

**1. Definitions.** The following definitions apply:

**1.1. Buyer:** The person, firm or company who purchases Goods from C5.

**1.2. C5:** C5 Medical Werks Inc.

**1.3. Contract:** Any contract between C5 and Buyer for the sale and purchase of the Goods.

**1.4. Goods:** Any goods or products agreed in the Contract to be supplied to Buyer by C5 (including any part or parts of them). Under no circumstances shall the Goods provided by C5 be considered finished medical devices.

**1.5. Order:** An order, subject to these terms and conditions, placed by Buyer for the Goods, which shall form a Contract on acceptance by C5.

**1.6. Quotation:** A quotation issued by C5 for the sale of Goods subject to these terms and conditions.

**1.7. Specifications:** The dimensional, mechanical, procedural, and chemical description of the Goods purchased hereunder. Specifications shall not mean any work performed by C5 under this Contract including, without limitation, providing representations, suggestions or any other work relating to the nature, design, manufacture or other aspects of Buyer's Goods. Any incorporation by Buyer of C5's representations, suggestions, or any other work shall be solely and exclusively at Buyer's discretion, and if so incorporated shall be at Buyer's sole risk.

## 2. Application of Terms.

**2.1.** Subject to any variation under Section 2.2, the Contract shall be on these conditions to the exclusion and express rejection of all other terms and conditions of Buyer.

**2.2.** These conditions apply to all C5's sales. Notice is hereby given that any change, modification, or other variation to these conditions or representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorized representative of C5. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of C5 which is not set out in this Contract.

**2.3.** No Order placed by Buyer shall be deemed accepted by C5 until a written acknowledgement of the Order is issued by C5 or C5 delivers the Goods to Buyer.

**2.4.** Buyer shall ensure that the terms of its Order are complete and accurate.

**2.5.** C5 shall not develop any Specifications for Buyer's Order. Buyer may make changes to the Specifications, at any time upon reasonable advance notice to C5. If such changes result in delay or additional expense to C5, unusable raw materials, WIP or finished goods, or in the obsolescence of any Goods or materials, C5 reserves the right to make an equitable adjustment of price and delivery schedule.

**2.6.** Buyer shall ensure that its Specifications are complete and accurate and do not infringe upon any third party rights.

**2.7.** Any Quotation is valid for a period of thirty (30) days only from its date, provided that C5 has not previously withdrawn it.

## 3. Price.

C5 reserves the right during execution of this Contract to amend its prices if increases in raw materials, wages or the cost of production of the goods increase significantly as determined solely by C5. Such price increase shall become effective thirty (30) days after C5 provides Buyer with written notice, containing supporting documentation, of such price increase.

## 4. Payments.

Buyer agrees to pay C5 the prices set forth in this Contract. Payment terms are thirty (30) days from the date of invoice, unless otherwise agreed to in writing.

**4.1.** All orders are subject to C5 management approval and periodic review of credit and payment terms, which may be modified by C5 on reasonable notice for good cause.

**4.2.** A late payment charge of one and one-half percent (1½ %) per month (annual rate of 18%) will be added to past due accounts. Buyer shall pay all reasonable attorneys' fees, collection costs and other expenses incurred by C5 for collection of past due invoices.

**4.3.** When Wire or ACH Remittance is required or necessary, remittance shall be made as follows:

Domestic Wires:

Bank: UMB Bank

C5 Medical Werks, Inc., Account # 6971178535

ACH routing # 107001067

Wire routing ABA# 101000695

International Wires:

Bank: UMB Bank

C5 Medical Werks, Inc., Account # 6971178535

Routing ABA# 101000695

Swift Code Address UMKCUS44.

**4.4.** When Check Remittance is required or necessary, checks should be sent to:

C5 Medical Werks, Inc.

Attn: Accounts Receivable

2451 River Road

Grand Junction, CO 81505

## 5. Delivery/Shipping/Carrier.

**5.1.** Unless otherwise expressly agreed in writing, delivery shall be effective F.C.A, C5's dock site.

**5.2.** C5 reserves the right to over or under ship by ten percent (10%) of the ordered quantity for any given shipment, until the Contract is complete, and bill Buyer for the amount actually shipped. Nothing herein shall relieve either party from fulfill the obligations set forth herein.

