

1. Acceptance – If the Terms and Conditions (“Terms”) of this quotation or order acknowledgment differ from the terms of the Buyer’s purchase order or inquiry, this quote or acknowledgment shall be considered as a “COUNTEROFFER” and shall not be an acceptance of any of Buyer’s terms which conflict herewith. The Terms contained herein are the complete and exclusive statement of the terms of agreement between the parties. The Buyer’s acceptance of the goods or services sold hereunder will manifest the Buyer’s assent to the Terms. Any reference to Buyer’s purchase order or inquiry noted herein shall not affect or limit the applicability of these Terms. No addition to or modification of these Terms will be effective unless made in writing and signed by an authorized representative of Medical Device Components LLC (hereafter “MDC”). MDC is only willing to supply goods and services subject exclusively to these Terms and MDC rejects all other conflicting or different terms of Buyer.

2. Prices – Unit prices apply only to the specific quantity and delivery schedule quoted. Any variations in quantity specified and/or timing of delivery may necessitate a revision in unit price. Unless otherwise stated in writing, prices are quoted F.C.A. MDC’s facility and precious metals will be charged at the MDC opening spot price as exists on the next business day following shipment or date of purchase by MDC on behalf of the Buyer for their consigned metal account, as applicable. Buyer must accept delivery of all goods within one (1) year of MDC’s acceptance of the order, unless such failure to accept delivery is due solely to the fault of MDC. If Buyer does not accept delivery within such one (1) year period, MDC shall, at its sole discretion, either (a) sell any metal, fabricated or otherwise, held for Buyer and charge Buyer the amount, if any, that such sale price is lower than the price MDC paid for such metal or (b) continue to hold such metal for Buyer for six (6) month period(s) and charge Buyer a surcharge for each such six (6) month period. All prices are subject to: (i) correction of stenographic and clerical errors and (ii) MDC reserves the right to adjust prices on orders at any time during production due to changes in cost of materials, wages, transportation, energy, or manufacturing, or other costs, fees or taxes due to any government act or regulation, event of nature or other event beyond the reasonable control of MDC.

3. Quantities Shipped – Quantities shown hereon are estimated. Invoice quantities may vary within 10% or in accordance with variations as otherwise may be agreed upon by MDC and Buyer.

4. Delivery/Freight – The promised delivery date is the best estimate possible, based on current and anticipated manufacturing schedules. MDC assumes no liability for losses or damages due to delays. MDC will extend the delivery date as a result of any delays that are the fault of Buyer. All shipments are made F.C.A. MDC’s facility (unless otherwise agreed in writing by MDC); risk of loss or damage will pass to Buyer upon delivery to a common carrier. In respect to metal purchased from MDC for consignment, title will not pass to Buyer’s consigned metal account until MDC receives payment for the full cost of the metal. In any event, Buyer hereby grants MDC a possessory security interest in the metal, whether fabricated or otherwise.

5. Credit and Payment – All sales are subject to the approval of MDC’s Credit Department. Unless otherwise agreed, all invoices are payable in U.S. dollars within ten (10) days. After ten (10) days, unpaid invoices will be assessed a finance charge of 1.5% of the unpaid balance per month, commencing on the 31st day. If Buyer is delinquent in making any payment to MDC or any affiliate of MDC under this or any other agreement or order, MDC has the right, in addition to any other remedy it may be entitled in law or equity, to (i) cancel the order, (ii) refuse to make further deliveries, (iii) declare due and payable immediately all unpaid amounts for goods or services previously provided to the Buyer and/or in process, (iv) sell any metal, fabricated or otherwise, held for Buyer or standing to the credit of its account and apply the proceeds of such sale in or towards satisfaction of such indebtedness, and/or (v) subject all claims for money, including commissions, metal, services or goods due or to become due from MDC or any affiliate of MDC to deduction or setoff against any counterclaim of MDC or any affiliate of MDC arising out of this agreement or any other agreement or order. Buyer acknowledges that its business dealings with MDC and its affiliates constitute a single continuous transaction, notwithstanding the issuance of separate agreements, purchase orders, acknowledgments or similar documents from time to time.

