

TERMS AND CONDITIONS

1. ACCEPTANCE- K2M Inc. (hereinafter referred to as "Purchaser") shall not be bound by any terms and conditions not appearing herein and shipment by Seller of the material ordered shall constitute a waiver by Seller of any terms and conditions at variance with these Terms and Conditions.
2. CHANGES-No changes in or additions to this order or the terms thereof shall be binding upon Purchaser unless approved by Purchaser in writing. Purchaser may at any time make changes in the scope or quantity of the goods or services covered by this order or in other terms hereof, in which event an equitable adjustment will be made to any price, time of performance, and other provisions of this order if appropriate.
3. CHANGES-MATERIALS-Seller acknowledges that certain material(s) purchased hereunder may be incorporated into medical devices. Seller agrees to provide timely notice to Purchaser of any proposed change(s) to be made in the design and manufacturing of any such material(s) so that Purchaser can determine the impact of such change(s) if any, upon the completed medical device. Seller also agrees to promptly notify Purchaser of any known defects that may arise in any of the materials purchased hereunder.
4. RETURNS AND INSPECTIONS- Materials delivered under this order shall be subject to inspection and test by Purchaser. All or any part of the materials delivered under this order may be held for or returned to Seller at his expense if found within a reasonable time from the date of their opening to be defective or not in accordance with the order, including specifications provided therein and/or Seller's express or implied warranties or representations.
5. SHIPPING INSTRUCTIONS-All goods must be shipped in accordance with shipping instructions stated on the face hereof or otherwise specified by Purchaser. Freight and insurance charges shall be paid by Seller unless Purchaser's order specifies otherwise.
6. TIME IS OF THE ESSENCE-Time is and shall remain of the essence in this order; and no acts of Purchaser, including without limitation, modification of this order or acceptance of late deliveries shall constitute waiver of this provision
7. ASSIGNMENT-Seller shall not, without first obtaining written consent of the Purchaser, in any manner, assign or subcontract all or any part of this purchase order.
8. WARRANTY- Seller expressly warrants that the goods or services ordered shall be merchantable; shall conform to this order, to specifications, drawings, and other descriptions referenced in this order, and to any accepted samples and shall be free from defects in materials and workmanship. Seller warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens or encumbrances. Purchaser is acquiring the goods in reliance on the Seller's representation that the Seller is in compliance with applicable FDA and ISO standards and understands Seller intends such compliance to continue. Should Seller not continue such compliance, Seller will provide Purchaser notice prior to delivery and will be liable to purchaser for such non-compliance. All these warranties and other warranties as may be prescribed by law shall extend to Purchaser, its successors, assigns, and customers and to users of the goods or services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery. Claims under these warranties must be made within the applicable period prescribed by statute.
9. EXCESS SCRAP-For any materials that may be supplied by Purchaser to Seller for use in the final product purchased by Purchaser ("Purchaser Provided Materials"), Seller agrees, unless otherwise agreed to in writing, to reimburse Purchaser for any unused scrap (including any of the Purchaser Provided Materials that are lost or damaged by Seller) that are over an amount that is equal to 5% of the Purchaser Provided Materials.
10. INDEMNITY AND INSURANCE-(a) Seller shall defend, indemnify and hold harmless Purchaser, its affiliates, distributors, sales agents, employees, customers and end users of the purchased Articles (the "Indemnified Parties"), from and against any and all claims, suits, demands, losses, costs, expenses and liabilities (including reasonable attorneys' fees and litigation expenses) arising out of or related to the purchase and/or use of the Articles purchased hereunder and/or arising out of Seller's work or performance hereunder. Seller shall procure and maintain liability insurance (including without limitation products and completed operations coverage), with minimum limits of \$2,000,000 per occurrence, or with such higher limits as Purchaser shall reasonably request. Seller shall on or before delivery of the Articles purchased hereunder, furnish to Purchaser a Certificate of insurance evidencing the foregoing coverage's. In the event the Purchaser is damaged by the failure of the Seller to deliver goods in accordance with the warranties herein, Seller shall defend, indemnify and hold harmless the Indemnified Parties from the assessment by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the Articles purchased hereunder.
11. CONTINGENCIES-Neither party hereto shall be liable to the other for default or delay in delivering or accepting goods hereunder if, such default or delay is caused by fire, strike, riot, act of God, delay of carriers, governmental order or regulation, complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or power and/or any other similar or different contingencies beyond the reasonable control of the respective parties.
12. DEFAULT-BANKRUPTCY-CANCELLATION-Purchaser may cancel this order in whole or in part at any time by written notice (i) whenever Seller shall default in performance or shall so fail to make progress in the work as to endanger the performance, except that the Purchase Order shall not be terminated for such default where the default is due to causes beyond the control of Seller and without its default or negligence, (ii) in the event of any proceedings in bankruptcy or solvency, by or against Seller, or (iii) in the event of the appointment of an assignee for the benefit of creditors, and, furthermore, Seller shall be liable for any additional damages incurred by Purchaser.
13. TOOLS AND MATERIALS-In consideration of Purchaser entering into this order, title to all designs, sketches, drawings, programs, blueprints, patterns, dies, models, molds, tools, plates, cuts, special appliances, and all improvements thereto, furnished to Seller by Purchaser and/or created or developed by Seller for Purchaser in connection with or as a result of this order, shall belong to Purchaser.
14. CONFIDENTIAL RELATIONSHIP-Seller and its directors, officers, employees, agents, advisors, attorneys and accountants (collectively, "Representatives") agree to treat as strictly secret and confidential all specifications, programs, drawings, blueprints, nomenclature, samples, models and other information supplied to him by Purchaser (the "Proprietary Information"), and shall use the Proprietary Information only in connection with this Purchase Order and the Proprietary Information shall not be used for any other purpose without the prior written consent of K2M. Consultant shall be responsible for any breach of this Purchase Order by any of its Representatives, and agrees, at its sole expense, to take reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of the Proprietary Information. The terms of this Section shall survive the expiration of this Purchase Order.
15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS-The Seller guarantees that no article shipped pursuant to this order is or shall be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act or is an article which may not be introduced into interstate commerce. Seller guarantees that all articles shipped hereunder shall have been produced and shipped in accordance with Federal, State and Local laws.
16. TITLE-Title to material to be delivered hereunder shall pass upon the Seller's delivery of the goods to common carrier unless otherwise specified. Seller is responsible for obtaining insurance and payment of freight and insurance costs, which shall be obtained at most advantageous rates if the costs are to be borne by the Purchaser. Notwithstanding the passage of title, the Purchaser shall have the right to inspect, reject, and return the goods in accordance with these terms.

