

**CAIRE MEDICAL JAPAN CO., LTD.  
Terms & Conditions of Purchase**

**1. General.** This Purchase Order ("Order") is placed by CAIRE Medical Japan CO., Ltd. ("Buyer") subject to the terms, conditions and instructions appearing on the face and reverse sides hereof or attached to Buyer's Order, and by accepting this Order, whether by partial performance or otherwise, shall be deemed acceptance of these terms and Seller agrees to be exclusively bound thereby unless otherwise agreed in writing between Buyer and Seller. No additions or modifications will be binding upon Buyer unless agreed to in writing by Buyer's duly authorized representative. Any different or additional terms and conditions contained in any document that Seller may send to Buyer is hereby expressly objected to. Specifications, drawings and data submitted to Seller with this Order are hereby incorporated and made a part of this Order and the same shall remain the complete and exclusive property of Buyer. As used herein the term "items" refers to goods and/or services furnished under this Order. With respect to this Order, time and rate of delivery of work is of the essence. This Order is subject to termination free of any claim or liability against Buyer for Seller's failure to deliver on schedule. Headings are for convenience only and shall be given no legal effect. Unless Buyer receives Seller's written notice of rejection within three business days after Seller's receipt of this Order, then Seller shall be deemed to have unconditionally accepted this Order.

**2. Payment/shipment.** Unless otherwise provided for on the reverse side of this Order, Buyer shall pay the purchase price of items by wire transfer to a bank account designated by Seller at expense of Buyer by fifty-five days from the later of the date on which the invoice is received by Buyer or the date on which the invoiced items are received. Seller certifies that at the time of its acceptance of this Order, the prices stated herein are not in excess of the prices currently being charged by Seller to other customers for the same or smaller quantities of like goods or services with similar delivery or performance schedules. Mail separate invoices in duplicate for each shipment to Buyer Attn: Accounts Payable. No charges of any kind, including charges for boxing, carting or storage will be allowed unless specifically agreed to by Buyer in writing on the face hereof. Send bill of lading with items or attach to invoice and show PO Number, item description and Buyer's numbers, if any. Seller shall ship the least expensive way, unless otherwise stated. Excess unauthorized shipments and shipments arriving in advance of scheduled delivery date may be returned at Seller's risk and expense.

**3. Changes.** Buyer shall have the right to make changes to this Order including changes to the shipping schedule. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be negotiated in the purchase price or performance schedule or both. Any claim by Seller for adjustment hereunder shall be deemed waived unless asserted in writing within five days from receipt by Seller of notice of the change. Seller shall implement such changes upon receipt of Buyer's written notice of change.

**4. Risk of Loss.** Delivery terms applicable to this Order shall be as defined in INCOTERMS 2010. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage and title shall pass to Buyer and delivery shall be deemed to be completed only upon actual receipt and acceptance of the items by Buyer. Risk of loss or damage and title to items rejected by Buyer or as to which acceptance has been revoked remain with Seller.

**5. Warranty.** Seller warrants to Buyer, its successors, assigns and customers that the items supplied are merchantable, of good quality, comply with specifications, drawings and data submitted to or by Buyer in connection with this Order, are free from defects, whether patent or latent, in design, material and workmanship and, except for build-to-specification orders, are suitable for the particular use for which the items are purchased. Seller guarantees to repair or replace, at no cost to Buyer, the items, or parts thereof, found to be defective. Any replacement parts and materials or corrections to workmanship are also warranted against defects. All services will be performed in a good and workmanlike manner and according to the highest applicable industry standards. If Seller breaches the warranties of this Paragraph 5, Buyer shall be entitled to recover expenses incurred thereby including the cost of replacement

items, the cost of work-in-process that is scrapped due to non-compliant items, the cost of recalling and/or reworking products that contain non-compliant items.

**6. Nonconformity.** All items ordered will be subject to final inspection and approval, at Buyer's election, at Seller's plant or other Buyer-designated location or, if services, at the site at which such services are to be performed. If any of the items are found at any time to be not in conformity with the requirements of this Order, Buyer shall also have the right to reject and return, or to hold such items for Seller's instructions at Seller's risk and expense or, in the case of services, to have such services performed anew by Seller at no cost or expense to Buyer. However, such items are not to be replaced or such services are not to be performed anew without Buyer's written authorization.

