

**IN ADDITION TO THE ITEMS CONTAINED ON THE FRONT FACE OF THIS PURCHASE ORDER, IT IS THE WILL OF THE PARTIES TO BE BOUND BY THE PRESENT GENERAL TERMS AND CONDITIONS IN ACCORDANCE WITH THE FOLLOWING DECLARATIONS AND CLAUSES:**

**1. Definitions.**

“S+N” means Smith & Nephew, Inc., a Delaware corporation or any other subsidiary or related entity identified on this Order (as defined below) as the purchaser of Products and/or Services (as defined below). “Supplier” means the person or entity to whom this Order is addressed. “Products” and “Services” will have the meanings set out in the Terms and Conditions section hereof. S+N and Supplier are each at times referred to herein as a “Party” and collectively as the “Parties”

**2. General Terms**

By accepting this purchase order (“Order”) submitted by S+N, Supplier hereby agrees to provide the items, materials, or equipment (the “Products”) and related services in connection with the supply of the Products (the “Services”) solely upon the terms and conditions stated herein. No modified, additional, or different terms or conditions proposed by Supplier will be accepted by S+N and any such proposed modification, additional, or different terms or conditions will be construed as proposals for additions to the Order and will not become part of this Order unless indicated in a written instrument executed by S+N. The delivery of Products or performance of Services in response to this Order will constitute acceptance of the terms and conditions stated herein.

**3. Price & Payments**

Except as otherwise agreed by the Parties and set out on the face of this Order, payment terms on all Orders will be due net sixty (60) days from the date of receipt of a valid invoice by S+N, or, if later, from the respective delivery dates of the Products or, as the case may be, full performance of all of the Services which are the subject of this Order. S+N may withhold payment of any amounts which are disputed in good faith by S+N. Unless otherwise agreed by S+N in writing, all prices are fixed and are inclusive of all packaging and delivery, VAT (if applicable) and any other applicable duties and taxes and are not

subject to escalation. S+N is not liable for any orders or amendments to orders other than S+N's Order or an amendment expressly agreed in writing and signed by an authorized signatory of S+N. No payment of, or on account of, the Order price is to constitute any admission by S+N as to the proper performance by Supplier of its obligations.

**4. Delivery**

All Products supplied pursuant to an Order will be properly packed and secured in such a manner as to reach their destination in good, non-damaged condition, and must (unless otherwise directed by S+N) be delivered by Supplier to the point of delivery specified in the Order, carriage or freight to such point of delivery paid, in accordance with S+N's instructions. Unless otherwise stated in the Order, Supplier is responsible for obtaining all export and import licenses for the Products and is responsible for any delays due to such licenses not being available when required.

**5. Time for delivery**

Subject to manufacturing lead times, if any, agreed upon by S+N and Supplier in writing, Supplier must comply with the timescale specified by S+N in the Order. If no timescale is specified, then delivery must be within a reasonable period not exceeding seven (7) days following the Order. TIME FOR DELIVERY WILL BE OF THE ESSENCE. Without prejudice to any other remedy which S+N may have, failure by Supplier to adhere to any provision as to time contained in the Order will entitle S+N at its option to treat the Order as repudiated in whole or in part and to cancel such Order upon written notice to Supplier.

**6. Risk and Title**

Unless otherwise stated in the Order, risk in the Products purchased is to pass to S+N upon completion of delivery in accordance with the Delivery section hereof, and title to the Products (or any part of them) is to pass to S+N on the earlier of completion of delivery or the time of payment being made for them. Except as otherwise agreed to by S+N in writing, Supplier is to be responsible for transport and unloading costs and insurance of Products to their full value against all risk of damage or loss prior to completion of delivery. Supplier represents and warrants that good and marketable title to the

Products will pass to S+N pursuant to the foregoing, free and clear of all liens and encumbrances.

#### **7. Inspection**

At any time prior to delivery of the Products or completion of the performance of the Services, S+N will have the right to inspect and test the Products (whether or not the Products are complete or are still in the process of manufacture) or, as the case may be, any Services are being performed. S+N will have the right to do so at any reasonable time either at Supplier's work site or at the work site of any sub-contractor.

#### **8. Insurance**

At all times while Supplier is providing Products and/or related services to S+N, Supplier will obtain and maintain, at its sole cost and expense, the following types of insurance when required: (1) Commercial General Liability insurance, including liability for bodily injury, property damage, wrongful death, and any pertaining contractual indemnity obligation imposed; the insurance will be in an amount that is required by operation of law and reasonable and customary in the industry for companies of comparable size and activity and (2) Commercial Automobile insurance, with coverage for all Owned, Hired and Non-Owned vehicles used in the conduct of business with S+N; and (3) Workers Compensation and Employers Liability with limits to meet the statutory limits in each state where work is being done. If the Supplier is a sole proprietor or a partnership where there are no employees and no sub-contractors or independent contractors are retained, then S+N can waive the requirement for Workers Compensation and Employers liability in exchange for agreement by Supplier that all principals waive all rights to claim to be statutory employees of S+N.