6. Warranty – The sole and exclusive warranties given by MDC with respect to the goods or services sold hereunder are that MDC has title to goods sold free and clear from any lien or encumbrance and that such goods will conform to the description and specifications set forth in the order acknowledgement or quotation accompanying these Terms. THE FOREGOING WARRANTIES APPLY ONLY TO BUYER AND ARE THE SOLE AND EXCLUSIVE WARRANTIES OF MDC AND MDC GIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In particular and without limiting the foregoing disclaimer, MDC makes no representation or warranty as to the appropriateness, suitability or performance with regard to the design and any use of the goods or services, whether or not known by MDC and whether used alone or in connection with other products or materials and Buyer shall not rely upon any statements by MDC employees, agents or representatives to the contrary. Buyer acknowledges that it alone has determined that the goods or services purchased hereunder will suitably meet the requirements of their intended use. Buyer further acknowledges that MDC does not perform any testing for biocompatibility of a good or service. Buyer shall perform testing of all goods supplied by MDC promptly upon delivery in order to confirm the goods conform to the specifications. Buyer understands that as to certain goods (e.g. wire, tubing, etc.), testing of the entirety of all such goods is NOT practical given the destructive aspects of certain testing (e.g. tensile strength) and therefore such testing will be performed on a sampling basis. Buyer agrees to accept the foregoing limited testing method coupled with its own testing, as the exclusive means of determining acceptance of the goods. Buyer is deemed to waive every claim from any cause unless made in writing within ninety (90) days of the receipt by Buyer of the goods or services to which such claim relates. No legal proceeding shall be brought for any breach of these Terms more than one (1) year after the accrual of the cause of action therefor. MDC has no obligation for any nonconforming goods caused by misuse, mishandling, neglect, accident or abuse by Buyer.

7. Warranty Remedy – In the event that Buyer claims that any goods or services supplied hereunder do not conform to the above limited and exclusive warranty during the applicable limited warranty period and MDC determines the goods or services do not conform to said warranty, MDC may, at its sole discretion: (i) provide replacement goods or services to Buyer; (ii) make whatever repairs or modifications that MDC deems necessary or desirable to enable the goods or services to meet the description and specifications set forth on the order acknowledgement or quotation accompanying these Terms; or (iii) credit Buyer’s account for the price paid by Buyer regarding the non-conforming goods or services.

8. Limitation of Remedies – THE CORRECTION OF SUCH NON-CONFORMITIES BY REPAIR, MODIFICATION, REPLACEMENT, PROVISION OF ADDITIONAL GOODS OR SERVICES, OR CREDITING BUYER’S ACCOUNT FOR THE COST OF THE NONCONFORMING GOODS OR SERVICES IN THE MANNER SET FORTH ABOVE CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER AND WILL CONSTITUTE FULFILLMENT OF THE OBLIGATIONS OF MDC WITH RESPECT TO THE LIMITED WARRANTY GIVEN HEREIN.

9. Limitation of Liability – Except as expressly provided herein, MDC shall not indemnify and will not be liable to Buyer, Buyer’s customers, or to any other person or entity for any claims, losses, expenses or judgments arising out of or resulting in any way from the goods or services supplied hereunder or sale or use thereof, where liability is premised upon any theory including, but not limited to, warranty, negligence or strict liability. Except as expressly otherwise provided, MDC’s total, complete and exclusive liability is limited as provided herein. MDC WILL NOT BE LIABLE FOR PRODUCTION LOSSES, LOST PROFITS OR OPPORTUNITY, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR ANY OTHER DAMAGES UNDER THESE TERMS OR FROM ANY CAUSE WHATSOEVER.

10. Force Majeure – MDC is not liable for any delay in delivery, or failure to deliver, due to any cause beyond MDC’s control, including but not limited to fires, floods, strikes or other labor disputes, accidents, acts of sabotage, war, terrorism, riots, transportation delays, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof. If MDC in its sole discretion determines that MDC’s performance hereunder would result in a loss to MDC on this sale because of causes beyond MDC’s control, then, MDC may terminate this agreement in whole or in part without liability for any delay in the delivery of or failure to deliver the goods or services sold hereunder. MDC may, during any period of shortage due to any cause, prorate and allocate its supply of such materials among itself for its own consumption, its subsidiaries, affiliated companies, its accepted orders, and its customers in such a manner as MDC may deem fair and reasonable.

