TERMS & CONDITIONS

1. Definitions. The Term “Affiliate” shall mean (a) any corporation or business entity fifty percent (50%) or more of the voting stock of which is, and continues to be, owned directly or indirectly by any Party hereto; (b) any corporation or business entity which directly or indirectly owns fifty percent (50%) or more of the voting stock of any Party hereto; (c) any corporation or business entity under the direct or indirect control of such corporation or business entity as described in (a) or (b). The term “Agreement” shall mean these Terms and Conditions, Stryker’s quality requirements (a copy of which is available to Supplier upon request), the content of any written or electronic purchase order or material release issued by Stryker to Supplier that references these Terms & Conditions, and any exhibits or other incorporated documents referenced on the face of the Purchase Order. The term “Stryker” shall mean either Stryker or the Affiliate of Stryker Corporation that issued the purchase order or material release to the Supplier. The term “Supplier” shall mean the entity or individual to whom Stryker has issued the purchase order or material release. The term “Products” shall refer to the materials, supplies, items and equipment covered by this Agreement. The term “Services” shall refer to the work and/or Services covered by this Agreement or performed during the course of performance of this Agreement.

2. Acceptance. This Agreement must be accepted in writing by Supplier by returning a signed acknowledgment copy of this Agreement. If Supplier fails to accept in writing, any conduct by Supplier that is in accordance with the existence of this Agreement shall constitute an acceptance by Supplier of this Agreement. Any terms proposed in Supplier’s acceptance of Stryker’s offer that add to, vary from, or conflict with these Terms and Conditions are hereby rejected and shall not apply. If this Agreement has been issued by Stryker in response to an offer, and if any of these Terms and Conditions are additional to or different from any terms of such offer, then Supplier shall accept any or all of the terms of this Agreement by either Stryker or the Affiliate of Stryker Corporation that issued the purchase order or material release to the Supplier. Supplier is partially or wholly responsible or other failure of Supplier to meet the requirements of this Agreement. Irrespective of the rights above and in the event of the delay in delivery Stryker shall be entitled to demand a conventional penalty to the amount of two tenths of a percent (0.2%) of the delivery value of the outstanding delivery or service for each working day, in which the delay continues, not however more than five percent (5%) of the total value of the outstanding delivery or service, unless Supplier can prove that the delay was not caused by him. We are entitled to assert this conventional penalty in addition to satisfying the contract due and any damages occasioned thereby to Supplier and Stryker. All rejected or returns of goods or failure of the conditions of the conventional penalty can also be declared after acceptance of the delivery until the date of the final payment.

3. Inspection. Each shipment or delivery, in compliance with all applicable laws and good commercial practice to ensure that no goods are delivered to Stryker. Supplier shall indicate any back orders placed by Stryker as a result of delays caused by him. We are entitled to assert this conventional penalty in addition to satisfying the contract due and any damages occasioned thereby to Supplier and Stryker. All rejected or returns of goods or failure of the conditions of the conventional penalty can also be declared after acceptance of the delivery until the date of the final payment.
(b) If any Products or Services delivered do not meet all of the requirements of this Agreement, Stryker shall have the right to reject such Products or Services and return such Products at Supplier’s expense. Stryker may elect to reject the entire Products or Services tendered even if only a portion thereof is nonconforming. If Supplier elects to accept nonconforming Products or Services, Stryker, in addition to its other remedies, shall be entitled to an appropriate reduction in price. Payment for any Products or Services shall not be deemed an acceptance thereof.

(c) Supplier agrees to undertake such quality control and inspection procedures as required by the FDA or any other appropriate regulatory agency. Supplier will provide Stryker with access to its manufacturing facilities in order that Stryker may make Current Good Manufacturing Processes audits at such times as Stryker shall deem necessary, upon not less than 48 hours’ notice.

12. Warranty.

(a) **Product Warranty.** Supplier warrants that, unless a different period is expressly set forth on a purchase order issued by Stryker, for a period of thirty-six (36) months from the date of delivery of the Products that all Products furnished hereunder shall: (i) be free from latent and manifest defects in workmanship, material, manufacture, and design (where design is Supplier’s responsibility); (ii) comply with the requirements of this Agreement, including all drawings, specifications and or quality plans incorporated herein and samples and warranties furnished by Supplier; (iii) be merchantable and safe for consumer use, and fit for the use intended by Stryker; (iv) be free and clear of any lien, security interest or other adverse claim against title; (v) comply with the laws, federal and state, laws within the United States and any other applicable local, municipal, regional, or foreign, laws rules and/or regulations governing weights, measures and sizes; (vi) not be adulterated or misbranded within the meaning of any State food and drug laws or the Federal Food, Drug and Cosmetic Act, or not be an article which may not be sold under the provisions of sections 510, 513, 515 or 801 of the Act or any other applicable Federal, state or local laws, be so deteriorated or introduced into interstate commerce; (vii) not infringe, including without limitation their sale or use alone or in combination, any United States or foreign patents, trademarks, trade secrets, copyrights or proprietary rights of any third party; and; (viii) materially comply with all federal and state, and or other applicable laws, rules and Stryker’s then current safety and other applicable regulations.