#### **9. Intellectual property**

All designs, inventions, patents, know how, new technology, improvements and all similar matters made, designed or developed by Supplier specifically in connection with the Order will be the sole property of S+N and Supplier must procure at no charge to S+N the execution of any and all papers necessary to perfect ownership by S+N. All material, drawings, samples, specifications and other technical data prepared or provided by S+N in connection with the Order, and all

tooling, fixtures, gauges or other fixed assets will be at all times remain the property of S+N which S+N is entitled to use, reproduce, assign, transfer, and dispose of at any time for any purpose whatsoever. Supplier must not use any such data or fixed assets except in order to perform Orders for S+N.

#### **10. Cancellation**

Without prejudice to any other right available to it, S+N will be entitled to cancel an Order, in whole or in part, at any time by giving written notice to Supplier whereupon all work under the Order (or the cancelled part) will be discontinued and S+N will pay to Supplier such proportion of the Order price as may be fair and reasonable having regard to the Products previously delivered and the value of Services performed under the Order. On such payment no further sum or sums will be due by way of damages, loss of profits or otherwise from S+N to Supplier by reason of such cancellation. In the event of S+N's cancellation hereunder, Supplier will immediately, but in no event later than thirty (30) days from the effective date of cancellation, refund to S+N any amounts paid but unearned for Products or Services provided hereunder

#### **11. Confidentiality**

During the course of its performance hereunder, Supplier may have access to proprietary business information and to trade secrets of S+N including, but not limited to, process and/or product specifications, material compositions, and customer lists ("Confidential Information"). Supplier will use the Confidential Information solely to perform pursuant to the Order and will not disclose or use any such Confidential Information, directly or indirectly, for any other purpose. Supplier further agrees to take all steps necessary or advisable to preserve and protect such Confidential Information. Except to the extent required by law, Supplier will make no reference, advertisement, or promotion regarding S+N, including, without limitation, displaying Products incorporating or manufactured using S+N's Confidential Information as part of a display or tradeshow demonstration, without the prior written consent of S+N. Supplier agrees that a breach of this obligation of confidentiality will give S+N the right to seek and obtain

preliminary and permanent injunctive relief, in addition to monetary damages

#### **12. Indemnity and Limitation of Liabilities**

Supplier will indemnify S+N, its parent, its subsidiaries and affiliates, and their respective officers, directors, shareholders, members, and employees (collectively, "S+N Indemnitees"), in full against losses, whether direct or indirect (and including, without limitation, legal and other professional fees and expenses) awarded against or incurred or paid by S+N or any other S+N Indemnitee as a result of or in connection with: (a) any breach of the terms of the Order or these terms and conditions by Supplier; (b) any infringement, alleged infringement, or misappropriation of any intellectual property rights caused by the use, manufacture or sale of the Products (except where the Products have been manufactured in accordance with complete Product specifications or designs supplied solely by S+N); (c) any defect or failure in any Product or the negligent performance or any failure in performance by Supplier; or (d) any claims arising out of any error or omission in drawings, calculations, packing details or other particulars provided by Supplier. IN NO EVENT WILL S+N BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, ANY ORDER, WHETHER OR NOT S+N WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

#### **13. Compliance**

Each party shall conduct its business and affairs in an ethical manner and consistent with the provisions of Smith + Nephew's Code of Conduct and Business Principles (available at <http://www.smith-nephew.com/compliance/code-ofconduct-and-business-principles/>) and shall comply with all applicable laws, regulations, and industry codes.

#### **14. Applicable law and dispute resolution**

This Agreement shall be governed by the laws of the Estate where the service is rendered. Parties will recognize a 90 days period of resolution to amicably resolved differences related to interpretation of clauses or pending actions notified by the counterpart that may be solved under 90 days term, in all other cases courts of law will define the corresponding process. All controversies, differences, disputes or claims arising out of this Agreement, or the business and subject matter to which this Agreement relates, its execution, non-

compliance, liquidation, interpretation or validity shall be subject in first instance to conciliation in accordance with the national substantive legislation expressly stipulated by the parties and the procedure foreseen in the regulations of the local judicial courts, to which the parties willingly and unconditionally submit to.