**7. Indemnity.** Seller shall to the furthest extent provided by law defend, indemnify and hold harmless Buyer, its successors, assigns and customers, from and against claims, liability, loss and damage, including without limitation, costs, expenses, and attorneys' fees, arising out of or relating to this Order or the items or services furnished hereunder, or any litigation based thereon, including without limitation, actual or alleged defects in material, workmanship or design of items furnished by Seller hereunder or pursuant to an Order. Seller shall further defend, indemnify and hold harmless Buyer, its successors, assigns and customers from and against any and all liens upon the premises of Buyer or its customers including without limitation, liens for labor performed and material furnished by Seller or its subcontractors, and Seller shall also at its own expense procure the discharge, release or satisfaction of any and all notices of intention or other evidence of such lien or claim thereto. Seller shall at all times carry and maintain such Workers' Compensation, general liability, property damage, employee's liability and compensation insurance and automobile insurance (at least \$5 million per incident) to protect Buyer and its customers from all of the aforesaid risks and from liabilities under any applicable Workers' Compensation and Occupational Disease Acts and name Buyer and its affiliates as additional insured on all policies except Workers' Compensation. At Buyer's request, Seller shall provide Buyer with payment and performance bonds in the amount equal to the value of this Order. Seller shall at all times fully comply with all applicable federal, state and local rules, laws, codes and regulations.

**8. Patent or Copyright Protection.** Seller shall defend, indemnify and hold harmless Buyer, its successors, assigns and customers from and against claims, liability, loss and damage, including without limitation, costs, expenses, and attorneys' fees arising out of or relating to any claim of patent or copyright infringement of or in any way related to the items or parts thereof, furnished hereunder or any litigation based thereon. In addition, Seller shall procure at Seller's expense for Buyer the right to continue using the items or parts found to have been infringing or shall so modify, supplement or replace such items and parts as to eliminate such infringement; provided, however, that there shall be no performance degradation due to such actions and the same shall be reasonably acceptable to Buyer.

**9. Certain Litigation.** If requested to do so, Seller shall defend, at its own expense, any litigation for which Seller is required to indemnify Buyer under Paragraph 7 or 8. Buyer shall have the right to participate in such defense with counsel of Seller's own choice at Seller's expense. If Seller shall fail to promptly assume the defense of such litigation when requested to do so by Buyer, then Buyer may defend with counsel of its own choice at the expense of Seller.

**10. Information.** Any knowledge or information concerning the design, manufacture, sale or use of the items covered by this Order which Seller may disclose to Buyer incident to the performance, manufacture or delivery of items covered by this Order shall be deemed to have been disclosed as a part of the consideration for this Order and to be free from all restrictions as to the use or disposition thereof by Buyer, and Seller agrees not to assert any claim against Buyer by reason of Buyer's use or disposition thereof. Seller shall for all times keep confidential all information, drawings, specifications, data or any other details furnished by Buyer or prepared by Seller specifically in connection with this Order.

**11. Property Supplied by Buyer.** Buyer shall retain title to any drawings, sketches, designs, patterns, dies, molds, tooling, equipment and materials

of every description paid for or supplied by Buyer for use in the performance of this Order. Any such articles shall be retained by Seller on consignment, suitably identified as Buyer's property. Seller shall hold and maintain any such articles at its risk and expense, shall keep such articles insured at its expense while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Buyer, and shall not use such articles except in filling Buyer's Orders. All such articles shall be delivered to Buyer upon demand, in the same condition as when received, except for reasonable wear and tear, and except to the extent such articles have been incorporated into items delivered to Buyer, or consumed in the normal performance of work for Buyer.

**12. Termination.** Buyer may, without cost or liability to Buyer, except for deliveries or services previously made and accepted, terminate this Order if one or more of the following events shall occur: (a) failure of Seller to perform any of its obligations under this Order or (b) any adverse change in the position, financial or otherwise, of Seller or (c) the insolvency of, or the filing of a petition under any federal, state or any other applicable bankruptcy or insolvency laws by or against Seller. In any termination permitted by this section, Seller shall be responsible for any damages suffered to Buyer, its successors, assigns or customers. In addition to the preceding rights of termination, Buyer may, on reasonable notice to Seller, terminate this Order at its convenience without cost or liability to it as to any items not received or accepted by Buyer. Any items shipped, or service performed, after the effective date of such termination, may at the sole option of Buyer be accepted by Buyer under this Order or be returned to Seller at Seller's risk and expense. Buyer is excused from performing during any force majeure event and for a reasonable period of time following the same.

