

STANDARD TERMS AND CONDITIONS

ACCEPTANCE OF PURCHASE ORDER—The terms, conditions and specifications on the face and reverse of the Gembro Healthcare (Purchaser) purchase order contract attached hereto, together with following standard terms and conditions (all of which are collectively referred to as the Agreement) constitute all of the terms and conditions of Purchaser's offer to purchase supplies and services from Contractor. No additional term or conditions stated by Contractor shall be Binding on Purchaser unless specifically agreed to in a writing signed by an authorized representative of Purchaser. Acceptance of the supplies or services covered by this agreement will not constitute acceptance by Purchaser of Contractor's terms and conditions. Any of the following acts by Contractor shall constitute acceptance of this Agreement: signing and returning a copy of the Agreement; delivery of any of the supplies, or performance of any of the services ordered, informing Purchaser of commencement of performance of this Agreement; or, returning Contractor's form of Agreement acknowledgement or acceptance.

1. **PERFORMANCE** — Deliveries of supplies and performance of services (supplies and services are sometimes collectively referred to herein as the 'products') shall be strictly in accordance with the schedule specified in this Agreement.

2. INSPECTION

(a) All products shall be subject to inspection and testing by Purchaser to the extent practicable at all times and places, including the time and place of manufacture and, in any event, prior to acceptance. No inspection or test made prior to final inspection and acceptance shall relieve the Contractor from responsibility for defects or other failure to meet the requirements of this Agreement.

(b) If any product is defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, Purchaser shall have the right to reject it to require its correction or to accept it with an equitable adjustment in price. Any product, which has been rejected or required to be corrected, shall be promptly removed and/or corrected by and at the expense of Contractor. If after notice, Contractor fails to promptly replace or correct such product, Purchaser may (1) replace or correct such product and charge the cost of replacement or correction to Contractor, or (2) without further notice, terminate this Agreement for cause in accordance with the termination provisions in paragraph 6 below.

(c) Contractor shall provide and maintain an inspection system and procedures consistent with sound business practices and as otherwise provided in this Agreement including systems conforming to the requirements of FDA Medical Device Good Manufacturing Practices ("GMP"). Records of all inspections work by Contractor shall be kept complete and available to Purchaser during the performance of this Agreement and for three years after final payment.

(d) Purchaser shall make final inspection and acceptance of all products after delivery. Acceptance shall be conclusive, except as regards latent defects, fraud, such gross mistakes as amount to fraud and Contractor's warranty obligations.

3. **PRODUCT WARRANTY** — Contractor warrants that all products provided hereunder will conform to all specifications and appropriate standards incorporated herein (including all drawings and other descriptions which are part of the Agreement); will be free from defects in material and workmanship; will conform in all respects to any samples furnished by Contractor, and will be merchantable and otherwise appropriate for the purpose for which such products are normally used. If Contractor knows or has reason to know the particular purpose for which Purchaser intends to use such products, Contractor warrants that such products will be fit for that purpose. All products furnished hereunder shall be manufactured in accordance with all applicable GMP requirements. Purchaser's approval of designs or specifications furnished by Contractor, or Purchaser's inspection, testing, acceptance, use of or payment for the products proved hereunder will not relieve Contractor of its obligations under this warranty. All warranties shall run to the Purchaser and to its customers.

4. **PRICE WARRANTY** — Contractor warrants that the prices charged Purchaser for products provided hereunder are not less favorable than those currently extended by Contractor to any other purchaser for orders of the same or similar products in similar quantities. If Contractor reduces the prices for such products during the term of this order, Contractor agrees to reduce the prices hereunder accordingly.

5. **CHANGES** — Purchaser may, at any time, by written notice suspend performance of this Agreement in whole or in part, and make changes in the drawings, designs, the method of shipment or packing or the time or place of performance. If any such change causes an increase or decrease in the cost of, or time required for the performance of, any part of the work under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Agreement shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within thirty days after the date of receipt by Contractor of the notification change. If the cost of material made obsolete or excess by such change is reimbursed by Purchaser, Purchaser may prescribe the manner of disposition of such material. Nothing in this clause shall excuse Contractor from proceeding with the Agreement as changed.

