



NDC Terms and Conditions

1. Buyer's Acceptance - The following terms and conditions (the "Agreement") including those on the Purchase Order, shall constitute the entire agreement for the purchase and sales of the Product(s) that Nitinol Devices and Components, Inc, (NDC) ("Seller") proposes to sell to you ("Buyer"). No waiver, alteration or modification of these terms and conditions shall be valid unless in writing and signed by an authorized representative of Seller. No modification shall be effected by the acknowledgement or acceptance of purchase order forms containing other or different terms or conditions whether or not signed by any representative of Seller. Any terms and conditions contained in Buyer's purchase order or request for quotation which are different from, in addition to, or at variance with the terms and conditions contained herein shall not be binding on Seller, and the Seller hereby objects thereto. If Seller accepts an order from Buyer in accordance with Section 3, such acceptance shall be expressly conditioned upon purchase order or request for quotation. BUYER'S RECEIPT OF THIS DOCUMENT SHALL CONSTITUTE AN ACCEPTANCE BY THE BUYER OF ALL THE TERMS AND CONDITIONS CONTAINED HEREIN EXCEPT FOR ANY TERM AND CONDITION TO WHICH THE BUYER SHALL OBJECT IN WRITING WITHIN FOURTEEN (14) DAYS FROM THE RECEIPT HEREOF.

2. Effect of Terms - The parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. It is the intent of the parties to nullify the effect of any prior dealings in the construction and interpretation of this Agreement, and no course of such prior dealings shall be read into this Agreement for any purpose whatsoever.

3. Seller's Acceptance of Orders – As long as these terms and conditions are attached to or referenced by a price quotation, Seller reserves the right to reject any eventual order from Buyer in its sole and absolute discretion. No order shall be deemed accepted unless and until Seller either gives written notice of acceptance or ships the ordered Products. Prior to acceptance, Seller shall have no liability if it is unable to supply the Products for any reason.

4. Prices – Unless otherwise specified, the prices stated herein or heretofore quoted shall be adjusted to reflect Seller's prices at the time of shipment.

5. Taxes and Charges – In addition to the purchase price Buyer shall pay Seller the amount of all government taxes, excises, and/or other charges that Seller may be required to pay with respect to this production, sale, or transportation of any products delivered hereunder, except where the law provides otherwise. Seller shall have the right to invoice separately any such taxes that may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same apply. Buyer shall also pay Seller a late payment charge of one and one-half percent (1-1/2%) per month of the unpaid purchase price of any products for each



month or part thereof that said purchase price is not paid when due, and shall also pay all costs and expenses (including attorney's fees) of Seller to collect any unpaid amount.

6. Warranty – Seller warrants that the Products meet Seller's specifications or product standards, as the case may be, for the product or such specifications as have been expressly agreed upon with the Buyer in writing. Seller further warrants that the Products are adequately contained, packaged, and labeled and conform to statements made on the container or label. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING WARRANTY OR MERCHANTABILITY EXCEPT AS SET FORTH ABOVE, AND WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's or Buyer's salespeople may have made oral statements about the merchandise described in this Agreement. Such statements do not constitute warranties, shall not be relied upon by Buyer or Seller and are not part of this Agreement or any agreement between Seller and Buyer.

7. Waiver – By accepting this agreement Buyer recognizes that the Seller's manufacturing site in Fremont, CA, (and the manufacturing sites of any subcontractors Seller uses to produce the Product) is not registered with the U.S. Food and Drug Administration or any other regulatory body as a manufacturer of medical devices or components. The Buyer also recognizes that Seller's (and Seller's subcontractors') quality management system and other systems supporting the manufacture of Product for the Buyer is not intended to comply with the requirements of any FDA Quality System Regulation. Seller makes no warranties, express or implied, concerning the Products suitability for their intended use. Buyer maintains the final and sole responsibility for determination of Product suitability. Seller assumes no responsibility whatever for the compliance of the Products with applicable laws, regulations, codes and standards, including the Federal Food, Drug and Cosmetic Act and regulations of the FDA.

8. Indemnity – Buyer shall indemnify and hold harmless Seller and its Affiliates and Subcontractors, and their respective directors, officers, employees and agents (the "Indemnified Parties") from all claims, demands, actions, losses, and damages of any kind whatsoever (including, but not limited to attorney's fees and costs) (collectively "losses") suffered or incurred by the Indemnified Parties for any third party claim arising out of the Buyer's sales or use of any Product sold by Seller; provided, however, that this indemnity shall not apply to the extent that any such Product when supplied by the Seller hereunder did not meet the applicable specifications therefore.

9. Buyer's Remedies and Limitations – Buyer's receipt of any Products shall constitute an unqualified acceptance and a waiver of any and all claims with respect to such Products unless Buyer notifies Seller within ninety (90) days of such receipt that the Products do not conform to the warranty outlined in paragraph 6 above. Given the proper notice referred to above, Seller's liability under said warranties shall be limited to the replacement or repair of the Products or the Products' purchase price as set forth in the relevant purchase order at Seller's option. Seller shall pay transportation costs of Products to and from Seller's plant only if Seller directs Buyer to return same in writing. Buyer assumes all risk and liability for the results obtained by the use of the



Products delivered hereunder in manufacturing processes of Buyer or in combination with other substances. NO CLAIM OF ANY KIND WHETHER AS TO PRODUCTS DELIVERED OR FOR NON-DELIVERY OF PRODUCTS SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH SUCH CLAIM IS MADE AND IN NO CASE SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF SELLER.

