



Purchase Order Terms and Conditions

Seller agrees to the following terms and conditions and Seller further agrees that the provisions under this purchase order, including said terms and conditions, and including all documents incorporated herein by reference, shall constitute the entire agreement by and between the parties hereto and shall supersede all prior agreements (verbal or written) and negotiations relating to the subject matter hereof. Acceptance may be made by written notice to Mevion Medical Systems, Inc. ("Mevion"), or by partial or complete performance hereunder.

Warranty

Seller warrants that all items ordered here under shall be merchantable and free from defects in workmanship and materials and shall strictly conform to the applicable specifications, drawings and approved samples, if any, including performance specifications and shall be suitable for the intended purpose as stated herein. These warranties shall be in addition to any other warranties, whether express, implied or statutory. All warranties shall survive inspection, acceptance and final payment by Mevion. All warranties shall extend to Mevion, its officers, directors, agents and employees, its customers and/or subsequent purchasers or owners of the items or end products of which they are part. Seller agrees, at its expense, to defend or assist in the defense of any action in any court against Mevion, its officers, directors, agents and employees, its customers or subsequent owners at Mevion's option insofar as such action is based upon alleged facts which amount to be a breach of the foregoing warranties. Seller agrees to indemnify Mevion, and its customers or subsequent owners, for any and all liability, loss, costs and expenses, including costs of tests performed by Mevion, reasonable attorney's fees and costs of litigation resulting from any breach of Seller's warranty obligations. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

Packing, Shipping and Risk of Loss

No charges will be allowed for boxing, wrapping or cartage or storage unless so specified in the purchase order. Seller shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meeting carriers requirement and safeguarding against damages from weather, transportation and storage. Risk of loss on all property shipped by Seller to Mevion shall pass to Mevion at point of destination. If, in order to comply with Mevion's delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in the purchase order, any increase in transportation costs resulting therefrom shall be paid for by Seller unless the need for such rerouting or expediting handling has been caused by Mevion.

Delivery

Time is of the essence in the performance of this purchase order. Seller, shall not, without Mevion's prior written approval, manufacture or procure materials in advance of Mevion's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim shall be allowed for any such manufacture or procurement in advance of such normal flow time unless there has been such prior written consent of Mevion. Mevion may, at its discretion, either retain property received in advance of delivery schedule or return to Seller, at Seller's risk and expense. If retained, time for payment and discount shall be based upon required delivery schedule dates.

Payment

Invoices shall contain the purchase order number, item number, and description of items or services, sizes, quantities, unit price and extended totals. Undisputed amounts of invoices submitted here under shall be paid net thirty (30) days after receipt of invoices and final acceptance of delivered items by Mevion. Any adjustments in Seller's invoices due to shortages, late delivery, rejections or other failures to comply with the requirements of this order, may be made by Mevion before payment. Payment does not constitute final acceptance.

Inspection

Seller shall permit Mevion's inspectors and/or Mevion's customers to have access to Seller's plant at all reasonable hours upon prior notice to Seller for the purpose of inspection of any items or work in progress covered by this purchase order. Seller, without additional cost to Mevion, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspection, Seller shall make available to the inspectors, samples of all drawings, specifications in process, preservation and packing data applicable to the items ordered hereunder. If requested, Seller shall promptly furnish to Mevion an inspection



certificate. Supplies which do not meet specifications may be returned by Mevion to Seller, at Seller's expense, provided however, that Mevion may, at its sole discretion, retain said samples and make such expenditures for improvements, changes and alterations to said supplies as may be deemed necessary, in order to bring them into conformity with specifications, at Seller's sole expense and Seller shall promptly reimburse Mevion for any such expenditures. All items shall be subject to final inspection and acceptance at destination point, notwithstanding any prior payment, inspection and acceptance. Mevion may, at its option, (1) hold the rejected items for Seller's instructions at Seller's risk, or (2) return them to Seller, at Seller's expense, or (3) terminate this purchase order in accordance with the Termination for Cause provision. Seller shall promptly reimburse Mevion for any and all damages sustained by Mevion as the result of said failure of said item to meet specifications. Mevion reserves the right to charge Seller any and all costs of inspection and tests when items offered for final inspection and acceptance do not comply with the requirements of this purchase order. No replacement or correction of rejected items shall be made unless otherwise specified on Mevion's return material order. Seller shall credit Mevion's account for the value of the items rejected plus the cost of packaging, inbound freight and handling.