**5.3.** Unless otherwise agreed by the Parties, Buyer shall bear all shipping costs. If C5 agrees to pre-pay freight and add the prepaid freight charged to the

total costs of Buyer's Order, then Buyer agrees to pay an administrative handling fee for each such shipment.

**5.4.** In the event that Buyer designates a specific carrier, C5 will attempt to use that carrier. However, C5 may select an alternative carrier to transport the Goods if, in C5's sole and exclusive discretion, it determines use of an alternative carrier is necessary to satisfy delivery requirements. Buyer shall inspect shipments for freight damages at the time of delivery and shall immediately notify carrier of freight damage, file a claim directly with the carrier, and notify C5 of the damage. C5 is not liable for freight damage or for losses incurred by Buyer as a result of freight damage or delays.

**5.5.** Unless otherwise stated in the Contract, all Goods ordered hereunder shall be deliverable within twelve (12) months of the date of this Contract. In the instance that Buyer purchases a quantity of Goods less than the ordered quantity, Buyer shall pay for the shipped quantity at the recalculated unit price based upon such shipped quantity, and the balance of this Contract shall be cancelled.

**5.6.** Buyer initiated changes in delivery schedule must be agreed to in writing in advance by C5 and will incur the following MINIMUM fees (expressed as a percentage of the rescheduled shipment's value): Within the same shipping month = 0%, 1 – 3 months = 2% per month, 3 – 6 months = 3% per month. Rescheduling requests exceeding six (6) months or requests to place an Order on indefinite "HOLD" will be treated by C5 as a termination under Section 19 without prejudice to any other rights C5 may have under this Contract.

## 6. Risk of Loss/Title.

Title to Goods shall vest in Buyer when Goods have been delivered. C5 shall bear risk of loss until title passes to Buyer.

## 7. Acceptance Testing.

**7.1.** Upon delivery of the Goods, Buyer shall have thirty (30) days to conduct acceptance testing of the Goods to determine whether the Goods conform to Specifications and operate in accordance with the Specifications for the Goods ("Acceptance Test Period").

**7.2.** On or before the end of the Acceptance Test Period, Buyer shall notify C5 in writing of Buyer's acceptance or rejection of the Goods. If Buyer fails to provide notification of acceptance or rejection within the Acceptance Test Period, the Buyer shall be deemed to have accepted the Goods.

**7.3.** If Buyer rejects the Goods due to non-conformance, then Buyer's exclusive remedies shall be as set forth in Section 9 ("Warranty") below.

## 8. Representations.

**8.1.** Buyer hereby represents and warrants that the Goods purchased hereunder shall not be considered finished medical devices. Buyer agrees it shall not use the Goods as a finished medical device without C5's prior written approval signed by an authorized representative.

**8.2.** Buyer expressly warrants that it shall not introduce the Goods in clinical trials or similar testing without C5's prior written approval signed by an authorized representative.

## **9. Warranty and Remedies.**

**9.1.** C5 warrants that the Goods provided under this Contract: (a) are free from defects in material and workmanship (but not design); and (b) comply with the Buyer's Specifications as described in this Contract. These are C5's **SOLE WARRANTIES** with respect to the Goods provided under this Contract. **C5 MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED WITH REGARD TO THE GOODS OR OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER. C5 EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**9.2.** C5's warranties shall commence upon the delivery of the Goods and shall continue thereafter until the earlier of: (a) the introduction of the Goods into any assembly process or other process whereby the Goods are integrated into a separate product; (b) Goods are shipped to Buyer's customer; or (c) thirty (30) days after acceptance of the Goods. These warranties do not cover damage to Goods caused by abuse, misuse, accident or neglect of Buyer or its agents.

