

SRS MEDICAL SYSTEMS, INC. - STANDARD TERMS & CONDITIONS OF PURCHASE

- 1. Acceptance.** The customer ("Customer") named on the purchase order, order form, quote, invoice, or other ordering document (including email or text) ("Purchase Order") hereby offers to purchase from SRS Medical Systems, Inc. ("SRS") the products and services described on the Purchase Order (respectively, "Products" and "Services") subject to these terms and conditions. Acceptance of this offer must be made on its exact terms. These Standard Terms and Conditions of Purchase ("Terms"), together with information contained on the Purchase Order, and any additions or revisions mutually agreed to in writing by Customer and SRS (the "Agreement") shall constitute the entire agreement and understanding of Customer and SRS with respect to the purchase of the Products or Services, superseding all prior oral or written understandings relating thereto and shall not be modified or interpreted by reference to any prior course of dealing, usage of trade or course of performance. If the Purchase Order, or any other communication from Customer contains provisions that are in conflict, inconsistent with, or in addition to the provisions hereof, these Terms shall prevail and SRS hereby notifies Customer of its objection to and rejection of any such terms and conditions stated by Customer, whether or not material, that are in conflict with, inconsistent with, or in addition to those contained in these Terms. No such additional or inconsistent terms are applicable unless specifically agreed to in writing by an authorized representative from SRS. Customer's acceptance of delivery of or payment for any Products or Services provided hereunder shall constitute Customer's acceptance of these Terms.
- 2. Orders.** SRS will use commercially reasonable efforts to supply to Customer such quantities of Products and Services as Customer may order in accordance with this Agreement. Customer may cancel or change the quantities for a Purchase Order, provided that such requests are received by SRS prior to shipment of Products. Following shipment, Products purchased from SRS are eligible for return and credit, subject to a twenty percent (20%) restocking fee. Customer shall be responsible for return shipping costs and expenses. SRS will use reasonable efforts to comply with such requests, but shall not be responsible or liable for any failure to provide changed amounts. Notwithstanding any other provision of this Agreement, SRS's obligation to supply Products and Services to Customer is subject to availability and SRS's other obligations. All orders are subject to acceptance by SRS.
- 3. Payment Terms; Shipping.** Payment terms are net thirty (30) days from date of shipment. Product is shipped FOB origin, and title and risk of loss to all Products sold by SRS to Customer shall pass from SRS to Customer upon the delivery of Product by SRS to the carrier for shipment or when the Product leaves SRS' premises.
- 4. Prices.** The prices for Products and Services shall be set by SRS' then-current price list at the time a Purchase Order is received by SRS (the "Price List"). The Price List shall be updated periodically by SRS and available upon Customer's request.
- 5. Taxes.** Customer will pay or reimburse SRS for all sales, use, value-added and other taxes (except taxes on SRS's net income) upon the sale of the Products and Services or payments to SRS under this Agreement.
- 6. Inspection.** Customer shall carefully inspect all deliveries of Products and report promptly to SRS (but in any event within five (5) calendar days after receipt of shipment) any alleged error, shortage, defect or nonconformity of such Products. Any failure by Customer to inspect and report as provided herein shall constitute a waiver by Customer of any claim or right of Customer against SRS arising with respect to any such error, shortage, defect or nonconformity which was reasonably discoverable by such an inspection.
- 7. Product Recall.** SRS will notify Customer promptly upon the occurrence of a Recall (as defined below) for any Products purchased by Customer directly from SRS. SRS shall be responsible for implementing the Recall and upon SRS's reasonable request, Customer shall fully cooperate with SRS to implement the Recall. The Product subject to Recall shall be deemed non-conforming and SRS shall, at its option, either replace the non-conforming Products or pay to Customer, Customer's reasonable, documented out-of-pocket expenses incurred in connection with such Recall, provided such expenses are preapproved by SRS. "Recall" shall mean any action by SRS or any governmental authority whether voluntary or involuntary, to recover title to or possession of Product sold or shipped, including Product recalls, market withdrawals, and field corrective actions.
- 8. SRS's Representations and Warranties.** SRS hereby represents and warrants that (i) it will comply with all applicable laws, rules, regulations, and applicable industry standards in the performance of the Services; and (ii) Products will conform to all specifications provided in writing by SRS, and all applicable laws, and regulations, be free from defects including in material, and workmanship (the "Warranty"). The Warranty period commences on the date of shipment of the Product to Customer and expires one (1) year thereafter. THE FOREGOING WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY REGARDING THE PRODUCTS AND SERVICES AND PROVIDED IN LIEU OF ALL OTHER WARRANTIES. SRS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING OUT OF ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. SRS'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY SHALL BE, AT SRS'S OPTION, TO REPAIR OR REPLACE THE PRODUCT, OR TO REFUND THE PURCHASE PRICE BY CREDITING CUSTOMER'S ACCOUNT FOR THE NON-CONFORMING PRODUCT. In addition, SRS shall reimburse Customer for its reasonable documented shipping costs of returning the non-conforming Product(s). In the event that no breach of Warranty is discovered by SRS upon receipt of any returned Product(s), to the extent practicable such Product(s) will be returned to Customer at Customer's expense, and Customer shall reimburse SRS for the transportation charges, labor and associated charges incurred in inspecting or testing the allegedly non-conforming Product(s).
- 9. Customer's Representations and Warranties.** Customer hereby represents and warrants that (i) it has any and all current licenses required to purchase such Products and agrees that this representation is material consideration for purchasing Products from SRS and that SRS is relying on such representation (upon SRS's request, Customer shall forward a copy of such licenses to SRS); (ii) it shall, at all times during its use of the Products, the exercise of its rights and the performance of its obligations hereunder, comply with all instructions, documentation, training and applicable recommendations of SRS (including, without limitation, SRS's instructions for use, proper storage, and proper maintenance) as well as all applicable laws, rules, regulations, and applicable industry standards; and (iii) all purchases made by Customer under these Terms are for its "own use" and Customer agrees that it will not resell or otherwise transfer any Products, in their original form, to any reseller, distributor or end-user. Customer will not export, re-export or otherwise transfer, directly or indirectly, any Products except as authorized by United States law.
- 10. License Grant.** SRS hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the software and documentation provided by SRS solely in connection with SRS's Products and Services in the United States.
- 11. Intellectual Property; No Reverse Engineering.** SRS alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Products or Services, as well as any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Products and/or Services, which are hereby assigned to SRS. Customer will not, and will not permit any third party to, copy, distribute, reproduce or use any of the foregoing except as expressly permitted under these Terms. Customer shall not, and will not permit any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any Product or Services (including software) (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); or (ii) modify, translate, or create derivative works based on any Product or Services.
- 12. Insurance.** SRS shall maintain commercially reasonable product liability, general liability and property damage insurance against any claim or claims which might or could arise regarding the products and services purchased by Customer under these Terms. The minimum limit of liability shall be \$2 million per occurrence and annual aggregate for product liability, and \$2 million per occurrence and annual aggregate for commercial general liability. In addition, SRS shall maintain insurance that will protect it from claims under workers compensation statutes and regulations and other employee benefits statutes and regulations. When requested by Customer,