Termination Without Cause

Mevion may terminate without cause the work to be performed hereunder in whole or in part, at any time, by written notice to Seller. Such notice shall state the extent and effect or date of such termination and, upon receipt thereof, Seller shall comply with the directions pertaining to work stoppages thereunder and the placement of future orders or subcontracts under the purchase order, if any. The parties shall thereupon in good faith attempt to agree by negotiation within three (3) months upon the amount of reimbursement, if any, to be paid to Seller or Mevion for such termination.

Default

Mevion shall be entitled to terminate any and all contracts (including, but not limited to, this or any other purchase order) between the parties in the event Seller: (i) defaults in or commits any breach of its obligations to Mevion and fails to cure the same within thirty (30) days of receipt of notice of default from Mevion; or (ii) enters bankruptcy; or (iii) files a petition in bankruptcy or has a petition in bankruptcy (led against it (voluntary or involuntary)); or (iv) has a receiver, trustee or custodian appointed or takes possession of any of Seller's assets; or (v) fails to deliver the items in accordance with the delivery schedule specified herein or any written extension thereof; or (vi) fails to replace, repair or otherwise correct any defects with respect to items in accordance with the provisions of the inspection as set forth above (each of (i) through (vi) and "Event of Default").

In the event that this purchase order provides for the furnishing of items in more than one lot, Mevion may terminate the entire purchase order. In the event of termination pursuant to an Event of Default, Mevion, in addition to its right of termination as set forth above, may (i) purchase similar items elsewhere on such terms and in such manner as Mevion may deem necessary, in its sole and absolute discretion, and the Seller shall be liable to Mevion for any excess costs occasioned by Mevion thereby; or (ii) provide such materials, supplies, equipment and labor as may be necessary to complete said work, pay for the same and deduct the amount so paid for money there or thereafter due Seller; or (iii) order all work under this purchase order stopped immediately and enter upon the premises and take possession, for use in completing the work of all the materials, regardless of stage of completion, supplies, tools, equipment and appliances of the Seller thereon and complete the work, or have same completed by others, and be liable to Seller for no further payment under this purchase order, until final payment is due, and then only if, to the extent that the unpaid balance of the amount to be paid under this purchase order exceeds the damages and expenses of Mevion in finishing the work; or (iv) require the Seller to transfer title and deliver to Mevion, as directed by Mevion, any (x) completed supplies and (y) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufactured materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this purchase order. Upon direction from Mevion, the Seller shall also protect and preserve property in its possession in which Mevion, or Mevion customers, have an interest.

Failure of Mevion to enforce any right under this clause shall not be deemed as a waiver of any right hereunder. The rights and remedies of Mevion under this clause shall not be exclusive and are in addition to other rights and remedies provided by law or equity or under the terms of this purchase order.

Changes

Mevion shall have the right at any time to make changes in the drawings, designs, specifications, quantities, delivery schedules, shipments or packaging in place of inspection or point of delivery of any items of this purchase order. No change shall be effective unless authorized in writing by Mevion. In the event such changes result in the delay or increase or decrease in expense to Seller, Seller shall notify Mevion immediately and



negotiate an equitable adjustment, provided, however, that Seller shall, in all events, proceed diligently to perform the work or services or supply the items contracted for under this purchase order as so changed. No change by Seller for such equitable adjustment shall be valid unless submitted to Mevion within thirty (30) days from the date of such change and authorized by Mevion in writing. Mevion shall have the right to review or audit Seller's records in the event of such a request.

