



Terms and Conditions

1. General - The following terms and conditions (the "Terms"), shall constitute the entire agreement for the purchase and sale of products (the "Product(s)") that **Confluent Medical Technologies, Inc.** a Delaware corporation ("Seller") proposes to sell to you ("Buyer"). No waiver, alteration or modification of these Terms shall be valid unless in writing and signed by an authorized representative of Seller. No modification shall be effected by the acknowledgement or acceptance of purchase order ("PO") forms containing other or different terms or conditions whether or not signed by any representative of Seller. Any terms and conditions contained in Buyer's PO or request for quotation that are different from, in addition to, or at variance with these Terms shall not be binding on Seller, and Seller hereby objects thereto.

2. Acceptance & Effect of Terms - BUYER'S RECEIPT OF REFERENCE TO THESE TERMS SHALL CONSTITUTE AN ACCEPTANCE BY BUYER OF ALL THE TERMS AND CONDITIONS CONTAINED HEREIN EXCEPT FOR ANY TERM OR CONDITION TO WHICH BUYER SHALL OBJECT IN WRITING WITHIN FIVE (5) DAYS FROM RECEIPT. The parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. It is the parties' intent to nullify the effect of any prior dealings in the construction and interpretation of these Terms, and no course of such prior dealings shall be read into these Terms for any purpose whatsoever.

3. Seller's Acceptance of Orders - Seller reserves the right to reject any eventual order from Buyer in its sole and absolute discretion. No order shall be deemed accepted unless and until Seller either gives written notice of acceptance or ships the ordered Products. Prior to acceptance, Seller shall have no liability if it is unable to supply the Products for any reason.

4. Prices & Payment - Unless otherwise specified, the prices heretofore quoted shall be adjusted to reflect Seller's prices at the time of shipment. All quotes are subject to Seller's approval of Buyer's creditworthiness and are not binding by PO submission. Unless otherwise approved by Seller in writing, standard payment terms are payment in full upon Seller's acceptance of Buyer's PO.

5. Taxes and Charges - In addition to the purchase price Buyer shall pay Seller the amount of all government taxes, excises, and/or other charges that Seller may be required to pay with respect to this production, sale, or transportation of any products delivered hereunder, except where the law provides otherwise. Seller shall have the right to invoice separately any such taxes that may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same apply. If Buyer fails to fulfill any payment term for any invoice, Seller may charge interest or late fees up to the maximum allowable under applicable law, change payment terms and/or defer or stop further shipments without prejudice to other remedies.

6. Warranty - Seller warrants at the time of shipment the Products meet Seller's specifications or product standards, as the case may be, for the Product only as have been expressly agreed upon between Seller and Buyer in writing. Seller further warrants that the Products are adequately contained, packaged, and labeled and conform to statements made on the container or label. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, OR IMPLIED,

INCLUDING WARRANTY OF MERCHANTABILITY EXCEPT AS SET FORTH ABOVE, AND WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES EXTEND ONLY TO THE ORIGINAL PURCHASER, AND NO WARRANTY APPLIES TO FUSES, BATTERIES, DISPOSABLES, OR ANY PRODUCT OR PART THAT HAS BEEN SUBJECT TO MISUSE, NEGLIGENCE, AN ACCIDENT, ABNORMAL OPERATING CONDITIONS, LACK OF RECOMMENDED MAINTENANCE OR MODIFICATION. Any oral statements made about the merchandise described in these Terms do not constitute warranties, shall not be relied upon by Buyer and are not part of these Terms or any agreement between the parties.

7. Waiver - Buyer recognizes that while Seller's manufacturing sites are registered medical device facilities with the U.S. Food and Drug Administration ("FDA"), Seller is not responsible for regulatory compliance or adherence to regulations for any Product sold to Buyer unless agreed to in a separate signed writing. Additionally, the manufacturing sites of any subcontractors Seller uses to produce the Product may not be registered with the FDA or any other regulatory body as a manufacturer of medical devices or components. Buyer also recognizes that Seller's (and Seller's subcontractors') quality management system and other systems supporting the manufacture of Product for Buyer is not intended to comply with the requirements of any FDA Quality System Regulation, unless otherwise agreed to in a separate signed writing. Seller makes no warranties, express or implied, concerning the Products suitability for their intended use. Buyer maintains final and sole responsibility for determination of Product suitability. Seller assumes no responsibility whatever for compliance of the Products with applicable laws, regulations, codes, or standards, including the Federal Food, Drug, and Cosmetic Act and regulations of the FDA.

8. Indemnity - Buyer shall indemnify and hold harmless Seller and its affiliates and subcontractors, and their respective directors, officers, employees and agents (the "Indemnified Parties") from all claims, demands, actions, losses, and damages of any kind whatsoever (including, but not limited to attorney's fees and costs) (collectively "losses") suffered or incurred by the Indemnified Parties for any claim arising out of Buyer's sale or use of any Product; provided, this indemnity shall not apply to the extent that any such Product when supplied by Seller hereunder did not comply with the warranty contained in Section 6.

9. Buyer's Remedies and Limitations - Buyer's receipt of any Products shall constitute an unqualified acceptance and a waiver of any and all claims with respect to such Products unless Buyer notifies Seller within thirty (30) days of such receipt the Products do not conform to the warranty outlined in paragraph 6 above. Given proper notice stated above, Seller's liability under said warranties shall be limited to replacement or repair of the Products or the Products' purchase price as set forth in the relevant PO at Seller's option. Seller shall pay transportation costs of Products to and from Seller's plant only if Seller directs Buyer to return same in writing. Buyer assumes all risk and liability for use of Products delivered hereunder in manufacturing processes of Buyer or their incorporation into other products. NO CLAIM OF ANY KIND WHETHER AS TO PRODUCTS DELIVERED OR FOR NON-DELIVERY OF PRODUCTS SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF



THE PRODUCTS IN RESPECT OF WHICH SUCH CLAIM IS MADE AND IN NO CASE SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE.