**9.2.** If Specifications are not met, C5 will, at its option, repair or replace the Goods or services or refund the purchase price by crediting Buyer's account. C5's exercise of one of these options shall not prejudice its exercise of other options in other circumstances. Goods may not be returned to C5 without first obtaining a Returned Goods Authorization Number. The return to C5 of any nonconforming Goods and delivery of any corrected or replaced Goods shall be at C5's expense unless, after inspection by C5, C5 determines, at its discretion, that the returned Goods are conforming to Buyer's Specifications. Buyer shall retain title to returned Goods until C5 verifies the Goods do not meet Specifications. The purpose of the express exclusive warranty remedies is to provide Buyer with replacement, exchange or refund for defective Goods. The exclusive remedies will not be deemed to have failed of their essential purpose as long as C5 is willing and able to replace, exchange, or refund such defective Goods. **IN NO EVENT SHALL C5 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.**

## **10. Limitations of Liability.**

C5 shall not be liable for special, indirect, consequential or incidental losses or damages of any kind or nature whatsoever, including but not limited to lost profits, lost records or data, lost savings, loss of use of facility or equipment, loss by reason of facility shut-down or non-operations or increased expense of operations, or other costs, charges, penalties, or liquidated damages, regardless of whether arising from breach of contract, warranty, tort, strict liability or otherwise, even if advised of the possibility of such loss or damage or if such loss or damage could have been reasonably foreseen.

## **11. Indemnity.**

Buyer shall indemnify and hold harmless C5, its owners, parents, affiliates, subsidiaries, agents, directors and employees from any liabilities, including, but not limited to, attorney fees and costs incurred by C5 with respect thereto, arising from and in connection with:

### **11.1. Providing and/or using Goods;**

**11.2.** The acts or omissions of Buyer, its agents and employees and others under its direction or control except to the extent such liabilities are caused by or are the result of the gross negligence or willful misconduct of C5;

**11.3.** Any damage or liability claimed by a third party, arising from the Goods which alone or as a component in an assembly, are alleged to have caused any type of injury or damage;

## **12. Intellectual Property, Indemnification.**

**12.1.** It is clearly understood that C5 is not providing Specifications related to the Goods sold hereunder.

**12.2.** Except for Specifications, all information developed by C5 relating to the manufacture of the Goods shall belong exclusively to C5. Buyer agrees that all such information and derivative works developed and/or discovered by C5 shall remain/become the property of C5. Buyer agrees to cooperate with the execution of any documentation required to effectuate the protection, copyrighting, and/or patenting of such works.

**12.3.** Buyer shall indemnify and hold harmless C5, its owners, parents, affiliates, subsidiaries, agents, directors and employees from and against all liabilities, including, but not limited to, attorneys' fees and costs incurred by C5 with respect thereto, that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to Good(s), Specifications, and/or the use thereof. Buyer will defend and/or settle at its own expense any action brought against C5 to the extent that it is based on a claim that Good(s), Specifications, and/or the use thereof, infringe any patent, trademark, copyright, trade secret or other proprietary right.

## **13. Confidentiality/Protection of Buyer's Rights.**

**13.1.** Each party agrees that they shall maintain all materials and information of the other party with a level of care no less than such care as it uses in maintaining the confidentiality of its own information, but in no case less than a reasonable degree of care. Each party shall use such materials and information of the other party only to the extent, for the purpose and in the course of performing its obligations under this Contract. Either party has the right, upon written request to the other party to have any materials and information it disclosed under this Contract returned or destroyed.

**13.2.** Nothing herein shall be construed as granting to either party any right or license under any

copyrights, inventions, or patents now or hereafter owned or controlled by the other party.

**13.3.** The parties understand and agree that any use or dissemination of information in violation of this Contract shall cause irreparable harm, will leave the non-disclosing party with no adequate remedy at law, and shall entitle such party to injunctive relief.

## **14. Insurance.**

**14.1.** Buyer will, at its expense, procure and maintain insurance on all of its operations, including the policies listed below. Buyer shall name C5 as an additional insured on policies required under this Contract and will furnish C5 with Certificates of Insurance as requested.