(b) **Additional Warranties.** Supplier represents and warrants, to the extent applicable to the Products, that:

(i) all Products and Services furnished hereunder shall be manufactured, inspected and supplied in accordance with all domestic and foreign federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, guidelines and regulations applicable to the labeling, re-labelling, packaging, labelling, testing, quality assurance, creation, record retention, record modification, record transmission (including by electronic means), storage, handling, transport (including exportation and importation of Products within the United States, or to or from the United States and any other country), and reporting of medical devices, and, as applicable, human cells, tissues or human cellular or tissue-based products (HCT/Ps, in accordance with 21 CFR 1271) in effect at a particular time and promulgated by the United States Food and Drug Administration ("FDA") and any foreign agency or authority equivalent to the FDA;

(ii) Supplier and any Supplier facility, equipment, employees, sub-suppliers and agents shall comply with any requirements, obligations, standards, duties or responsibilities pursuant to any environmental, product composition and or manufacturing declarations, directives, or regulations, and treaties regarding such subject matter; and any regulations, interpretive guidance or enforcement policies related to any of the foregoing;

(iii) Supplier and its affiliates and related entities are not debarred, suspended, prohibited from government contracts or otherwise excluded from contracting with the Federal Government or any State or local government agency;

(iv) Stryker may disclose to Supplier any and all information, data, drawings, and other information and things (herein collectively, the "Confidential Information") that is of value to Stryker and is proprietary Information of Stryker, and any speculative information that might be protected by trade secret, confidential information, or other intellectual property right (collectively "Intellectual Property"), are the sole property of Stryker.

(v) the Product or Service shall be in accordance with Stryker’s specifications.

(vi) Supplier agrees to Stryker’s purchase order.

(vii) Supplier shall be responsible for all claims arising out of the negligence, reckless actions or willful misconduct of Supplier or its employees or agents.

(viii) Supplier shall indemnify Stryker for any and all claims based on or arising out of a breach of this Agreement or any of its terms and conditions.

13. Changes. Stryker reserves the right at any time to change a purchase order in writing and if such change causes an increase or decrease in price or delivery of Stryker’s goods or Services, an equitable written adjustment shall be made.

14. Confidentiality. In its performance of this Agreement, Stryker may disclose to Supplier or Supplier’s employees and agents with equivalent functionality to Stryker, "Confidential Information" means trade secrets (as defined by applicable laws), any data, reports, computer programs or models and related documentation, business or research plans, specifications, drawings, designs or information transmitted by Stryker to Supplier in connection with this Agreement, and all other information that is of value to Stryker and is proprietary Information of Stryker, including without limitation, the fact that Supplier has furnished or contracted to furnish to Stryker the Products or Services covered by this Agreement including the terms of this Agreement. All Confidential Information of Stryker shall remain the property of Stryker. Supplier shall keep all Proprietary Information of Stryker confidential and use such information only as necessary to fulfill Supplier's obligations pursuant to this Agreement. All originals, copies, summaries and derivatives of Confidential Information in whatever form shall be returned to Stryker or destroyed upon Stryker’s request.

15. Intellectual Property.

(a) **Ownership.** To the extent this Agreement includes Services, Supplier agrees that all drawings, writings, designs, copyrightable material, inventions (whether or not patented), improvements, developments, and/or know how furnished hereunder, by Stryker or its successors in interest, are the sole property of Stryker, created by Supplier in performance of its obligations hereunder, whether solely or jointly, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other intellectual property right (collectively "Intellectual Property"), are the sole property of Stryker, and Stryker shall perform such further acts needed to transfer, perfect, and defend Stryker's ownership of the Intellectual Property. Supplier shall require its employees and sub-suppliers to execute written assignments of Intellectual Property to effect such assignment.

(b) **License.** To the extent that Supplier or third parties retain ownership rights in materials delivered with the Products, or upon which the Services are based, Supplier hereby grants to Stryker a perpetual, fully-paid, irrevocable, worldwide, non-exclusive, royalty-free right and license to make, have made, modify, use, distribute, publicly perform or display, sell, offer to sell, service and import such materials. Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the licenses and intellectual property rights set forth in this Intellectual Property section.


(a) Supplier agrees to purchase and supply to Stryker, all Tools and Equipment necessary to execute the Agreement. All Tools and Equipment shall be used exclusively for Stryker’s performance of its obligations hereunder. To the extent any equipment owned by Stryker is placed at Supplier’s facility for use in connection with Supplier’s performance of its obligations hereunder, in addition to the foregoing terms and conditions, such equipment and Supplier’s use thereof shall be subject to the terms and conditions set forth in Stryker’s Equipment Placement Terms (available upon request).


