

TERMS AND CONDITIONS OF PURCHASE

1. Terms and acceptance. This order is an offer to purchase the goods identified in the attached purchase order and shall constitute the terms of a legally binding agreement (referred to hereinafter as "Order" or "Agreement") when (1) Buyer receives signed acknowledgment of the Order from Seller, or (2) according to schedule, Seller ships to Buyer the Order of all or any portion of the goods covered by this Order; or (3) Buyer gives Seller written approval of the price and delivery schedule of the goods as stated by Seller if Seller's written acknowledgment of this Order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which Buyer's approval applies. Except as provided in the preceding sentence, it is a condition of this Order that any provisions printed or otherwise contained in any acknowledgment, inconsistent with or in addition to the terms and conditions stated here, or any alteration in this purchase Order, shall have no force or effect, and that Seller by such acknowledgment agrees that any such provisions or any such alterations in this Order shall not constitute any part of this contract of purchase and sale. This contract contains the entire agreement of the parties, and failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

2. Inspection, warranty. Risk of loss or damage to the goods shall be on Seller until the goods have been delivered to and accepted by Buyer, notwithstanding any other terms contained herein or in any contracts with Buyer. Goods delivered (whether paid for or not) are subject to inspection, testing and approval by Buyer before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered will be of good quality, material, and workmanship, merchantable, free from defects, and if ordered for a stated purpose will be fit for such purpose. This warranty shall survive any inspection, delivery, acceptance, or payment by Buyer of the goods or services. Such warranties, including warranties prescribed by law shall run to Buyer, its successors and assigns and any users of the goods.

3. Nonconforming goods. Buyer may reject and return or hold at Seller's expense and risk all goods that are (a) not fully up to standard, (b) not in compliance with the specifications, (c) shipped contrary to Buyer's instructions, (d) shipped in excess of the quantities ordered, (e) substituted for goods described, (f) not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications, in recognized standard containers), or (g) believed to violate any statute, ordinance, or administrative order, rule, or regulation Buyer may charge to Seller all expense of inspecting, unpacking, examining, repacking, storing and reshipping any goods rejected as nonconforming. The remedies afforded to Buyer shall not be exclusive, and Buyer may hold Seller liable for any and all damages arising from any breach or default under these terms and conditions.

4. Price. Prices recorded in this Order shall not be increased for this Order. No additional amounts shall be chargeable to Buyer because of taxes or excises, presently or later levied on Seller. If Seller reduces its quoted prices for the goods covered by this Order (whether in the form of a price reduction, close out, rebate, allowances, or additional discounts offered to any other Buyer) at time of any shipment, Seller agrees that the price to Buyer for such goods will be reduced accordingly, and that Buyer will be billed at such reduced prices. If price is not recorded on the face of this Order, price shall be that of last previous order given by Buyer to Seller, subject to the provisions of this paragraph. If price includes taxes or excises and if such taxes or excises or any part thereof are later refunded to Seller, Seller shall immediately pay Buyer the amount of such refund. Seller certifies that the prices for this Order are not higher than prices being charged to other organizations purchasing identical goods in equal or smaller quantities at this particular time and do not discriminate against purchaser.

5. Payment. Terms of payment are as previously arranged, or if specified in this Order, then as so specified in this Order.

6. Delivery time of essence. Buyer's schedules are based upon the agreement that the goods will be delivered to Buyer by the dates specified on the face of the purchase order. Time is therefore of the essence and if goods are not delivered within the time specified, Buyer may reject such goods and cancel the Order. The acceptance of late or defective deliveries shall not be deemed a waiver by Buyer of its right to cancel this Order or to refuse to accept further deliveries.

7. Packing. Each package shall be numbered and labeled with Buyer's order number, stock number, contents and weight, shall contain an itemized packing slip and shall be properly prepaid for shipment so as to secure the lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified. No charges will be allowed Seller for packing, breaking, freight, express, or cartage unless stated herein.

8. Invoicing. For all implantable devices, Seller will provide Buyer with one invoice for each patient and will clearly identify the patient on the invoice by first and last name and will also include the surgeon's name and the date of surgery.

