

European Distribution Center Motiva BV ("MOTIVA")
TERMS AND CONDITIONS

1. GENERAL.

1.1 **Applicability.** These terms and conditions ("**Terms**") apply to the delivery and sale of Products on a consignment basis described in the applicable quote or similar document provided by MOTIVA (the "**Quote**") and such sale is conditioned upon the acceptance by the legal or natural person purchasing such Products ("**CUSTOMER**") of the Terms set forth herein. These Terms, together with the Quote (if any) and consignment agreement (if any), shall constitute the agreement ("**Sales Agreement**") between MOTIVA and CUSTOMER for the consignment, purchase and sale of Products. If any terms and conditions within the Sales Agreement documents conflict with each other, MOTIVA and CUSTOMER will give them the following priority: (a) the Quote, (b) the consignment agreement, and (c) these Terms. Any different terms or provisions provided in any document that CUSTOMER provides shall be expressly rejected.

1.2 **Purchase Orders: Acceptance.** CUSTOMER agrees to purchase the quantity of Products specified in purchase orders issued by CUSTOMER in connection with a Quote and that are accepted by MOTIVA as set forth below (each a "**Purchase Order**"). Purchase Orders may be submitted via Motiva's Webstore application, telephone or email to MOTIVA. MOTIVA may accept, at its sole discretion, any Purchase Order by confirming the order by email. No Purchase Order is binding on MOTIVA unless accepted by MOTIVA in writing.

1.3 **Unauthorized Use.** CUSTOMER shall not modify or reverse engineer or permit or encourage others to modify or reverse engineer, the Products. CUSTOMER shall not use the Products for the benefit of third parties that are not affiliated with or patients of CUSTOMER.

2. DELIVERY; RISK OF LOSS; CUSTOMER ACCEPTANCE.

2.1 **Delivery.** MOTIVA shall deliver Products on a consignment basis. The requested delivery date for the Products shall be set forth by CUSTOMER in the applicable Purchase Order. MOTIVA will provide an estimated delivery date to CUSTOMER at the time of MOTIVA's acceptance of the Purchase Order. MOTIVA will use reasonable efforts to meet the delivery dates as quoted but will not be liable for any failure to meet such dates. Partial shipments may be made and invoiced (as applicable) and MOTIVA will use reasonable efforts to notify CUSTOMER in advance of any partial shipment.

2.2 **Acceptance; Risk of Loss; Title.** All risk of loss, theft, damage to or destruction of the Products shall pass to CUSTOMER, upon delivery of the Products to the delivery location specified by CUSTOMER ("**Delivery**"). The Products shall be deemed accepted by the CUSTOMER upon Delivery. MOTIVA shall retain title to the Products in the consignment stock unless and until they are purchased by CUSTOMER pursuant to this Sales Agreement (and full payment in cash or cleared funds has been received), at which time MOTIVA shall transfer title to CUSTOMER.

3. PRICING; TERMS OF PAYMENT; TAXES.

3.1 **Pricing.** The prices payable for the Products are listed in the Quote. Except as otherwise specified herein, (i) prices are quoted by MOTIVA in Euros (ii) accepted Purchase Orders and payment obligations are non-cancellable and fees paid are non-refundable; and (iii) MOTIVA reserves the right to revise prices quoted as specified in the Quote.

3.2 **Payment Terms.** Unless otherwise stated in an accepted Purchase Order, all invoiced amounts due to MOTIVA are payable within thirty (30) days from the invoice date. CUSTOMER shall make all payments hereunder by the method of payment specified in each invoice provided to CUSTOMER and in Euros. CUSTOMER shall pay interest on all late payments at the lesser of the rate of eighteen percent (18%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

3.3 **Invoice Disputes.** In the event of a payment dispute, CUSTOMER shall deliver a written statement to MOTIVA no later than fifteen (15) calendar days after the invoice date listing all disputed items or CUSTOMER shall be deemed to have waived its right to dispute charges. MOTIVA and CUSTOMER shall use best efforts to promptly resolve any

disputed charges. CUSTOMER may not set off any amounts due hereunder.

3.4 **Returns.** MOTIVA shall provide pre-paid ground shipping labels for returns of all unused implant Products. CUSTOMER will make any unused implant Products available for collection by MOTIVA within 72 hours after the surgery date (where CUSTOMER has notified MOTIVA of planned surgery dates). Any implant Product not returned within seven (7) calendar days of the surgery date (where CUSTOMER has notified MOTIVA of planned surgery dates) will be assumed used, and an invoice will be issued automatically. Returns are subject to inspection by MOTIVA and will only be accepted if all package seals and product integrity are intact upon return and inspection by MOTIVA. Notwithstanding anything to the contrary, no credits will be issued for implant Products returned after seven (7) calendar days.

