

HELIX MEDICAL, LLC TERMS AND CONDITIONS OF SALE - FINISHED GOODS

1. Offer and Acceptance. The sale of products and services ("Products") by Helix Medical, LLC ("Seller") to the purchaser ("Purchaser") are exclusively governed by the terms and conditions herein, together with Seller's order specific terms agreed to in writing by the parties relating to Product prices, quantity, specifications, delivery schedules and locations (collectively referred to as "this Contract"). Issuance of a purchase order or acceptance of the Products by Purchaser constitutes acceptance of the terms and conditions of this Contract. Any additional or different terms or modifications to this Contract proposed by Purchaser, whether in a purchase order or otherwise, are expressly rejected by Seller and are not part of this Contract.

2. Price. Prices in a quotation are valid for thirty (30) days from date of quotation. Except where otherwise prohibited by law, all applicable sales, excise, use or similar taxes or charges for the sale of Products will be in addition to the stated price and paid by Purchaser. Seller reserves the right to increase any price in the event of increased costs beyond Seller's reasonable control including, without limitation: (a) raw material costs; (b) modifications to specifications or Product acceptance criteria requested by Purchaser; or (c) price of goods manufactured by others and re-sold by Seller.

3. Payment. Purchaser agrees to pay in U.S. Dollars, without offset, all invoiced amounts within thirty (30) days from date of Seller's invoice. Overdue payments shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law. Seller shall have the right, among other remedies, including the right of setoff, either to terminate this Contract or to suspend further deliveries under this Contract and/or other agreements with Purchaser in the event Purchaser fails to make any payment when due. Purchaser shall be liable for all expenses related to collection of past due amounts, including attorneys' fees. Seller may require full or partial payment in advance of shipment or change credit or payment terms if, in Seller's opinion, the credit or financial condition of Purchaser is, or is about to become, impaired. If Purchaser requests delayed shipment, Seller may bill for Products when ready for shipment and charge reasonable daily storage fees. Seller retains a security interest in Products, equipment and tooling until payment, and Purchaser will execute any paperwork required by Seller to perfect any such security interest.

4. Shipping and Delivery. Seller will use reasonable efforts to perform and deliver the Products on time, but will not be liable for any expenses or damages incurred as a result of late delivery. If Purchaser does not provide routing instructions, Seller will decide the method for routing shipment. All sales of Products are delivered F.O.B. Seller's plant or Ex Works (Incoterms 2000) with respect to sales to international locations. All shipping and insurance expenses and risk of loss are assumed by Purchaser. Seller reserves the right to ship and Purchaser agrees to accept an underrun or overrun of any quantity up to and including 10% of the quantity ordered by Purchaser. If Seller is unable to meet Purchaser's delivery requirements, subject to Section 18 herein, Purchaser may cancel the affected order and/or this Contract, and such cancellation will be Purchaser's sole remedy.

5. Rejections and Returns. Purchaser will be deemed to have inspected and accepted all delivered Products unless written notice of rejection, specifying the basis therefor in reasonable detail, is provided to Seller within thirty (30) days after delivery. Purchaser may return non-conforming Products, or request the return of Products otherwise, but in any case may not return any Product without Seller's prior written approval in the form of Seller's Return Material Authorization ("RMA") which must include lot numbers, quantities, catalog numbers and the specific reason for return. Seller's Customer Service will then either authorize or deny the request for return. Only Products listed on the approved RMA are acceptable for return, and no credit will be due Purchaser if Products are returned without an RMA. The return of Products must be shipped freight prepaid to the Seller's location provided on the RMA. All returns if approved for return at Seller's discretion are subject to a 25% handling/restocking charge except for Products shipped due to Seller's error. For authorized Product returns, a credit will be issued to Purchaser at the net purchase price of the Product, further provided that: (a) returned Products must have at least a one (1) year shelf life remaining, or Products with original expiration dating of eighteen (18) months or less have at least six (6) months shelf-life remaining; (b) an approved RMA has been obtained prior to return of Products; (c) Products are in their original packaging and Purchaser has not changed, adulterated, obscured, removed or defaced trademarks, trade names or labels appearing on any Product; (d) Products are current inventory items; and (e) Products have been shipped and billed by Seller to Purchaser and Purchaser has paid for said Products. The following Products are not eligible for return: (1) Products that have deteriorated due to improper handling, storage, abuse or other factors; (2) Products which have been opened, partly used or which the labels or seals have been removed or tampered; (3) Products that have been purchased in a special promotion; (4) broken, damaged or opened cases; (5) resealed cartons; and (6) custom or special Products made to Purchaser's specifications.

