

.RIVERPOINT MEDICAL, LLC
GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Definitions.

(a) “**Buyer**” means Riverpoint Medical, LLC or its affiliate that is identified on the applicable Order.

(b) “**Governmental Authority**” means any applicable international, domestic federal, state, municipal, local, territorial or other governmental department, regulatory authority, judicial or administrative body.

(c) “**Order**” means the request, purchase order or other document to which these Terms are attached or incorporated by reference, including by reference to a URL where these Terms are made available.

(d) “**Product**” means each product to be supplied by Seller pursuant to an Order.

(e) “**Seller**” means the other contracting party to an Order that is selling the Product.

(f) “**Specification**” means the design specification(s) for a Product as identified on the applicable Order or as otherwise identified by Buyer.

2. Applicability.

(a) These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the sale of the Products by Seller to Buyer. Notwithstanding anything herein to the contrary, if a written supply agreement, quality agreement or other contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Buyer expressly limits its acceptance to the terms of the Order and these Terms. These Terms prevail over any of Seller’s general terms and conditions of sale regardless of whether or when Seller has submitted its quote, acceptance, invoice or such terms, and Buyer expressly rejects all such terms and conditions offered by Seller. Seller may accept an Order in writing or by commencing performance in accordance with the Order. Buyer may withdraw the Order at any time prior to its acceptance by Seller.

3. Shipment and Delivery.

(a) Seller shall deliver all Products to Buyer as set forth in the applicable Order in accordance with the delivery date(s) specified in the Order or as otherwise agreed in writing by the parties. Timely delivery of the Products is of the essence. All shipments will be DAP (Incoterms 2010) to the delivery address identified in the Order, and title and risk of loss will pass in accordance therewith. Seller shall ship the Products using Buyer’s preferred carrier. If Seller fails to deliver the Products in full on the applicable delivery date, Buyer may terminate the Order immediately by providing written notice to Seller.

(b) Seller shall give written notice of shipment to Buyer when the Products are delivered to a carrier for transportation. Seller shall

provide Buyer all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Products to Buyer within one business day after Seller delivers the Products to the carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order.

4. Quantity. Seller may not, without Buyer’s prior written consent, make any partial shipments of Products to Buyer. If Seller delivers to Buyer a quantity of Products more or less than the quantity set forth in the Order, Buyer may reject all or any excess Products. Any such rejected Products shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Products and instead accepts the delivery of Products at the increased or reduced quantity, the price for the Products shall be adjusted on a pro-rata basis.

5. Packaging. All Products shall be packed for shipment according to the Specifications or Buyer’s instructions or, if not covered thereby, in a manner sufficient to ensure that the Products are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s expense.

6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

7. Inspection and Rejection of Nonconforming Products. Buyer has the right to inspect the Products on or after their delivery. Buyer, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are nonconforming or defective. If Buyer rejects any portion of the Products, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the Products, Seller shall, at its expense, promptly, replace the nonconforming Products and pay for all related expenses, including, transportation charges for the return of the defective Products and the expedited delivery of replacement Products. If Seller fails to timely deliver replacement Products, Buyer may replace them with products from a third party and charge Seller the cost thereof and terminate this Order for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

8. Price.

(a) Buyer shall purchase the Products from Seller at the prices set forth in the Order or, if no such price is listed in the Order, a pricing list agreed upon by the parties, or if no such pricing list exists, Seller’s published price list in force as of the date that Seller accepts Buyer’s purchase order less any written, standard or standing discount that Seller provides to Buyer. Unless otherwise specified in the Order, the price includes all packaging, transportation costs, insurance and customs duties. No increase in the price for any Product is effective, whether due to increased material, labor or

transportation costs or otherwise, without the prior written consent of Buyer.

(b) All prices listed and payments required to be made by Buyer to Seller under this Agreement are exclusive of any applicable federal, state and local taxes, fees, duties and charges (other than value added taxes and taxes based on Seller's net or gross income, personnel or property, which Seller shall pay). Seller shall withhold and remit any such taxes that Seller is required to so withhold and pay by applicable law, unless Buyer provides Seller with certification of its exemption from such tax, and will hold harmless Buyer from the payment of the same.