4. **COMPLIANCE WITH LAW.** CUSTOMER will comply with all applicable laws and regulations with respect to the Products, including all export laws.

5. **LIMITED WARRANTY.** MOTIVA provides a limited warranty with the Products solely to and for the benefit of the end-user (the "**User**"), as set forth and in accordance with the terms and conditions of the limited warranty to be provided in connection with the shipment of the Product (the "**Limited Warranty**").

6. **LIMITATIONS OF LIABILITY.** THE TOTAL LIABILITY OF MOTIVA, INCLUDING ITS SUBCONTRACTORS OR SUPPLIERS, ON ANY AND ALL CLAIMS, WHETHER IN THE SALES AGREEMENT (INCLUDING GRAVE FAULT), WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATIONS UNDER THIS SALES AGREEMENT OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT RELATING THERETO SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PURCHASE ORDER WHICH DIRECTLY GIVES RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF THE SALES AGREEMENT (INCLUDING GRAVE FAULT), WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL MOTIVA, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE OR DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER OR DOWNTIME COSTS FOR SUCH DAMAGES NOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, NOR FOR ANY TYPE OF LUCRUM CESSANS, INCLUDING, EVEN IF MOTIVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS SALES AGREEMENT AND THAT MOTIVA WOULD NOT ENTER INTO THIS SALES AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. Nothing in this clause limits or seeks to limit MOTIVA's liability for death or personal injury caused by its negligence.

7. **FORCE MAJEURE.** MOTIVA will not be liable for any failure to perform any of its obligations under this Agreement if performance has become impossible or unreasonably more difficult due to causes beyond its reasonable control including but not limited to: acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, disease, epidemic, civil commotion, blockades, embargos, calamities, floods, fires, earthquakes, explosions, storms, strikes, lockouts, labor disputes, or unavailability of labor, raw materials, power or supplies, whether or not such causes were foreseeable or not or unavoidable or not.

8. **VIGILANCE, PRODUCT TRACEABILITY, CORRECTIVE ACTIONS.**

8.1 CUSTOMER shall without undue delay notify MOTIVA of all Product-related complaints and reports about "incidents" (within the meaning of Sec. 2 No. 1 of the Medical Devices Safety Plan Ordinance and Art. 2 No. 64 of the EU Medical Devices Regulation or comparable requirements under applicable local laws, rules or regulations) which CUSTOMER becomes aware of by notices from users (patients) or otherwise from the marketplace; CUSTOMER will duly answer any follow-up questions asked by MOTIVA; this does not imply disclosure of personal data of users (patients) without their prior consent. If CUSTOMER obtains any queries or orders from authorities related to Products, CUSTOMER shall inform MOTIVA thereof.

8.2 CUSTOMER shall ensure that CUSTOMER is able to trace all Products whether still in stock at CUSTOMER or already implanted in patients (the latter by inspecting its medical records including contact data of patients treated), so that CUSTOMER will be able to implement any corrective actions, including recalls, initiated by the manufacturer or by regulators.

9. CONFIDENTIAL INFORMATION. CUSTOMER shall hold the following information in strict confidence and not disclose the same to any other person or entity except as provided herein: all information, pricing and terms relating to or contained in this Sales Agreement, including any attached Purchase Orders, all data, trade secrets, financial data, pricing, business plans or any other information received from MOTIVA in connection with this Sales Agreement (collectively, "**Confidential Information**"). Notwithstanding the above, CUSTOMER may disclose Confidential Information: (i) to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the party's rights and obligations under this Sales Agreement, provided that the disclosing party requires any such

recipient to use the information solely for these purposes and to keep it strictly confidential, (ii) as required by law, provided that the disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure, and (iii) with the prior written consent of MOTIVA.

10. MISCELLANEOUS. MOTIVA retains all right, title and interest in and to all intellectual property rights in and covering the Products. CUSTOMER may not assign, sell, transfer, delegate or otherwise dispose of this Sales Agreement or any rights or obligations under this Sales Agreement (including by assignment by operation of law such as in case of a merger, demerger, contribution or transfer of a universality or a branch of activity) without the prior written consent of MOTIVA. MOTIVA is entitled to assign this Sales Agreement and/or delegate any or all its obligations hereunder without CUSTOMER's consent and without prior notice to CUSTOMER. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Sales Agreement, and all matters of extra-contractual and/or tort liability, if any, arising out of or in relation with this Agreement, shall be governed by the substantive law of Belgium, excluding the UN Convention on the International Sale of Goods (1980) ("Vienna Convention") (if otherwise applicable) and without giving effect to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international) that would cause the laws of any jurisdiction other than Belgium to be applicable. Any dispute arising out of or in connection with this Sales Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the CEPANI Rules of Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be English.