6. Limited Warranty. Seller warrants to Purchaser that: (a) the Products will be free from defects in workmanship and material, and will conform to Seller's specifications and/or Seller's statements of work, or those specifications provided by Purchaser and agreed to by Seller; and (b) Seller will transfer to Purchaser ownership and good title to Products delivered, free of all liens and encumbrances. These warranties will continue for thirty (30) days from the date of delivery of the Products. THE WARRANTIES AND ANY ASSOCIATED REMEDIES SET OUT OR REFERENCED HEREIN ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY SELLER OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW SELLER DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF NON-INFRINGEMENT.

7. Limited Remedy. Any warranty claims by Purchaser shall be provided to Seller in writing. Failure by Purchaser to give written notice of claim within the warranty period shall be deemed an absolute and unconditional waiver of Purchaser's warranty claim. Purchaser's sole and exclusive remedy for a valid warranty claim is either replacement of the Product or a full refund of the price paid by Purchaser for the Product. This remedy does not include the cost of installation, removal, dismantling, or reinstallation. Purchaser will provide Seller with access to all available warranty data and field returned Products. Purchaser will also provide Seller with an opportunity to participate in root cause analysis performed by Purchaser concerning the Products. Seller shall have no liability to the extent Products are or have been: (a) modified by Purchaser or a third party; (b) modified by Seller at Purchaser's request; (c) made to specifications not provided by Seller; (d) used or installed in a way not known to Seller or operated under conditions not known to Seller; or (e) subject to misuse, abuse or improper storage, installation or maintenance. Products replaced during the warranty period shall be under warranty for thirty (30) days.