**13. Default and Remedies.** Any failure by Seller to comply fully with any requirement of any Order shall constitute a default. Upon Seller's default, Buyer may cancel all or any portion of such Order. Seller shall reimburse Buyer for any cost, loss, damage and liability incurred by Buyer by reason of Seller's default. The remedies expressly provided for in these conditions shall be in addition to any other remedies which Buyer may be entitled to under any law.

**14. Set-Off.** Buyer may at all times set-off any amount owing from Buyer to Seller or to any of Seller's affiliated companies against any amount payable in connection with this Order by Buyer.

**15. Dispute Resolution and Governing Law.** Any controversy or claim arising out of or relating in any way to this Order or the breach thereof shall be resolved at courts and submitted to the exclusive jurisdiction of the Tokyo District Court as court of the first instance. This Order shall be governed by the law of Japan, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and excluding Japanese conflicts of law. In no event shall Seller cease the performance and/or delivery of any items while any formal or informal claim pertaining to any matter is in dispute.

**16. Miscellaneous.** Assignment of this Order or of any rights, duties or obligations hereunder by Seller, by operation of law or otherwise, without the prior written consent of Buyer, shall be void. Any provision of this Order which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining portions hereof. The obligations of Seller under this Order shall survive any inspection, delivery, acceptance or payment of and for the items or services. If Seller is a subcontractor to Buyer, then Seller further agrees, with respect to the items or services it is supplying, that Seller shall also be governed by the same terms and conditions by and between Buyer and Buyer's customer so there is a total flow down of the same.

**17. Software.** Seller grants to Buyer a non-exclusive royalty free perpetual license to use any standard software provided by Seller hereunder and to sublicense the same. Buyer shall not be bound by any terms and conditions that may accompany any software. Seller grants to Buyer an unlimited, exclusive and perpetual license to use, modify and sublicense any custom software provided by Seller to Buyer.

**18. Limit of Liability.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER UNDER

CONTRACT, TORT, STRICT LIABILITY OR BASED ON ANY OTHER THEORY OF LAW.

**19. Hazardous Materials.** Seller shall notify Buyer of all "hazardous materials" (as that term is defined in applicable Federal, state and local statutes) which are contained in the items being supplied to Buyer or to Buyer's customers and Seller shall furnish Buyer with copies of all applicable "material safety data sheets" for said items no later than the shipment date under this Order. In addition, Seller shall be responsible for all chemical substances or mixtures which Seller brings onto Buyer's or Buyer's customer's premises. When ordered by Buyer, Seller shall promptly and properly remove and dispose of all such substances, mixtures, containers, and/or other hazardous materials residues in accordance with all applicable federal, state, local statutes, laws, regulations, rules, orders, and ordinances.

**20. Government Contracts.** If this Order is placed under a government contract (prime or subcontract) then this Order is also subject to the applicable government contract clause(s) as are required by public law and which are then hereby incorporated into this Order by reference.

**21. Export Compliance.** Buyer is entitled to terminate this Order at any time free of any claim or liability in the event that performing this Order is prohibited or restricted by any law or regulation of the U.S. Government or any other applicable governmental agency of any country having jurisdiction ("Applicable Trade Laws"). In no event shall Buyer be required to export or import or deliver any technical information, data, and/or material if such export or import or delivery is then prohibited or restricted by Applicable Trade Laws. Seller accepts responsibility for exporting any items sold hereunder and will be responsible for filing any documents required by the U.S. or other government agencies. Seller shall be the exporter of record and shall secure all licenses necessary for exportation. Seller warrants and represents that it is in full compliance with all Applicable Trade Laws.

**22. Misbranding, Adulteration and Manufacturing Practices.** Seller guarantees that no items delivered pursuant to an Order will, on the date of delivery, be adulterated or misbranded under 21 U.S.C. §§351, 352 and 355 or 15 U.S.C. §§1261-1276, as amended, or be otherwise prohibited from introduction into interstate commerce under 21 U.S.C. §331, 15 U.S.C. §1263, as amended, or similar state or municipal laws, and Seller guarantees that, where applicable, the manufacture of any article or material shall have been consistent with 21 C.F.R. §§800-895, as amended.

**23. Compliance Certificate.** Seller agrees to execute and deliver upon Buyer's request a Certificate of Compliance in a form acceptable to Buyer certifying Seller's full compliance with each and every requirement imposed upon Seller by each Order and by applicable laws, regulations and industry standards, and setting forth the country or countries of origin for each of the items and all of the countries from which each of the items was exported.

*REV 11/18*