6. TERMINATION

(a) **Without Cause:** Purchaser may terminate, for its convenience, all or any part of this Agreement at any time by written notice to Contractor. Upon receipt of notice of termination, Contractor will stop all work to the extent specified in the notice and will transfer title, and deliver to Purchaser all completed items, work in process, parts, special tools, plans, drawings, technical data and all other material and information produced or acquired in connection with the terminated work, which, if this Agreement had been completed would be required to be delivered to Purchaser. If Contractor and Purchaser are unable to agree upon the amount to be paid to Contractor by virtue of the termination, Purchaser will reimburse Contractor for all costs reasonably incurred by Contractor in the performance of this Agreement prior to termination, which are properly allocable to the work terminated and which are not otherwise recoverable by Contractor. In addition, Purchaser will pay to Contractor a reasonable profit with respect to the work so terminated. The amount payable to Contractor pursuant to this paragraph 6(a) shall not exceed the Purchase Order price, and the amount so calculated shall be subject to deductions with respect to any claim Purchaser may have against Contractor. If Contractor fails to submit a written termination claim to Purchaser, identifying those costs properly reimbursable under this clause, in such detail as may reasonably be required by Purchaser, within thirty (30) days after the date of termination. Contractor's claim to compensation with respect to the termination shall be absolutely and unconditionally waived.

(b) **With Cause:** Purchaser may terminate all or any part of this Agreement at any time in any of the following circumstances:

(1) if Contractor fails to deliver the supplies or fails to perform the services required by this agreement within the time specified, or any extension thereof granted by Purchaser in writing, or

(2) if Contractor fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, in either of these circumstances, does not cure such failure within a period of ten (10) days after receipt of notice from Purchaser specifying such failure.

If Purchaser terminates this agreement pursuant to this subparagraph 6(b), Purchaser may purchase, upon such terms and in such manner as Purchaser may deem appropriate, supplies or services similar to those ordered under this Agreement, and, Contractor shall be liable to Purchaser for any additional cost incurred by Purchaser for such similar supplies or services. Notwithstanding the foregoing if after notice of termination, it is determined that none of the circumstances entitling Purchaser to terminate this Agreement with cause existed at the time of such termination, such notice of termination shall be deemed to have been issued pursuant to subparagraph (a) of this paragraph 6.

The rights and remedies of Purchaser provided in this subparagraph (b) shall not be exclusive and are in addition to any other rights or remedies provided by law or by other provisions of this Agreement; provided, however, that Contractor shall not be liable for any damages if its failure to perform is attributable to causes beyond Contractor's control and without Contractor's fault or negligence, and Contractor has given Purchaser prompt notice of anticipated delays in performance.

7. **SPECIAL TOOLING** — If all, or substantially all, of the costs of special toolings, dies, molds, jigs, patterns, machinery (collectively "Tooling") used in the performance of this Agreement has been, or will be, charged to Purchaser, title to such special tooling shall vest in Purchaser. The Tooling shall be used only in the performance of work for Purchaser. Contractor agrees that it will follow normal industrial practices in the identification, maintenance and repair of the Tooling, and will make all records relating to the Tooling available to Purchaser at all reasonable times. Upon termination of completion of this Agreement, Contractor will furnish a list of the Tooling to Purchaser and, promptly upon Purchaser's request will deliver the special Tooling to Purchaser in good condition, normal wear and tear excepted.

8. **PURCHASER SUPPLIED MATERIALS** — If Purchaser furnishes Contractor with material (such as parts, components, dies, molds, jigs, tools or test equipment) or pays for such material, title thereto shall remain or vest in Purchaser and Contractor shall identify, maintain and preserve such material and shall dispose of it (including scrap) only in accordance with Purchaser's direction. Unless otherwise authorized in writing by Purchaser, Contractor shall use such material only in the performance of orders for Purchaser and shall return such material to Purchaser when requested upon completion or termination of this Agreement to the extent not previously delivered to Purchaser. Contractor shall be responsible for any loss, damage or destruction to all such material.

9. **PURCHASER CONFIDENTIAL INFORMATION** — Contractor shall maintain in confidence all of Purchaser's technical, process and economic information provided to Contractor pursuant to this Agreement or derived from drawings, specifications and other data furnished by Purchaser in connection with this Agreement and Contractor shall not divulge or use, directly or indirectly, any such information for the benefit of another party, or for any purpose other than the performance of this Agreement, without obtaining Purchaser's prior written agreement. Contractor shall not make copies or permit copies to be made of any drawings, specifications or other data without the prior written agreement of Purchaser. Upon completion of this Agreement, Contractor shall promptly return to Purchaser all such drawings, specifications and other data.

10. **INTELLECTUAL PROPERTY RIGHT INDEMNITY** — Contractor agrees to indemnify and hold harmless Purchaser and its customers against any liability (including costs) for actual or alleged infringement of any patent, trademark, copyright, or mask work right, or misappropriation of any trade secret, arising from or related to the manufacture, use, sale or other disposition of products furnished hereunder. Upon receipt of timely notice of any claim or suit alleging such infringement, Contractor agrees to defend Purchaser, and its customers at Contractor's expense.