8. Indemnity and Limitation of Liability. Each party as an "Indemnitor" respectively as the case may be, will defend or settle at its sole expense, any third party product liability "Claim" (including demands or suits) made against the other party ("Indemnitee") as it concerns damage to tangible property, bodily injury and/or death to the extent caused by the Indemnitor's defective design (if design is warranted) or manufacture of products (including, as the case may be, Product made by Seller), or provision of services, or its negligent acts, omissions or willful misconduct, or "duty to warn" to the extent such duty may exist. Indemnitee will provide prompt written notice of the Claim, all requested information about the Claim, reasonable cooperation and assistance, and sole authority to defend or settle any Claim. Indemnitor will keep Indemnitee informed of the progress of the Claim and will confer with Indemnitee on strategies for the defense and settlement of the Claim as may be appropriate. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR BREACH OF OBLIGATIONS OF CONFIDENTIALITY, MISAPPROPRIATION OF INTELLECTUAL PROPERTY, OR LOSS OF SELLER'S ANTICIPATED PROFITS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE OBLIGATIONS UNDER THIS CONTRACT. THE TERM "CONSEQUENTIAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL. EXCEPT FOR PERSONAL INJURY OR DEATH DUE TO SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL DAMAGES THAT CAN BE AWARDED IN ANY CLAIM BY PURCHASER RELATING TO SELLER'S OBLIGATIONS UNDER THIS CONTRACT (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE COMBINED TOTAL OF AMOUNTS PAID BY PURCHASER TO SELLER UNDER THIS CONTRACT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE PARTIES EXPRESSLY AGREE THAT THE ABOVE LIMITATIONS ON LIABILITY PROVISION SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IF IT IS FOUND THAT PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9. Recall. In the event Seller conducts a voluntary or government-mandated recall, field correction, market withdrawal, stock recovery, or other similar action with respect to the Products ("Recall"), Seller and Purchaser will consult with each other without delay, however the final decision for handling any Recall shall rest with Seller. Purchaser will immediately (i.e., within 24 hours or less) notify Seller if Purchaser learns that a potential Recall implicates the Products, and if a complaint alleges that a death or serious deterioration in the state of health has occurred. In other cases Purchaser will notify Seller of complaints within two (2) calendar days without any delay that could not be justified. Purchaser will provide all reasonable assistance requested by the Seller in the conduct of a Recall, and will: (a) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall; (b) provide Seller a reasonable opportunity to participate in inquiries and discussions among Purchaser, its customer and governmental agencies regarding the need for and scope of the Recall; and (c) consult with Seller about the most cost-effective method of modifying or replacing systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance. Seller shall be solely responsible for notifying governmental or regulatory authorities regarding any such matters, and Purchaser will cooperate with Seller in reporting any requirements or other follow-up activities (including but not limited to, corrective action) relating thereto. Each party will designate a representative responsible for the exchange of such information and for all other regulatory information. In the event of a Recall, Purchaser will not make any statement to the press or public concerning the Recall without first notifying Seller and obtaining Seller's prior approval of any such statement. If a Recall arises from any other reason, including Purchaser's products, acts or omissions in the marketing, distribution, storage, or handling of the Product, the costs and responsibilities of the Recall will be borne by the Purchaser. The parties will maintain records of all sales of Product sufficient to adequately administer a Recall for the period required by applicable law.

10. Patent Infringement. Seller will defend or settle, at its sole expense, any third party claim, demand or suit against Purchaser alleging that the use of any Product designed and made by Seller, infringes a U.S. patent, copyright, trade secret or other intellectual property right ("IP Claim(s)"); provided: (a) the alleged infringement does not arise from Seller's compliance with specifications or designs furnished by Purchaser; (b) Seller receives prompt written notice of such IP Claim and exclusive control over its defense and/or settlement; and (c) Purchaser provides Seller with all information available to Purchaser for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability under this Section 10 if and to the extent that an IP Claim is based on: (1) a Product modification made by Purchaser or a third party, or made by Seller at Purchaser's request; (2) use or interconnection by Purchaser of the Product in combination with other products not made or sourced by Seller; or (3) Products made to design or specifications not provided by Seller. Except for third party IP Claims above, and subject to the limitations set out in Section 8 above, Seller's exclusive obligation to Purchaser as to Products declared to infringe, and Seller's right as to Products which Seller believes are likely to infringe, is the

acquisition of a license, or the replacement of Products with non-infringing goods, or the modification of the Products so that they are non-infringing. If Seller determines that none of the foregoing alternatives are reasonably available, Seller will issue a refund equal to the purchase price for the affected Products if within one year of delivery or the Purchaser's net book value of the affected Product at the time of the refund. Regarding Purchaser's products made by or utilizing the designs of Purchaser, or products combined or interconnected with Products furnished under this Contract, Purchaser will defend and settle at its sole expense, any third party claim, demand or suit against Seller alleging any of such products infringes a patent, copyright, trade secret or other intellectual property right, provided: (i) the alleged infringement does not arise from Purchaser's compliance with specifications or designs furnished by Seller; (ii) Purchaser receives prompt written notice of such claim, demand or suit and exclusive control over its defense and/or settlement; and (iii) Seller provides Purchaser with all information available to Seller for the defense and cooperates with Purchaser in the defense, and does not take a position adverse to Purchaser. THIS SECTION 10 STATES THE ENTIRE LIABILITY OF SELLER AND PURCHASER'S LIMITED REMEDIES AS TO IP CLAIMS.