Indemnity for Infringement

The Seller shall, at its expense, indemnify and hold harmless Mevion, its officers, directors, agents and employees, its customers and all persons claiming under Mevion, against any suit or suits for the infringement of any patent, copyright or trademark or any misappropriation of trade secrets or any other intellectual property rights of a third party, and shall defend indemnify the aforesaid parties against all damages, costs and expenses, including all reasonable legal expense, arising there from by reason of the manufacture, sale or the natural and intended use of the items covered by this purchase order. Seller shall be given adequate notice of such claims and assume full and exclusive control in the defense thereof. If the use of any of the items covered by this purchase order is enjoined, Supplier shall at its own expense: (a) procure for Mevion the right to continue using the items; or (b) remove the items and replace with noninfringing items; or (c) remove the items and refund the purchase price and transportation and installation costs thereof; or (d) with Mevion's consent modify the items to eliminate the infringement.

Indemnification

Seller agrees to defend, hold harmless and indemnify Mevion, its officers, directors, agents and employees, from and against any claim and loss, including reasonably attorney's fees, due to Seller's negligence or other wrongful acts or omissions in Seller's performance of this purchase order. Seller shall maintain, amounts deemed acceptable to Mevion, at Mevion's sole and absolute discretion, such insurance as will protect Mevion from said risks and from any claim. Upon request of Mevion, Seller shall furnish Mevion certificate of such insurance providing that at least ten (10) days prior written notice shall be given to Mevion of cancellation or reduction of coverage.

Assignment

Seller shall not assign any rights or claims under this purchase order without the prior written consent of Mevion and, absent Mevion's prior written consent, any such intended assignment shall be void and of no force or effect. All claims from money due or to become due from Mevion shall be subject to deduction by Mevion for any setoff or claims which Mevion may have against Seller arising out of this or any other of the Mevion purchase orders with Seller, whether such setoff or counterclaim arose before or after such assignment by Seller.

Independent Contractor

The Seller is, and shall be deemed to be, an independent contractor at all times during the performance of the work specified in the purchase order.

Disputes

Any disputes concerning issues under this purchase order, which are not resolved by agreement of the parties to the purchase order, may be settled by appropriate legal action at law or in equity or such other procedure as may be agreed to by the parties. As an alternative to the foregoing, the parties may settle disputes via arbitration. Pending any prosecution, appeal or final decision referred to in this paragraph, or the settlement of any dispute arising under this purchase order, the Seller shall proceed diligently as directed by Mevion with the performance of the purchase order. In the event of a dispute resulting in litigation, Seller shall reimburse Mevion's reasonable attorney's fees and costs whenever Mevion prevails. Likewise, Mevion shall reimburse Seller's reasonable attorney's fees and costs whenever Seller prevails.

Remedies and Non-Waivers

Except as otherwise expressly provided, the remedies provided hereunder shall be cumulative and in addition to the rights and remedies in law or equity. No waiver of a breach of any provision of this purchase order shall constitute a waiver of any other breach of any such provision.

Jurisdiction

This purchase order shall be construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of laws principles. All rights and remedies of Mevion under this purchase order are cumulative and are in addition to any legal rights and remedies of Mevion. All actions or legal proceedings



arising out of or relating to this purchase order shall be instituted exclusively in the United States District Court for the District of Massachusetts in Boston, Massachusetts. Should said Court decline jurisdiction, the parties hereto agree to institute any actions or other legal proceedings in the Middlesex County Superior Court, in Woburn, Massachusetts.

Additional Provisions

In the event that this purchase order has been issued in support of or as a subcontract under any contract issued subject to Federal Acquisition Regulations, the prime contract and all mandatory clauses therein are incorporated herein by reference and are binding upon the Seller.

As a designer and manufacturer of a medical device, Mevion requires that the Seller notify Mevion of any changes to the product or service provided prior to delivery of such product or service so that Mevion may determine whether the changes may affect the quality of the finished device. Failure to notify Mevion of these changes will be grounds for removal from the Approved Supplier List.

Confidentiality

In the event that Seller has access to confidential or proprietary information of Mevion (the "Confidential Information") Seller agrees: (i) not to disclose or make available any Confidential Information to any third parties, (ii) to disclose Confidential Information only to those of Seller's employees and contractors that have a need to know such Confidential Information in order for Seller to perform its obligations hereunder and who have executed agreements with Seller that impose confidentiality obligations on such employees or contractors that are no less restrictive as those set forth herein, and (iii) not to use the Confidential Information for any purpose other than to perform Seller's obligations hereunder.