11. INVENTIONS AND TECHNICAL DATA

(a) If payment is made directly or indirectly by Purchaser for experimental, developmental or research work performed or to be performed hereunder, Contractor agrees to disclose and, upon request, to assign to Purchaser each invention, patentable or unpatentable, conceived or first reduced to practice in the performance of this Agreement.

(b) All designs, drawings, specifications, software or other technical data delivered by Contractor to Purchaser in the performance of this Agreement, or which Contractor may acquire or prepare in connection with the performance hereof, shall be the exclusive property of Purchaser. Contractor shall not, without the prior written authorization of Purchaser, make any use, directly or indirectly, of any such technical data other than in the performance of this Agreement.

12. **ASSIGNMENTS OR SUBCONTRACTS** — Contractor shall not assign this Agreement, or subcontract all or substantially all of the work called for by this Agreement without Purchaser's prior written approval.

13. **DISPUTES** — Any dispute arising under this Agreement which is not settled by agreement of both parties shall be settled by binding arbitration in Denver, Colorado pursuant to the Rules and Procedures of the American Arbitration Association then in effect and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The losing party in any such arbitration shall pay the prevailing party its reasonable attorney's fees incurred by the prevailing party in such arbitration. Pending a final determination of any dispute hereunder, Contractor shall proceed diligently with the performance of this Agreement as directed by Purchaser.

14. **COMPLETE AGREEMENT** — This Agreement (and all documents expressly incorporated herein by reference) is intended by the parties as a final, complete and exclusive statement of their agreement with respect to the subject hereof. It replaces and supercedes all prior and contemporaneous communications, representations and agreements, whether written or oral, with respect to the subject matter hereof, and can be amended only by a written agreement executed by the parties hereto.

15. **WAIVER** — The failure of Purchaser to enforce at any time any of the provisions of this Agreement to exercise any election or option provided herein, or to require at any time performance by the Contractor of any of the provisions hereof shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of Purchaser thereafter to enforce each and every such provision.

16. **COMPLIANCE WITH LAWS** — The Contractor warrants that no law, rule or ordinance of the United States, any state or other governmental authority has been violated in the manufacture or sale of the products or in the performance of the services covered by this Agreement and Contractor will defend and hold the Purchaser harmless from loss, cost or damage as a result of any such violation.

17. **GRATUITIES** — Contractor warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Purchaser any gratuity with a view toward securing any business from Purchaser or influencing such person with respect to the terms, conditions or performance of any contract with or order from Purchaser.

18. **GOVERNMENT CONTRACTS** — If this is a government subcontract, its terms and conditions shall also include (1) the following Federal Acquisition Regulation Part 52 clauses (and supplementary DFAR clauses), and (2) all other clauses and representations required to be included herein by statute, regulation or the terms of Purchaser's prime contract or higher tier subcontract: Restrictions on Certain Foreign Purchases (225-11); Walsh-Healey Public Contracts Act (222-20); Equal Opportunity (222-26); Authorization and Consent (227-1); Notice and Assistance Regarding Patent and Copyright Infringement (227-2); Patent Indemnity (227-3); Affirmative Action for Special Disabled and Vietnam Era Veterans (222-35); Affirmative Action for Handicapped Workers (222-36); Utilization of Small Business and Small Disadvantaged Business Concerns (219-8); Examination of Records by Comptroller General (215-1); Utilization of Labor Surplus Area Concerns (220-3); Utilization of Women Owned Small Businesses (219-13); Clean Air and Water (223-2); Drug-Free Workplace (223-6); Buy American Act Supplies (225-3).

If this agreement exceeds \$100,000 or a certificate of Current Cost or Pricing Data has been furnished, the following clauses are similarly incorporated herein by reference: Subcontractor Cost and Pricing Data (215-24); Price Reduction for Defective Cost or Pricing Data (215-22); Cost Accounting Standards (230-4).

In all of the foregoing FAR and DFAR clauses, the term "Contractor" shall mean "Seller", the term "Contract" shall mean this Agreement, and the term "Contracting Officer" shall mean "Buyer" or the Contracting Officer for the U.S. Government prime contract, as appropriate. Any reference to a "Default" clause in the above FAR or DFAR clauses shall mean the "Termination With Cause" clause hereof.

19. **APPLICABLE LAW** — This agreement shall be governed by and construed in accordance with the laws of the State of Colorado.