11. Ownership of Proprietary Materials. Seller will have and retain all intellectual property rights in all Products, tooling and associated materials, furnished by Seller in connection with or pursuant to this Contract, including, without limitation, patents, utility models, design rights (and any pending applications), trademarks, copyrights, technical, business, economic or know-how information, trade secrets, confidential proprietary information, inventions, data, formulae, material compositions, drawings, specifications, prototypes, manufacturing processes, product pricing and any right related thereto (whether or not patentable) that is not generally available to the public ("Proprietary Materials"). No Proprietary Materials created by Seller in connection with or pursuant to this Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that Purchaser owns any rights in such Proprietary Materials, Purchaser hereby irrevocably assigns to Seller all rights, title and interest, including all intellectual property rights, in and to such Proprietary Materials.

12. Tooling. Tools purchased and fully paid for by Purchaser shall be the property of Purchaser and may be removed from Seller's premises upon reasonable notice after termination of this Contract, with the exception of tools containing Seller's Proprietary Materials. To the extent tools contain Proprietary Materials, such tools may not be removed from Seller's premises and must remain in the custody of Seller unless Seller's Proprietary Materials are removed from such tools or as otherwise mutually agreed to in writing. Tools partially paid for by Purchaser shall remain the property of Seller. Seller will at its expense maintain the tools in good condition, normal wear and tear excepted, however, Purchaser will be responsible for the cost of any capital expenditures related to the tools including improvements to extend the life of, or add value or capacity to the tools.

13. Technical Advice. Unless otherwise agreed mutually in writing, any technical advice furnished by Seller to Purchaser before or after delivery of the Products is provided "as is" on a good faith judgment basis, but without warranty of any kind, and is accepted at Purchaser's sole risk.

14. Compliance with Law. The parties will comply with all applicable federal, state, local and foreign laws, orders, rules, ordinances, including but not limited to U.S. Food and Drug Administration regulations. If Purchaser exports, re-exports, or imports Products, Purchaser assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations of any applicable jurisdiction or country.

15. Confidentiality. If the parties have entered into a Confidentiality or Non-Disclosure Agreement ("NDA"), the terms and conditions of the NDA shall apply and control for confidentiality obligations between the parties. In connection with this Contract, Purchaser may have access to Seller's confidential information, including, without limitation inventions, developments, know how, specifications, business plans, results of testing, systems, financial information, product information, methods of operation, manufacturing processes, customer information, supplier information and compilations of data ("Seller's Confidential Information"). Purchaser shall use Seller's Confidential Information only for the purposes contemplated under this Contract and shall not disclose it to third parties. Purchaser shall maintain the confidentiality of Seller's Confidential Information in the same manner, but in no event less than the manner, in which it protects its own confidential information. Purchaser is permitted to disclose Seller's Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and authorized subcontractors have written confidentiality obligations to Purchaser no less stringent than the confidentiality obligations under this Section. Upon termination of this Contract, Purchaser shall return Seller's Confidential Information and shall not use Seller's Confidential Information for its own, or any third party's, benefit. Purchaser's confidentiality obligations shall survive termination of this Contract for so long as Seller's Confidential Information remains confidential. Seller shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.

16. Contract Work. Purchaser and Seller are independent contractors and nothing in this Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

17. Termination by Seller. In addition to any other rights of Seller to terminate or suspend performance of this Contract, Seller may, upon written notice to Purchaser, immediately terminate all or any part of this Contract or suspend performance under this Contract, without any liability to Purchaser: (a) if Purchaser (1) repudiates, breaches, or threatens to breach any of the terms of this Contract, (2) fails to accept or threatens not to accept Products in accordance with this Contract, or (3) fails to make timely payment, or (b) upon the occurrence or threat of insolvency or bankruptcy of Purchaser. Upon termination of this Contract by Seller: (i) Seller shall be relieved of any further obligation to Purchaser; (ii) Purchaser shall be liable to Seller for the immediate payment of amounts then billed to date by Seller to Purchaser; (iii) Purchaser shall purchase and pay Seller immediately for all unique raw materials, work in process and finished goods under this Contract; (iv) Purchaser shall reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products; and (v) Purchaser shall immediately reimburse Seller for all preparation and other expenses incurred by Seller or its subcontractors in connection with this Contract and for all other losses or costs arising from termination.