10. Loss in Transit – Seller shall have no liability whatsoever for damage, loss, or deterioration of the Products after delivery of the Products to a commerce carrier, regardless of whether Seller charges Buyer for freight. Buyer acknowledges that all claims for losses caused by the carrier, including those for inconvenience, delay or expense, shall only be made against the carrier. In no event shall Buyer deduct any amount for damage in transit from the amount due hereunder.

11. Period of Limitation – Buyer agrees that any action for breach hereunder shall be commenced within one (1) year from the date of delivery of the Products.

12. Patents – Seller shall indemnify Buyer from any judgment for damages and costs on account of infringement of any United States patent due to the materials, per se, supplied by the Seller hereunder in accordance with the design and/or specifications furnished by Seller to Buyer. Seller shall have the option to refund the purchase price or replace with product that does not infringe. Buyer shall indemnify the Seller from any judgment for damages and costs on account of the infringement of any United States patent due to materials supplied by Seller hereunder in accordance with the design and/or specification furnished by Buyer to Seller. Said indemnification shall arise only if the party charged with infringement gives the other party prompt written notification of the bringing of any suit and that any opportunity be given to said other party to settle or defend same as they see fit provided further that every reasonable assistance will be afforded the defending party in any such action. IN NO EVENT SHALL THIS INDEMNITY CLAUSE COVER INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED BY EITHER PARTY.

13. Contingencies – Stated shipping dates, dates of delivery, and dates for performing labor, if any, are approximate, and are not a guarantee of any particular date of shipment, delivery or labor to be performed. Seller shall not be liable for its failure to perform hereunder due to causes or contingencies beyond its control, including, but not limited to, strikes, fires, floods, accidents, acts of God, acts of law or public authorities, delay in transportation, lack of raw materials, or otherwise; and Seller may at its option cancel or reduce deliveries accordingly, or allocate supply in such manner as it deems equitable.

14. Cancellation – Seller shall have the absolute right to cancel this Agreement upon breach thereof by Buyer, upon Buyer's failure to make any payment required by this Agreement, or upon the insolvency or bankruptcy of Buyer. Any purchase order or similar document (or any part thereof) which is accepted by Seller may not be cancelled by Buyer unless and until Seller receives written notice of the cancellation, has determined any additional charge to be made and such charge had been accepted and paid by Buyer.



15. Wrongful Rejection – If Buyer wrongfully rejects the Products or wrongfully repudiates a part or the whole Agreement, then with respect to any Products affected and, if the breach is of the whole Agreement, then also with respect to the whole undelivered balance, Seller may withhold delivery of such Products, stop delivery of such Products in possession of a carrier or other bailee, and recover damages for non-acceptance or repudiation. The measure of damages shall be the difference between the market price at the time and place for render of the Products and the unpaid contract price, together with any incidental damages incurred by Seller as a result of the Buyer's breach. The foregoing shall be in addition to, and not exclusive of, other remedies which Seller may have by law.

16. Quantities – In the case for orders for Products to be manufactured to specifications, Seller may deliver up to 10% above or 10% below any quantity so ordered, thereby completing the order.

17. Tooling – Tooling charges apply only to initial order unless subsequent orders are for substantially larger quantities requiring production tooling to meet delivery requirements.

18. Deliveries - All shipments shall be FOB point of shipment unless otherwise stated on Seller's acknowledgement of the purchase order or request for quotations. All deliveries hereunder are subject to the condition that all indebtedness of the Buyer to Seller due before the date of shipment shall first be paid.

19. Testing – For the purposes of witnessing final physical testing of any Products to be delivered hereunder, the Buyer shall have the right of access with supervision to Seller's facilities during normal working hours.

20. Changes – Prior to the date of delivery of the Products, Buyer shall have the right to make changes in its order provided that Seller receives written notice of the desired changes and agrees to the changes and provided further that Buyer accepts any additional charge therefore as determined by Seller. Changes which interfere with or alter Seller's production schedules, as determined by Seller, will not be acceptable unless the time for performance is extended for such period as is deemed necessary by Seller. Failure of Seller to accept Buyer's request to change its purchase order (or similar ordering documents) shall not be cause for Buyer's cancellation of its order except upon payment of a cancellation charge to be determined by Seller.

21. Export Sales – Buyer has complied and/or will comply with all applicable laws, rules and regulations of the United States of America and of any other country concerned pertaining to the purchase and movement of, and the payment for the Products, to be delivered hereunder. All drawbacks of duties paid on items entering into the manufacture of the Products delivered hereunder shall accrue to Seller, and the Buyer agrees to furnish Seller with all documents necessary to obtain payment of such drawbacks and to cooperate with Seller in obtaining such payment.

22. Applicable Law – The laws of the State of California and the United States of America shall govern the validity, interpretation and performance of the sale.



23. Reformation – Any provision of this Agreement prohibited by law, invalidated by the enactment of any statute, ordinance or regulation, or declared unlawful by a court of competent jurisdiction, shall be ineffective only to the extent of such prohibition and shall not in any manner invalidate or effect the remaining provisions of this Agreement, such provisions being deemed severable.