by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or utilized by restricted end-users or an end-user engaged in activities related to weapons of mass destruction, including, without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, or chemical or biological weapons.

## **21. Termination**

We may terminate or suspend your account and bar access to immediately, without prior notice or liability, under our sole discretion, for any reason whatsoever and without limitation, including but not limited to a breach of the Terms.



If you wish to terminate your account, you may simply discontinue using the Service.

All provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **22. Governing Law. Entire Agreement and Miscellaneous Terms**

These Terms shall be governed and construed in accordance with the laws of Massachusetts, United States, without regard to its conflict of law provisions. Any and all disputes arising under this Agreement will be dealt with under the exclusive jurisdiction and exclusive venue of the federal or state courts located in Suffolk County, Massachusetts, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect as if such invalid or unenforceable provision had not been included herein. These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have had between us regarding the Service. The section headings used herein are for convenience of reference only and do not form a part of this Agreement, and no construction or inference will be derived therefrom. To the extent that electronic signatures are available, the parties agree to use electronic signatures and agree that any electronic signatures will be legally valid, effective, and enforceable.

## **23. Changes**

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will provide at least 30 days notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Service after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Service.

## **24. Contact Us**

If you have any questions about these Terms and Conditions, please contact Dr. Wade Goolishian by email at [wade@surgisign.com](mailto:wade@surgisign.com) or by calling 868-888-7222 ext. 3.

## Privacy Policy

Last updated: September 19, 2017

OR-6, LLC ("us", "we", or "our") operates the [www.surgi-sign.com](http://www.surgi-sign.com) website (the "Service").

This page informs you of our policies regarding the collection, use and disclosure of Personal Information when you use our Service.

We will not use or share your information with anyone except as described in this Privacy Policy.

We use your Personal Information for providing and improving the Service. By using the Service, you agree to the collection and use of information in accordance with this policy. Unless otherwise defined in this Privacy Policy, terms used in this Privacy Policy have the same meanings as in our Terms and Conditions, accessible at [www.surgi-sign.com](http://www.surgi-sign.com)

### Information Collection And Use

While using our Service, we may ask you to provide us with certain personally identifiable information that can be used to contact or identify you. Personally identifiable information may include, but is not limited to, your email address, name, phone number, postal address, other information ("Personal Information").

We collect this information for the purpose of providing the Service, identifying and communicating with you, responding to your requests/inquiries, servicing your purchase orders, and improving our services.

### Log Data

We may also collect information that your browser sends whenever you visit our Service ("Log Data"). This Log Data may include information such as your computer's Internet Protocol ("IP") address, browser type, browser version, the pages of our Service that you visit, the time and date of your visit, the time spent on those pages and other statistics.

In addition, we may use third party services such as Google Analytics that collect, monitor and analyze this type of information in order to increase our Service's functionality. These third party service providers have their own privacy policies addressing how they use such information.

### Cookies

Cookies are files with a small amount of data, which may include an anonymous unique identifier. Cookies are sent to your browser from a web site and transferred to your device. We use cookies to collect information in order to improve our services for you.

You can instruct your browser to refuse all cookies or to indicate when a cookie is being sent. The Help feature on most browsers provide information on how to accept cookies, disable cookies or to notify you when receiving a new cookie.

If you do not accept cookies, you may not be able to use some features of our Service and we recommend that you leave them turned on.

## Do Not Track Disclosure

We support Do Not Track ("DNT"). Do Not Track is a preference you can set in your web browser to inform websites that you do not want to be tracked.

You can enable or disable Do Not Track by visiting the Preferences or Settings page of your web browser.

## Service Providers

We may employ third party companies and individuals to facilitate our Service, to provide the Service on our behalf, to perform Service-related services and/or to assist us in analyzing how our Service is used.

These third parties have access to your Personal Information only to perform specific tasks on our behalf and are obligated not to disclose or use your information for any other purpose.

## Communications

We may use your Personal Information to contact you with newsletters, marketing or promotional materials and other information that may be of interest to you. You may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send or by contacting us.

## Compliance With Laws

We will disclose your Personal Information where required to do so by law or subpoena or if we believe that such action is necessary to comply with the law and the reasonable requests of law enforcement or to protect the security or integrity of our Service.

## Security

The security of your Personal Information is important to us, and we strive to implement and maintain reasonable, commercially acceptable security procedures and practices appropriate to the nature of the information we store, in order to protect it from unauthorized access, destruction, use, modification, or disclosure.

However, please be aware that no method of transmission over the internet, or method of electronic storage is 100% secure and we are unable to guarantee the absolute security of the Personal Information we have collected from you.

## International Transfer

Your information, including Personal Information, may be transferred to — and maintained on — computers located outside of your state, province, country or other governmental jurisdiction where the data protection laws may differ than those from your jurisdiction.

If you are located outside United States and choose to provide information to us, please note that we transfer the information, including Personal Information, to United States and process it there.

Your consent to this Privacy Policy followed by your submission of such information represents your agreement to that transfer.

## **Links To Other Sites**

Our Service may contain links to other sites that are not operated by us. If you click on a third party link, you will be directed to that third party's site. We strongly advise you to review the Privacy Policy of every site you visit.

We have no control over, and assume no responsibility for the content, privacy policies or practices of any third party sites or services.

## **Children's Privacy**

Only persons age 18 or older have permission to access our Service. Our Service does not address anyone under the age of 13 ("Children").

We do not knowingly collect personally identifiable information from children under 13. If you are a parent or guardian and you learn that your Children have provided us with Personal Information, please contact us. If we become aware that we have collected Personal Information from a children under age 13 without verification of parental consent, we take steps to remove that information from our servers.

## **Changes To This Privacy Policy**

This Privacy Policy is effective as of September 19, 2017 and will remain in effect except with respect to any changes in its provisions in the future, which will be in effect immediately after being posted on this page.

We reserve the right to update or change our Privacy Policy at any time and you should check this Privacy Policy periodically. Your continued use of the Service after we post any modifications to the Privacy Policy on this page will constitute your acknowledgment of the modifications and your consent to abide and be bound by the modified Privacy Policy.

If we make any material changes to this Privacy Policy, we will notify you either through the email address you have provided us, or by placing a prominent notice on our website.

## **Contact Us**

If you have any questions about this Privacy Policy, please contact Dr. Wade Goolishian at [wade@surgisign.com](mailto:wade@surgisign.com) or by calling 868-888-7222 ext. 3.