11. Risk of Loss – Unless otherwise agreed by MDC in writing, Buyer assumes all risk of loss or damage and MDC assumes no liability for delay damage or breakage after delivery has been made to the common carrier. Buyer shall make all claims for loss or damage to the applicable common carrier.

12. Taxes and Other Charges – The Buyer will pay, or reimburse MDC if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods or services covered hereby, the delivery or use thereof, or upon any act done or document, title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

13. Resale of Goods Sold Hereunder – In the event of the resale of any of the goods sold, hereunder, in whatever form, the Buyer will include the following language in a conspicuous place in the agreement covering such resale: “Warranties by manufacturers and sellers of goods sold hereunder are limited to repair or replacement of the goods or to the refund of the purchase price at the manufacturer’s option, within the time limit specified. Manufacturers and sellers make no warranties or representations, express or implied, by operation of law or otherwise as to the merchantability or fitness for a particular purpose of the goods sold hereunder. Manufacturers and sellers are not liable for any defect in the goods sold hereunder and the purchaser releases manufacturers and sellers from any and all liability for negligence with respect to any activity engaged in by manufacturers and sellers with regard to the goods sold hereunder. The purchaser acknowledges that it alone has determined that the goods purchased hereunder will suitably meet the requirements of their intended use. Manufacturers and sellers will not be liable for consequential, incidental, punitive or any damages other than repair or replacement of defective goods or refund of the purchase price for such defective goods, at manufacturer’s option.”

14. Patent or Trademark Infringement – Buyer warrants to MDC that the manufacture, sale or use of goods or services hereunder by MDC pursuant to Buyer’s supplied specifications will not infringe any patent, copyright, trade secret, or other intellectual property right of any third party and Buyer shall defend, indemnify and hold MDC and its affiliates harmless from and against all losses for any claimed or actual infringement of any patents, copyrights, or other intellectual property right of any third party related thereto.

15. Technical Assistance – Unless otherwise expressly agreed otherwise in MDC’s acknowledgement: (i) any technical advice provided by MDC with respect to the use of goods or services furnished to Buyer shall be without charge; (ii) MDC makes no warranties of any kind and assumes no obligation or liability for any such advice, or for any results occurring as a result of the application of such advice; and (iii) Buyer shall have sole responsibility for selection and specification of the goods or services appropriate for the end use of such goods or services.

16. Tooling – Notwithstanding payment of amount quoted for special fixtures, patterns, dies, tools, jigs or the like, MDC retains title and Buyer has no right to remove such equipment from MDC’s facility. In the event of no reorder by Buyer for a period of three years from the last invoice date, MDC has the right to scrap such equipment without notice to Buyer.

17. Experimental or Prototype Orders – Notwithstanding any other provisions hereof, experimental or prototype orders will be produced on a “Product of Best Effort” basis and will be sold and/or delivered “As Is”. NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE IS MADE WITH RESPECT TO EXPERIMENTAL OR PROTOTYPE ORDERS.

18. Waiver – Waiver by MDC of any breach or variation of any of the Terms shall not be construed as a waiver of any other breach or variation; the failure of MDC to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. The invalidity in whole or in part of any provision of these Terms shall not affect the validity of any other provisions.

19. No Third Party Beneficiaries – Except to the limited extent expressly provided to deduction or setoff against any counterclaim of MDC or any affiliate of MDC herein, nothing in these Terms is intended to create any rights by persons not a party hereto and no other party will be construed to be a third party beneficiary of these Terms or otherwise have any legal or equitable rights hereunder.

20. Confidentiality – Neither party shall disclose to any third party, except as required by law, the substance of these Terms. All written information provided hereunder by a party to the other including, but not limited to, requirements, prices, delivery schedules, and processes, is the disclosing party’s confidential information. The receiving party shall not disclose any such information or use such information except for the purposes of performance hereunder during the term of the applicable agreement or purchase order and for a period of five (5) years thereafter, provided that the receiving party may use or disclose any information that: (i) is already known to it at the time of disclosure; (ii) becomes publicly known through no fault of the receiving party; or (iii) is disclosed to the receiving party by a third party who is free to make such disclosure. The obligations of confidentiality hereunder are, in addition to and are deemed to modify or limit any provision respecting confidentiality set forth in any other confidentiality agreement or undertaking between the parties.