**14.1.1.** Workers' Compensation Insurance in the statutory amount.

**14.1.2.** \$1,000,000 per occurrence Employer's Liability Insurance.

**14.1.3.** \$10,000,000 per occurrence Commercial General Liability Insurance and/or Medical Products Liability Insurance, including coverage for property damage and personal injury.

**14.1.4.** If Buyer is unable to obtain general liability and/or products liability policies on an occurrence basis and/or Buyer ceases manufacture of the Good(s), then Buyer shall, for the life of the Good(s), maintain in effect the then current general liability and/or products liability policies with respect to claims arising from the Good(s). If such insurance coverage cannot be maintained, Buyer shall obtain and maintain the most advantageous policies of general liability and/or products liability obtainable.

**14.1.5.** Buyer shall indemnify C5 in the event it fails to obtain and maintain the levels of insurance required herein.

## **15. Assignment and Subcontracting.**

**15.1.** C5 reserves the right to assign any of its rights or obligations hereunder. Buyer shall not assign any of its rights or obligations hereunder without C5's written consent.

**15.2.** C5 expressly reserves the right to subcontract all or part of its obligations under this Contract without the consent of Buyer; provided however any such subcontracting shall be made in accordance with C5's then current quality management system.

## **16. Force Majeure.**

Neither party shall be liable for failure to perform when such failure is caused by unforeseeable force majeure circumstances including, by fire, flood, earthquake, heavy snowfall, strikes, inevitable accident, war, riots, civil commotion, any governmental procedure, laws, order or regulations embargoes, blockades, or any other cause beyond the reasonable control of such party. The party experiencing the force majeure circumstances shall inform the other party of such cause and cooperate with and assist the injured party in all reasonable ways to minimize the impact of such circumstances on the injured party.

**17. Buyer Supplied Items and Material.**

**17.1.** Buyer may supply C5 with items to be incorporated into the Goods sold hereunder. C5 shall use reasonable measures to protect and preserve items provided by Buyer and will only be liable for replacement of such items if lost, destroyed or rendered useless due to C5's gross negligence. Unless otherwise agreed to by the parties, any items of personal property directly supplied by Buyer to C5 related to this Contract will be returned to Buyer upon expiration of this Contract, as received, less normal wear and tear. Buyer warrants that any items provided hereunder comply with all applicable federal, state and local laws and regulations.

**18. Compliance with Laws.**

**18.1.** Buyer hereby represents and warrants that it has, currently is and for the duration of this Contract will, operate its business in compliance with all applicable laws, and regulations, including, but not limited to, applicable requirements under the United States Food, Drug, and Cosmetic Act of 1938, as amended 21 U.S.C. 321, et seq; the Medical Device Amendments of 1976, Pub. L. No. 94-295; the Safe Medical Devices Act of 1990 Pub. L. No. 101-629; the Medical Device Amendments of 1992, Pub. L. No. 102-300; and the Food and Drug Administration Modernization Act of 1997, Pub. L. No. 105-115. Buyer shall indemnify and hold harmless C5, its owners, parents, affiliates, subsidiaries, agents, directors and employees from and against all liabilities, including but not limited to attorney fees and costs incurred by C5 with respect thereto, that may be sustained by reason of Buyer's failure to comply with the aforementioned federal, state, county, and local laws, ordinances, regulations and codes.

**18.1.1.** Buyer represents that it is knowledgeable of the Biomaterials Assurance Act of 1998 (21 U.S.C. §1601-1606).

**18.1.2.** Buyer represents and agrees that C5, in providing Goods and services pursuant to this Contract, is acting solely in the capacity of a "biomaterials' supplier" as defined in the BAA.

**18.1.3.** Buyer represents and agrees that under the terms of this Contract, it is acting in the capacity of a manufacturer" as defined in the BAA.

**18.1.4.** Buyer represents and warrants that it will not take any action nor instruct or request C5 to take any action that would jeopardize C5's status as a "biomaterials' supplier."

**18.1.5.** Products and services offered by C5 under this Contract are offered with the expressed consideration that Buyer warrant any export or use shall comply with all applicable foreign, U.S. federal, state, or local laws, ordinances, rules, orders, and regulations, including without limitation U.S. export control laws and any regulations and/or orders thereof.