17. CANCELLATION-Purchaser shall have the right upon notice to Seller to cancel this order or any unfilled portion thereto with an equitable adjustment to price considering only the Sellers costs incurred related to the unfilled portion.
18. GOVERNING LAW-The contract resulting from the acceptance of this order shall be interpreted according to the laws of the Commonwealth of Virginia.
19. ARBITRATION-Seller and Purchaser agree to submit any dispute arising from the performance or failure to perform under this agreement to binding arbitration under the commercial arbitration rules of the American Arbitration Association at the AAA's Washington, D.C. office. The arbitrator shall have the power to award damages but shall not in any case award exemplary or punitive damages. The decision of the arbitrator may be entered into judgment in any court of competent jurisdiction.
20. DAMAGES-Purchaser's liability for breach of this Agreement shall not exceed the un-recovered cost of any materials or work in process incurred by Seller. Purchaser shall not be liable for any indirect, incidental, special or consequential damages.
21. AUDIT-K2M Inc. may, at reasonable intervals, audit the Seller's quality program for conformance to the applicable requirements of the Quality System Regulation (QSR) and to the intent of ISO 9000 Quality Management System Standards (ANSI/ASQ Q9000) or the Purchaser's quality assurance specification for suppliers.
22. These TERMS AND CONDITIONS may be superseded only in the event of the existence of a written contract, separate from this document, between Purchaser and the Seller.