an insurance certificate evidencing the foregoing coverage, issued by an insurance company licensed to do business in the relevant state or states and signed by an authorized agent, shall be furnished to Customer.

13. Limitation on Liability. THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT IN CONNECTION WITH A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF SECTION 11 (INTELLECTUAL PROPERTY), OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14 (INDEMNIFICATION), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY OR ENTITY UNDER THESE TERMS, UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, THAT ARE OR INCLUDE (1) PROXIMATE, ACCIDENTAL, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT OR SIMILAR DAMAGES OR (2) LOST PROFITS OR LOST REVENUES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT IN CONNECTION WITH A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FAILURE TO FULFIL PAYMENT OBLIGATIONS, BREACH OF SECTION 11 (INTELLECTUAL PROPERTY), OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14 (INDEMNIFICATION), NEITHER PARTY'S TOTAL LIABILITY, UNDER ANY EQUITY, COMMON LAW, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, SHALL EXCEED, IN THE AGGREGATE, THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO SRS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVEN RISE TO LIABILITY. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

14. Indemnification. Each party will defend, indemnify and hold the other party harmless from and against all third-party claims, actions, proceedings, regulatory investigations, damages, losses, judgments, settlements, costs and expenses (including attorneys' fees) ("Claims"), arising from or in connection with such party's gross negligence or willful misconduct, breach of this Agreement, or breach of applicable law. Indemnifying party shall not be obligated to indemnify the indemnified party in any manner whatsoever to the extent such Claim arises from the indemnified party's negligence, willful misconduct or the indemnified party's breach of this Agreement or breach of applicable law. The indemnifying party's indemnity obligations hereunder are contingent upon the indemnified party providing it with (a) prompt written notice of all applicable claims and suits and threats thereof, (b) sole control of all defense and settlement activities (provided that any settlement that does not include the full and unconditional release of the indemnified party shall require the prior written consent of the indemnified party, which shall not be unreasonably withheld, conditioned or delayed), and (c) all reasonably requested assistance with respect thereto.

