

RIVERPOINT MEDICAL, LLC

GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions.

(a) **“Buyer”** means the other contracting party to a Sales Confirmation that is purchasing the Product.

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

(c) **“Product”** means each product to be supplied by Seller pursuant to a Sales Confirmation.

(d) **“Sales Confirmation”** means the quotation, confirmation of sale, acknowledgment, invoice 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.

(e) **“Seller”** means Riverpoint Medical, LLC or its affiliate that provides and is identified on the applicable Sales Confirmation.

(f) **“Specification”** means the design specification(s) for a Product as identified on the applicable Sales Confirmation or as otherwise agreed upon by the parties.

2. Applicability.

(a) These terms and conditions of sale (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 Sales Confirmation 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's payment for any Product, receipt of any Product or failure to reject these Terms within five days after they are provided by Seller, whichever comes first, shall constitute Buyer's acceptance of these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms, and Seller expressly rejects all such terms and conditions offered by Buyer. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

3. Shipment and Delivery.

(a) Seller shall deliver all Products to Buyer as set forth in the applicable Sales Confirmation, subject to the terms and conditions of this Agreement. All identified delivery dates are estimated only and Seller shall not be liable for any early delivery or delay in delivery. All shipments will be EXW (Incoterms 2010) Seller's loading dock, and title and risk of loss will pass in accordance therewith. Buyer will pay freight based on normal course of business freight shipments. Seller shall not be liable for any delays, loss or damage in transit.

(b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units

shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

4. Quantity. If Seller delivers to Buyer a quantity of Products of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products the price set forth in the Sales Confirmation adjusted pro rata.

5. No License. Buyer does not acquire and Seller does not grant to Buyer any license or right in any Seller names, trademarks, service marks, patents, copyrights or other intellectual property rights, except the right to use Products in the manufacture of Buyer's products.

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.

(a) Buyer shall inspect the Products within 30 days after receipt (**“Inspection Period”**). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. **“Nonconforming Products”** means only the following: (i) Product shipped is different than identified in Buyer's purchase order; or (ii) Product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller's designated facility. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products. Buyer acknowledges and agrees that the remedies set forth in this Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Products.

(c) Other than as set forth in this Section, Buyer has not right to return Products to Seller if and unless such a return is permitted by Seller's then-current return policy, a copy of which will be provided upon Buyer's request. All returns must be conducted in accordance with such return policy, and may be subject to restocking and other fees and charges.

8. Price.

(a) Buyer shall purchase the Products from Seller at the prices set forth in the Sales Confirmation or, if no such price is listed in the Sales Confirmation, Seller's published price list in force as of the date that Seller accepts Buyer's purchase order.

(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. Any present or future sales, revenue, excise, withholding or other tax, fees, duties or

charge of any nature, imposed by any public authority, applicable to the purchase of Products hereunder (other than value added taxes or taxes based on Seller's net income), shall be paid by Buyer unless an exemption therefrom is obtained and will hold harmless Seller from the payment of the same.

9. Payment Terms.

(a) Payment terms are net 30 days after the date of the invoice (unless otherwise specified on the order confirmation). All payments shall be made in U.S. dollars to such account(s) as designated by Seller from time to time. If Buyer has not paid any invoice when due, Seller may withhold shipment of any and all other Products until such past-due invoice has been paid in full.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for five days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Limited Warranty.

(a) The warranty, including the applicable warranty period and exclusive remedies, provided by Seller for a Product, if any, is solely as set forth on the packaging or packaging inserts for such Product. Any such warranties made by Seller are solely for the benefit of Buyer. Nothing in this Agreement obligates Seller to accept Product returns directly from Buyer's customers or otherwise provide warranty or other services to any customer of Buyer.

(b) **EXCEPT AS SET FORTH IN SECTION 10(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third-Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by any warranty from Seller. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) Seller shall not be liable for a breach of a warranty for a Product if: (i) Buyer makes any further use of such Products becoming aware of the non-conformity; (ii) the defect arises because

Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.

(e) Subject to Section above, with respect to any Product that does not comply with its warranty, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Products to Seller. **THESE REMEDIES SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY REFERENCED IN SECTION 10(A).**

11. Indemnification by Buyer. Buyer agrees to indemnify and hold Seller harmless from all claims directly or indirectly arising from Buyer's misrepresentations of the quality, use or purpose of the Products; Buyer's negligence or other more culpable act; or Buyer's violation of any law, rule or regulation or breach of this Agreement.

12. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS THAT ARE THE CAUSE OF CLAIM SOLD UNDER THE APPLICABLE SALES CONFIRMATION.**

(c) **THESE LIMITATIONS WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF A LIMITED OR EXCLUSIVE REMEDY SET FORTH HEREIN.**

13. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances, including with relation to the handling, transport, storage, marketing, sale and disposition of any Product, and with the design, manufacturing, testing, marketing and sale any other product that incorporates any Product. Buyer agrees to use the Products only for lawful approved purposes in accordance with accepted medical practices. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any Governmental Authority imposes antidumping or countervailing duties or any other penalties on Products.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

16. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, 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 Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller 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 Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

17. Force Majeure. Seller shall not be liable or responsible to Buyer, 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 Seller including, without limitation, 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 Sales Confirmation 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.

24. 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.

25. 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.

26. 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, but not limited to, the following provisions: Limitation of Liability, Compliance with Laws, Confidential Information Governing Law, Dispute Resolution and Survival.