**19. Termination.**

**19.1.** The rights and obligations created herein shall be subject to termination only in accordance with the termination provisions contained herein.

**19.2.** Should either party materially breach any term or condition of this Contract, then the non-breaching party shall provide written notification to the breaching party of such failure. If the breaching party fails to cure the breach or provide a reasonable plan to cure the breach within thirty (30) days the non-breaching party shall have the right to immediately terminate this Contract.

**19.3.** Without prejudice to any other remedy for breach of this Contract, upon termination of this Contract, neither party shall be released from the payment of any sum then owed to the other party, which sum shall become immediately due and payable.

**19.4.** Upon Contract termination C5 will immediately stop work on any Order(s). Buyer shall pay to C5 the price for all Goods or services which have been completed in accordance with this Contract not previously paid for, work in progress and raw materials, unless C5 can sell or otherwise use such raw materials.

**19.5.** C5 has the right to terminate this Contract, after giving Buyer three (3) days written notice of such termination, in the event a Buyer makes, or it reasonably appears it shall make, an assignment for the benefit of creditors, is subject to any voluntary or involuntary provincial or federal receivership, insolvency or bankruptcy proceedings, becomes unable, or admits in writing its inability, to meet its obligations as they mature, fails to give adequate assurances of its ability to perform, or are dissolved or liquidated.

**20. General Provisions.**

**20.1.** The provisions of this Contract that, by their sense and context, are intended to survive performance by either or both parties shall also survive the completion, expiration, termination or cancellation of this Contract or any Order(s).

**20.2.** The relationship of the parties established under this Contract is that of independent contractors and neither party is a partner, employee, agent or joint venture of or with the other and nothing in this Contract shall preclude C5 from contracting to provide similar goods or services for others.

**20.3.** Except for tooling provided directly by Buyer to C5, all tooling C5 requires to perform its obligations under this Contract including any tooling procured specifically to perform the work under this Contract shall remain the property of and in the custody of C5 and Buyer shall have no ownership rights therein unless otherwise agreed to in writing signed by an authorized representative of C5.

**20.4.** C5 shall have a lien for any amounts owned by Buyer to C5 attaching to all of Buyer provided tooling, molds or other property designed, manufactured, fabricated or otherwise used by C5.

**20.5.** All claims for money due or to become due from C5 shall be subject to deduction or setoff by C5 by reason of any counterclaim arising out of this or any other transaction with Buyer.

**20.6.** C5's waiver of any right under this Contract shall not constitute a waiver of such right or any other right on any other occasion. In the event any provision of this Contract is determined to be invalid, such invalidity shall not affect the validity of remaining portions of this Contract, and the parties shall substitute for the invalid provision in a provision that mostly closely approximates the intent and economic effect of the invalid provision.

**20.7.** The parties agree that this Contract or any Order shall be modified only by further written agreement by the parties. The above terms and conditions of this Contract, together with those set forth or referred to on the face of this form as accepted by C5 in writing, constitute the entire agreement for sale. This Contract supersedes all prior oral and written communications between the parties to this agreement.

**20.8.** C5 and Buyer, while on the premises of the other, shall comply with all plant rules and regulations, including, where required by governmental regulation, submission of satisfactory clearance from the appropriate government authorities.

**20.9.** The laws of the State of Colorado shall govern this Contract, notwithstanding conflict of laws. If an arbitrator or court determines that terms and conditions in addition to those contained in this offer should be included in interpreting the agreement between the parties, then notwithstanding any contrary Colorado law, the parties agree that any different terms and conditions shall be interpreted under Article 2 of the Uniform Commercial Code, section 2-207(2).

**20.10.** The Federal and State court in the State of Colorado shall have exclusive jurisdiction over all disputes and controversies arising out of this Contract or any Order. Venue shall be proper in Denver, Colorado.

**20.11.** Buyer is responsible for the payment of all taxes associated with the goods and services provided hereunder, including without limitation, sales, use, rental, personal property and any other taxes.