18. Termination by Purchaser. If Seller fails to perform any material obligation under this Contract or delivers Product after an agreed upon delivery date, and, if the non-performance can be cured but Seller fails to cure the non-performance within thirty (30) business days after written notice from Purchaser, Purchaser may terminate this Contract without further obligation. Otherwise, upon giving written notice to Seller not less than ninety (90) days prior to shipment Purchaser may cancel any purchase order or scheduled delivery under this Contract, in which case: (a) Seller will be relieved of any further obligation to Purchaser; (b) Purchaser will pay all amounts then due; (c) Purchaser will purchase and pay Seller immediately for all unique raw materials, work in process and finished goods under this Contract; and (d) Purchaser shall reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products.

19. Force Majeure. Neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control.

20. Governing Law, Jurisdiction and Venue. This Contract will be governed by and construed in accordance with the laws of the State of Michigan without reference to the choice of law principles thereof. The Convention on Contracts for the International Sale of Goods is expressly excluded. Subject to the provisions of Dispute Resolution below, each party irrevocably submits to the jurisdiction of the Courts of the State of Michigan and the United States District Court for the Eastern District of Michigan and hereby waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action and proceeding.

21. Dispute Resolution. In the event of any dispute or disagreement between Seller and Purchaser arising out of or relating to this Contract or a Product ("Dispute"), such Dispute, upon the written request of Seller or Purchaser, shall be referred to the chief financial officers of each party or their respective designees. The chief financial officers or their respective designees shall promptly meet in good faith to resolve the Dispute and if they do not agree upon a resolution within thirty (30) calendar days after the reference of the Dispute to them, then such Dispute, upon written notice from one party to the other of its intent to arbitrate ("Arbitration Notice"), shall be submitted to and settled exclusively by final and binding arbitration in lieu of any judicial proceeding; provided, however, that nothing contained in this Section shall preclude any party from seeking or obtaining from a court of competent jurisdiction: (a) injunctive relief, or (b) equitable or other judicial relief to specifically enforce the provisions of this Contract or to preserve the status quo prior to the event(s) leading to the Dispute. Arbitration shall be conducted by the American Arbitration Association in Southfield, Michigan before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association existing at the date of submission of the Dispute to arbitration. Any arbitration award shall be binding and enforceable against Seller and Purchaser and judgment may be entered thereon in any court of competent jurisdiction. Notwithstanding the foregoing, any Dispute relating to or arising out of, in whole or in part, any breach of Purchaser's obligations of confidentiality hereunder or for the misuse or infringement of Seller's intellectual property rights by Purchaser shall not be subject to binding arbitration under this Contract.

22. Assignment, Waiver, Entire Agreement, Severability. Purchaser may not assign or delegate any of its rights or obligations under this Contract without prior written consent from Seller. Seller may terminate this Contract upon giving at least sixty (60) days written notice to Purchaser, without any liability to Purchaser, if there is a change of control of Purchaser. Seller may assign its rights and obligations under this Contract at any time, without Purchaser's prior written consent. The failure of either party to enforce any right or remedy provided in this Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. This Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of this Contract. This Contract may not be modified unless in writing and signed by authorized representatives of both parties. Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable.

23. Two Year Limitation. Neither party may bring a claim or action arising out of or related to this Contract, including any claim of fraud or misrepresentation, more than two (2) years after the cause of action accrues.