9. Payment Terms.

(a) Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Agreement. Payment terms are net 45 days after the date of receipt of a proper invoice, provided that Buyer may withhold any amounts disputed in good faith by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under all Order notwithstanding any such dispute.

(b) All payments shall be made in U.S. dollars to such account(s) as designated by Seller from time to time.

(c) Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

10. Warranties. In addition to and without limiting any warranty that Seller may provide on a Product's packaging, manuals or inserts or otherwise provided by Seller, Seller warrants to Buyer that for a period of 12 months after delivery, all Products will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable Specifications and other drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe, misappropriate or violates any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Products by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Products with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Products and pay for all related expenses, including transportation charges for the return of the defective or nonconforming Products to Seller and the expedited delivery of repaired or replacement Products to Buyer.

11. Indemnification by Seller.

(a) Seller shall defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates, successors or assigns and each of their respective directors, officers, shareholders, owners and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Products purchased from Seller or Seller's negligence, willful misconduct or breach of this

Agreement. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

(b) Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Products infringes, misappropriates or otherwise violates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

12. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances, including with relation to the design, manufacture, handling, transport, storage, marketing, sale and disposition of any Product. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Products under this Order. Seller assumes all responsibility for shipments of Products requiring any government import clearance. Buyer may terminate this Order if any Governmental Authority imposes antidumping, retaliatory or countervailing duties or any other penalties on Products.

13. Termination. Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Products on three business days' prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to Seller, either before or after the acceptance of the Products, if Seller has not performed or complied with any of this Agreement, in whole or in part. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate this Order upon written notice to Seller. If Buyer terminates this Order for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted by Buyer prior to the termination.

14. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Confidential Information. All non-public, confidential or proprietary information of Seller, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

16. Force Majeure. Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted or breached this

Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of such non-performing party including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. Seller's economic hardship or changes in market conditions are not considered force majeure events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any force majeure event are minimized and resume performance under the Order. If a force majeure event prevents Seller from carrying out its obligations under the Order for a continuous period of more than five business days, Buyer may terminate this Order immediately by giving written notice to Seller.

17. Assignment. Seller shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Seller of any of its obligations under this Agreement.

18. Independent Contractors. In connection with this Agreement, each party is an independent contractor. This Agreement does not, and will not be construed to, create an employer-employee, agency, joint venture or partnership relationship between the parties. Neither party has any authority to act for or to bind the other party in any way.

19. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. Governing Law. This Agreement is governed by and will be interpreted under the internal laws of the State of Oregon, without regard to its conflicts of law provisions.

21. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement (a "**Dispute**") that cannot be resolved by mutual negotiations within 45 days after notice by one party to the other of the existence of a Dispute (unless the parties agree to extend that period) shall be resolved by arbitration in accordance with the

Commercial Arbitration Rules of the American Arbitration Association ("**AAA**") (such rules, the "**AAA Rules**"; see www.adr.org) and the Federal Arbitration Act, 9 U.S.C. §1 et seq. The arbitration will be conducted in Portland, Oregon, by one arbitrator appointed in accordance with the AAA Rules. The arbitrator must follow the *ICDR Guidelines for Arbitrators Concerning Exchanges of Information* in managing and ruling on requests for discovery. The arbitrator will decide the Dispute in accordance with the substantive law of the State of Oregon. The award of the arbitrator may be entered in any court of competent jurisdiction.

22. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Interpretation. In this Agreement: (a) the word "person(s)" includes any legal entity(ies) as well as natural person(s); (b) the words "including," "include" and "includes" each are deemed to be followed by the term "without limitation;" and (c) the term "or" is not exclusive. All references to \$ or dollars are references to U.S. dollars. This Agreement is the joint drafting product of the parties and each provision has been subject to negotiation and agreement and will not be construed for or against any party as drafter thereof. The headings appearing at the beginning of sections contained in this Agreement have been inserted for identification and reference purposes only and may not be used to determine the construction or interpretation of this Agreement.

25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including the following provisions: Inspection and Rejection of Nonconforming Products, Warranties, Indemnification by Seller, Compliance with Laws, Confidential Information Governing Law, Dispute Resolution and Survival.

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