21. Applicable Law/Venue – All questions arising in connection with the quotation or any order submitted in connection therewith, the acknowledgment or counteroffer made in response to any such order, or the sale of the goods or services covered hereunder, shall be resolved by the laws in the state that MDC’s products or services originate, without giving recognition to its choice of law principles. All disputes between MDC and Buyer must be brought in the federal and state courts located within the state that MDC’s products or services originate.

22. Compliance – 22.1 Buyer hereby acknowledges and agrees that the goods may be subject to applicable export control and trade sanction laws, regulations, rules and licenses (“Export Control and Trade Sanctions Rules”). Buyer shall use the goods only for lawful purposes and agrees to comply with the Export Control and Trade Sanctions Rules and shall not do anything which would cause MDC to be in breach of such Rules.

22.2 Buyer will not in connection with the agreement or the goods, offer, promise or give, request, agree to receive or accept directly or indirectly any financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to the UK Bribery Act 2010, US Foreign Corrupt Practices Act 1977 or other applicable anti-bribery laws (“Anti-Bribery Laws”).

22.3 Buyer warrants and represents that along with its employees, agents, contractors and representatives: (a) it is fully aware of and understands the provisions of all applicable taxation, anti-money laundering, counter-terrorism and other financial crime laws (the “Financial Crime Laws”), and that it has in place robust and reasonable internal procedures to ensure that it and its employees, agents, contractors, and representatives comply with Financial Crime Laws; (b) it has not committed and will not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by itself or any other person (“Tax Offences”); and (c) any consideration paid for the purchase of goods and/or services does not constitute the proceeds of crime under any applicable Financial Crime Laws, and is not derived from conflict, terrorism or money laundering sources (“Financial Crime Offences”). Buyer will promptly notify MDC in writing (to the extent permitted by law) if: (i) it becomes aware of any Tax Offences or Financial Crime Offences by it or its employees, agents, contractors or representatives; or (ii) it or its employees, agents, contractors or representatives become the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any potential violation of Financial Crime Laws, or any such investigation is threatened or pending.

22.4 Buyer shall not do anything which would cause MDC to be in breach of the Export Control and Trade Sanctions Rules, Anti-Bribery Laws, Financial Crime Laws, and/or the Modern Slavery Act 2015 and shall provide MDC with such information and/or documentation (including but not limited to identification documentation) as shall reasonably be required by MDC (i) to comply with the Export Control and Trade Sanctions Rules, Anti-Bribery Laws, Financial Crime Laws, and/or the Modern Slavery Act 2015 (ii) to audit Buyer’s compliance with this Section 22.

22.5 MDC may, in addition to the other remedies that may be available to it, refuse to enter into or to perform any order, and/or immediately terminate the agreement without notice of default or legal action being required and without being liable to pay compensation of any kind whatsoever for damage caused if MDC determines, at its sole discretion, that entry into to the agreement and/or performing any obligations or exercising any rights under the agreement might cause Buyer or MDC to violate any applicable Export Control and Trade Sanctions Rules. MDC assumes no responsibility or liability for Buyer’s failure or inability to obtain any required relevant export approval.

22.6 Buyer shall protect, indemnify and hold MDC harmless from any fines, damages, costs, losses, liabilities, fees and penalties incurred by MDC as a result of Buyer’s errors, failures or omissions to comply with this Section 22 (Compliance) and/or any termination pursuant to this Section. Buyer’s obligations under this Section 22 (Compliance) shall survive termination of this agreement for any reason whatsoever.

24. Data Protection – “Controller”, “Processor”, “Personal Data”, “Process”, “Processing”, “Processed” and “Data Subject” have the meanings given under the Data Protection Laws. “Data Protection Laws” means all data protection laws, regulatory requirements, guidance and codes of practice, including Regulation (EU) 2016/679 (“GDPR”), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”) and the Data Protection Act 2018 as amended and/or replaced from time to time.

24.1 With regard to any Personal Data processed by either party in connection with this agreement, the parties will respectively each be a Controller in respect of such processing.

24.2 Each party shall comply with the requirements of the Data Protection Laws applicable to Controllers in connection with this agreement and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other party of the Data Protection Laws.