9. Warranty against infringement. Seller warrants that the sale or use of goods covered by this Order either alone or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademarks or copyrights either in the U.S.A. or foreign countries. Seller shall defend every suit which shall be brought against Buyer or any party selling or using Buyer's products for any alleged infringements of any patents, trademarks or copyrights, by reason of the sale or use of said materials either alone, or in combination with other materials and to pay all expenses and attorneys' fees that shall be incurred

in and about defending every such suit and all costs, damages, and profits recoverable in every such suit.

10. Compliance with law. Seller agrees that the goods or services provided by Seller will be provided in compliance with Buyer's Policies and Procedures and with all applicable federal, state, and local laws, rules and regulations, including, but not limited to, the provisions of the Fair Labor Standards Act of 1938, the Federal Food Drug, and Cosmetics Act, the 1980 Omnibus Reconciliation Act, and and the Social Security Act.

11. Indemnity.

(a) Seller shall defend, indemnify and hold harmless Buyer, its employees, customers and users of the goods or services, from and against any claim, loss, damage or expense arising out of the purchase and/or use of the goods or services purchased with this Order and/or arising out of Seller's or its subcontractor's work or performance.

(b) Seller shall defend, indemnify and hold harmless Buyer from and against the assessment by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the goods and services purchased here.

(c) Seller shall defend, indemnify and hold harmless Buyer, its employees, customers and users of the goods or services from and against any claim, loss (including the cost of any goods or services lost by seizure, forfeiture, condemnation or voluntary recall), damage or expense arising out of any claim or finding by the United States of America or any state or local government or any agency or instrumentality that the goods or services are not as guaranteed and warranted.

12. Insurance. Seller shall procure and maintain liability insurance, with contractual liability coverage with such limits as Buyer shall reasonably request. If requested, Seller shall on or before delivery of the goods or services purchased here furnish to Buyer a Certificate of Insurance evidencing the foregoing coverages and limits.

13. Taxes. Seller accepts liability for payment of all payroll and Social Security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.

14. Conflicting terms. In the event any other document contains terms of sale, description of merchandise, or other provisions pertinent to the transaction to which the terms and conditions of purchase set forth herein apply, and if any such terms, description of merchandise or provisions are or reasonably may be interpreted as being in conflict or inconsistent with these Terms and conditions of Purchase, the Buyer and Seller agree that the Terms and Conditions of Purchase set forth herein prevail, and that any such conflict or inconsistency shall be

interpreted to give full force and effect to these Terms and Conditions of Purchase.

15. Delegation, assignment. Seller shall not delegate or assign any duties or claims under this Order without Buyer's prior written consent. Any such delegation or assignment attempted without Buyer's previous written consent shall effect, at Buyer's option, a cancellation of all of Buyer's obligation. All claims for money(ies) due or to become due from Buyer shall be subject to deduction by Buyer, for any setoff or counterclaim arising out of this or any other of Buyer's orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

16. Modification. Buyer shall have the right to make, from time to time, and without notice to any sureties or assignees, changes as to packing, testing, destination, specifications, designs, and delivery schedule. Seller shall immediately notify Buyer of any increases or decreases in costs caused by such changes and in equitable adjustment of prices or other terms shall be agreed upon in a written amendment to this Order.

17. Cancellation. Buyer reserves the right at any time without cause to cancel all or any part of the undelivered portion of this Order by notice to Seller. In the event of such cancellation, Buyer shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Buyer's right to terminate this purchase order for default of Seller.

18. Waiver of liens. Seller hereby waives and relinquishes all liens and claims statutory or otherwise which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller or Buyer in performance of this Order.

19. Default. Upon the happening of any one or more of the following events, Buyer shall have the unrestricted right to cancel and terminate the Order without cost or liability to the Buyer: (1) Seller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (3) institution of legal proceedings against Seller by creditors or stockholders; (4) appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of the Buyer to cancel its additional obligations.

20. Trade name. Unless authorized by Buyer in writing, Buyer's name, trade name, or the name or trade name of any of Buyer's subsidiaries or affiliates shall not be used in Seller's advertising or other material Seller disseminates to third persons except as necessary for performing this contract or as required by law.