(a) Supplier shall defend, indemnify and hold Stryker, its affiliated companies, and their respective shareholders, officers, directors, employees, agents, successors, and assigns harmless from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorneys’ fees, expenses, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier or its employees or agents; (ii) Products or Services that do not meet the requirements of this Agreement; (iii) Supplier’s warranties or any other term or condition of this Agreement; (iv) Supplier’s negligent, unauthorized or wrongful acts or omissions with regard to the transportation, use, handling, disposal, processing or installation of regulated materials; (v) a claim that any Products or Services furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; (vi) a claim of any lien, security interest or other encumbrance made by a third party; (vii) a violation of federal or state law, regulation, statute or ordinance; (viii) a recall or product field action involving the Products or Services to the extent they relate to or arise out of a breach of Supplier’s warranties or any other term or condition of this Agreement; or (ix) failure to comply with the Confidentiality obligations set forth herein. Notwithstanding the foregoing, Supplier shall not be liable for any claims arising out of the negligence, reckless actions or willful misconduct or malfeasance of Stryker, its officers, agents, or employees or any person or entity not subject to Supplier’s supervision or control.

(b) Without limiting Stryker’s rights and remedies hereunder, if Stryker believes that the Products or Services supplied hereunder are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right, Stryker may require Supplier to: (i) replace such Products or Services with products not infringing; (ii) cease using all Confidential Information and destroy or use such Products or Services with equivalent functionality to make them non-infringing.

(c) Supplier shall carry and maintain insurance coverage satisfactory to Stryker to cover its obligations in this Agreement, including without limitation, the following insurance with the respective minimum limits per occurrence: Commercial General Liability (CGL) - $2,000,000, Workers’ Compensation - $1,000,000, Automobile Liability - $1,000,000 and Product Liability - $1,000,000. Such Workers’ Compensation and Employer’s Liability insurance shall include a Wavier of Subrogation in favor of Stryker. Such CGL or Public Liability and
Product Liability insurance shall (i) include Stryker as an additional insured, (ii) include an Indemnity to Principal or waiver of subrogation clause in favor of Stryker or (iii) otherwise extend Supplier’s coverage to Stryker with respect to losses arising out of Supplier’s performance or assumption of liabilities under this Agreement.

19. Termination.

(a) Stryker may, at any time, terminate this Agreement, in whole or in part, without cause, upon written notice to Supplier. Upon any such termination Supplier shall, to the extent specified by Stryker, stop all work under this Agreement, cause its suppliers and subcontractors to stop work. Charges for any such termination of this Agreement shall be limited to actual non-recoverable costs incurred by Supplier that Stryker can demonstrate were properly incurred for the Products or Services hereunder prior to the date of termination. In no event will Stryker reimburse Supplier for anticipated profits or revenue or other economic loss for undeveloped Products or unperformed Services. Any Products for which Supplier is reimbursed shall become Stryker’s property.

(b) Supplier may terminate this Agreement for breach of Supplier, in whole or in part, if: (i) Supplier fails to make delivery of the Products or perform the Services within the time specified herein, any purchase order, or material release; or (ii) Supplier makes an assignment for the benefit of creditors; or (iv) otherwise fails to comply with the requirements of this Agreement.

(c) Any such termination shall not relieve Supplier from any liability hereunder.

20. Remedies. Stryker’s remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.

21. Security Interests. All drawings, artwork, data, drawings, supplier data, documents, tooling, dies, molds, fixtures, and patterns furnished or paid for by Stryker shall be Stryker’s exclusive property, and shall be used by Supplier only in performance of Stryker’s Equipment Placement Terms (available upon request).

22. Assignability and Subcontracting. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this Agreement nor any interest therein shall be assigned, delegated subcontracted for, or otherwise transferred by the Supplier, except upon the prior written consent of Stryker. Any assignment or transfer without such consent shall be void and of no effect. Regardless of Stryker’s consent to any of the foregoing, Supplier shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and understands the terms of this Agreement. Stryker may assign its rights or obligations under this Agreement to any Stryker affiliate or successor without Supplier’s consent.

23. Survivorship. All provisions, representations and warranties contained herein which by their nature are required or intended to be observed or performed after termination of this Agreement will survive its termination.

24. Release of Information. Supplier shall not release any statement, advertisement, information, or publicity referring to Stryker, or any Stryker affiliate without Stryker’s prior written approval.

25. Compliance with Laws.

(a) Supplier warrants that, to the extent applicable to its performance under this Agreement, all Products and Services will be produced or performed in compliance with all applicable federal, state and local laws, rules and regulations, including without limitation: (i) Executive Order 11246; (ii) the Jobs for Veterans Act (38 U.S.C. §§ 4211-4212); Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793); the Vietnam Era Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-250); and any law, order, or regulatory provision issued in addition, supplement or replacement of the foregoing; (ii) the requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders issued under section14 thereof; and (iii) as required by the United States’ immigration laws or federal acquisition regulations, including but not limited to the requirements set out at 48 C.F.R. 52.222-54 (the Federal “E-Verify” program), Supplier and its employees, agents, and sub-suppliers are entitled to work in the United States, and upon reasonable request, Supplier shall provide to Stryker documented proof of eligibility to work in the United States for itself and its employees, agents, and sub-suppliers.

(b) Stryker is an equal opportunity employer and federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with the following, which are incorporated herein by reference: 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and Executive Order 13406 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws, specifically:

(i) This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a), as applicable. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

(ii) This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a), as applicable. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to