10. Loss in Transit – Seller shall have no liability whatsoever for damage, loss, or deterioration of the Products after delivery of the Products to a commerce carrier, regardless of whether Seller charges Buyer for freight. Buyer acknowledges that all claims for losses caused by a carrier, including those for inconvenience, delay or expense, shall only be made against a carrier. In no event shall Buyer deduct any amount for damage in transit from amounts due hereunder.

11. Period of Limitation – Any action for breach hereunder shall be commenced within one (1) year from the date of delivery.

12. Intellectual Property – Seller does not warrant or provide any guarantee of non-infringement of trademark, copyright, patent or other intellectual property rights of any third party. Buyer shall indemnify, hold harmless and defend Seller in any suit or proceeding brought against Seller based on a claim that the manufacture of the Product, the Product, or any use or incorporation of such into Buyer's product constitutes an infringement of any third party's trademark, copyright, patent or other intellectual property right

13. Contingencies – Stated shipping dates, dates of delivery, and dates for performing labor, if any, are approximate, and are not a guarantee of any particular date of shipment, delivery or labor to be performed. Seller shall not be liable for its failure to perform hereunder due to causes or contingencies beyond its control, including, but not limited to, strikes, fires, floods, accidents, acts of God, acts of law or public authorities, delay in transportation, lack of raw materials, or otherwise; and Seller may at its option cancel or reduce deliveries accordingly, or allocate supply in such manner as it deems equitable.

14. Cancellation – Seller reserves the right to modify these Terms at any time in its sole discretion; no such modification shall affect any pending or accepted PO. Seller may cancel or terminate these Terms at any time, and may cancel any outstanding PO before the termination effective date is (i) Buyer breaches any provision of these Terms; (ii) Buyer fails to comply with any payment term; (iii) Buyer's credit becomes unsatisfactory to Seller; or (iv) requested by government agency. Seller shall not be liable to Buyer or any third party for any termination. Upon termination of any outstanding PO, Buyer shall pay all costs of Seller for Products or parts or materials relating thereto that are produced, ordered, or received by Seller for such PO before such termination.

15. Wrongful Rejection – If Buyer wrongfully rejects Products Seller may withhold delivery of such Products, stop delivery of any remaining Products in its possession or that of a carrier or other bailee and recover damages for non-acceptance. Damages shall be the difference between the market price at the time for render and the unpaid contract price, together with any incidental damages incurred by Seller as a result of Buyer's breach. The foregoing shall be in addition to, and not exclusive of, other remedies which Seller may have by law.

16. Quantities – In the case of orders for Products to be manufactured to specifications, Seller may deliver up to 10%

above or 10% below any quantity so ordered, thereby completing the order.

17. Tooling – Tooling charges apply only to initial order unless subsequent orders are for larger quantities that require production of additional tooling to meet delivery requirements. Any tooling or fixtures fees are intended to cover engineering costs and expenses associated with developing the same as required for use in Seller's proprietary processing. Payment of such fees will *not* transfer ownership of such tooling or fixtures to Buyer.

18. Deliveries - All shipments shall be EXW point of shipment unless otherwise stated on Seller's acknowledgement of a PO or request for quotation. Deliveries are conditioned upon payment of all indebtedness of Buyer to Seller due before the shipment date.

19. Changes – Prior to the delivery date, Buyer shall have the right to request changes in its order provided Seller receives written notice, agrees to the changes, and Buyer accepts any additional charge therefore as determined by Seller. Changes which interfere with or alter Seller's production schedules, as determined by Seller, will not be acceptable unless the time for performance is extended for such period as is deemed necessary by Seller. Failure of Seller to accept Buyer's request to change its order shall not be cause for Buyer's cancellation except upon payment of a cancellation charge to be determined by Seller.

20. Export Sales – Buyer has complied and/or will comply with all applicable laws, rules and regulations of the United States of America and of any other country concerned pertaining to purchase and movement of, and payment for the Products, to be delivered hereunder. Buyer shall be responsible, at its own risk and expense, for obtaining any required authorization, such as an import license, foreign exchange permit or any other official governmental authorization, even though Seller may at Buyer's request, apply for any such authorization. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved of its obligations to pay Seller for accepted orders. All sales shall at all times be subject to the export control and foreign assets control laws and regulations of the United States Government, as amended. Buyer agrees that it shall make no other disposition, except as expressly permitted under United States Law, of any products purchased from Seller other than to the country of destination specified on Buyer's order or as declared on Seller's invoices. Buyer agrees to indemnify and hold Seller harmless from, or in connection with, any violation of such export restrictions by Buyer, or its employees, consultants, agents, or customers. All drawbacks of duties paid on items entering into the manufacture of the Products delivered hereunder shall accrue to Seller, and Buyer agrees to furnish Seller with all documents necessary to obtain payment of such drawbacks and to cooperate with Seller in obtaining such payment.

21. Applicable Law – The laws of the State of California and the United States of America shall govern validity, interpretation and performance of these Terms and the sale. The UN Convention on Contracts for the International Sale of Goods does not apply. Buyer submits and agrees to the jurisdiction of the state and federal courts of the State of California, Santa Clara County in any action, suit, or proceeding for any dispute between the parties.

22. Reformation – Any provision of these Terms prohibited by law shall be ineffective only to the extent of such prohibition and shall not invalidate or effect the remaining provisions, such provisions being deemed severable.