21. Controlling Law. This Agreement is executed, delivered and intended to be performed in the State of New York and shall be governed by, interpreted, and construed in accordance with the laws of the State of New York without reference to its conflicts of law principles and the parties agree to submit to the personal and exclusive jurisdiction of the courts located in Erie County, New York.

22. Code of Conduct and Business Ethics. Seller represents and warrants that it has read, understood, and agreed to comply with Catholic Health of Buffalo's Code of Conduct and Business Ethics, Policy (policy #).

23. General. All warranties shall be construed as conditions as well as warranties. No waiver of a breach or of any provision of this Order shall constitute a waiver of any other breach or provision. No modification or change in or departure from or waiver of the provisions of this Order shall be valid or binding unless approved by Buyer in writing. This Order shall constitute the entire Agreement between the parties regarding the goods or services listed in the attached purchase order.

24. Access to Books and Records: To the extent that Section 1861(v)(1)(I) of the Social Security Act (the "Act") and associated regulations are applicable to any Services rendered pursuant to this Order, Buyer and Seller shall each, until 4 years after the date of the services provided, comply with requests by the Comptroller General of the United States, the Secretary of Health and Human Services and their duly appointed representatives for access, in accordance with the Act, to this Agreement as well as to the books, documents and records of Buyer and Seller that are necessary to verify the cost of such services. Both parties also agree to make such disclosures as may be required to be compliant with or as may be required by Medicare, Medicaid and other federal or state or third party payment programs or government agency with respect to this Agreement. If either party is requested to disclose books, documents or records relevant to this Agreement for audit by such programs, it shall notify the other party of the nature and scope of the request and each party shall make available, upon written request of the other, all such relevant books, documents or records during such party's regular business hours. Furthermore, if Seller carries out any of its duties under this Agreement through a subcontract having a value or cost of \$10,000.00 or more over a 12 month period, Seller will cause such subcontract to contain a clause to the effect that until the expiration of 4 years after furnishing of any service pursuant to said subcontract, subcontractor will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, copies and records of subcontractor that are necessary to certify the nature and extent of costs incurred by Buyer for such Service. Furthermore, Seller agrees that within 3 business days of Buyer's request, it will provide Buyer with any and all of Seller's business records concerning Buyer that Buyer deems in its reasonable, but sole, discretion are necessary to (a) assure compliance with federal or state

laws and regulations, (b) substantiate amounts Buyer owes to Seller or (c) substantiate amounts Seller owes to Buyer.

25. **Excluded Provider.** Each party represents that it has not been convicted of a crime related to healthcare, and is not currently listed by a federal agency as debarred, excluded or otherwise ineligible to participate in federally funded programs. If either representation changes, the affected party shall notify the other party immediately after the party receives notice that it is an excluded provider. The party receiving this notice shall have the right to terminate this Agreement immediately after receiving the notice. For purposes of this section, the term "excluded provider" shall mean each entity entering into this Agreement and each entity's parent, principals, shareholders, directors, and officers (including subcontractors and employees).

26. **Independent Contractor.** This Agreement is not intended to create, and will not be construed to create, any relationship between the parties other than that of independent contractors. Neither of the parties nor any of their respective representatives will be construed to be the agent, employee, or representative of the other. Seller will neither have nor exercise any control or direction over the methods by which Catholic Health provides Services.

27. **Product Safety, Withdrawal, and Recall Information.** Seller shall notify Catholic Health System of all applicable product safety, withdrawal, and recall information ("Information") within 24 hours of Seller's determination to issue such Information. Seller shall notify Catholic Health of Buffalo's Senior Director of Supply Chain Management at 291 North Street Buffalo NY 14201.

28. **Dated and Expired Products.** When Seller's goods have an expiration date and a single item value greater than \$250.00 USD, Catholic Health of Buffalo purchases such goods from Seller and Seller sells such goods to Catholic Health of Buffalo only on consignment. At Catholic Health of Buffalo's discretion, Seller shall (a) accept for return, and (b) refund, credit or exchange any of its expired goods.

29. **In the event of a labor strike supplier will provide uninterrupted deliveries or provide arrangements for product delivery continuing to service Catholic Health with supplies necessary for patient care.**

Catholic Health
Corporate Offices
2121 Main Street
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