15. Confidentiality. The term "Confidential Information" means, to the extent previously, presently or subsequently disclosed by or for one party ("Discloser") to the other party ("Recipient"), all financial, business, legal and technical information of Discloser or any of its affiliates, suppliers, customers and employees, that is marked or otherwise identified as proprietary or confidential at the time of disclosure, or that by its nature would be understood by a reasonable person to be proprietary or confidential, and including all copies, abstracts, notes, summaries, analyses and other derivatives thereof. Confidential Information shall not include any information that (a) was rightfully known to Recipient without restriction before receipt from Discloser, (b) is rightfully disclosed to Recipient without restriction by a third party, (c) is or becomes generally known to the public without violation of this Agreement by Recipient or (d) is independently developed by Recipient or its employees without access to or reliance on such information. Except for the specific rights granted by this Agreement, Recipient shall not copy, reproduce, use for its own benefit, publish, or disclose to others, or permit the use by others for their benefit or to the detriment of Discloser, any of Discloser's Confidential Information without its written consent, and shall use reasonable care to protect it. Recipient shall be responsible for any breach of confidentiality by its employees and contractors. Any breach or threatened breach will cause

irreparable harm to Discloser for which money damages would not be an adequate remedy. Discloser shall, in addition to any other legal or equitable remedies, be entitled to an injunction or similar equitable relief against any such breach or threatened breach without the necessity of posting any bond.

16. Miscellaneous. All communications under this Agreement shall be in writing via email, mail or fax, and shall be deemed to have been duly given upon receipt if sent to the email address, address or fax number set forth on the Purchase Order or such other address or fax number as either party may specify. All notices hereunder shall be in English. In the event that any provision of this Agreement shall, in whole or in part, be determined to be invalid, unenforceable or void for any reason, such determination shall affect only the portion of such provision determined to be invalid, unenforceable or void, and shall not affect in any way the remainder of such provision or any other provision of this Agreement. The parties agree that they will negotiate in good faith or will permit a court or arbitrator to replace any provision of this Agreement so held invalid, unenforceable or void with a valid provision that is as similar as possible in substance to the invalid, unenforceable or void provision. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege hereunder, operate as a waiver of any right, power or privilege by such party. This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without taking into account its principles on conflicts of law. Exclusive jurisdiction and venue for any litigation arising under this Agreement is in the federal and state courts located in Boston, MA U.S.A. and both parties hereby consent to such jurisdiction and venue for this purpose. In any such action, suit or proceeding, the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose. In no event shall SRS have any liability to Customer for any delayed performance or nonperformance by SRS which results, in whole or in part, directly or indirectly, from any cause beyond the reasonable control of SRS. Such causes shall include (but shall not be limited to) acts of God, wars, riots, civil disturbances, strikes, labor disputes, fires, storms, floods, earthquakes, natural disasters, inability to obtain or use raw or component materials or parts, labor, equipment, facilities, or transportation, and acts of any government or agency thereof. Customer's order will be deemed suspended for so long as any such cause prevents or delays SRS's performance. In the event of any such suspension, SRS shall have the right, at its option, upon notice to Customer, (a) to terminate its obligation to sell any or all of the Products and Services ordered hereunder or (b) to resume performance as soon as practicable after the suspension, and reschedule delivery of the Products and Services ordered hereunder to one or more deferred dates to be mutually agreed upon by Customer and SRS, subject to Customer's payment of an additional charge for any increase in SRS's direct or indirect costs occasioned by the suspension of its performance. These Terms (together with any Purchase Orders) (i) constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior understandings and agreements, whether written or oral, as to such subject matter; (ii) may be amended or modified only by a writing executed by an authorized officer of the party against whom enforcement is sought; (iii) may not be assigned by Customer without the written consent of SRS; and (iv) shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.