



STANDARD TERMS AND CONDITIONS

1. PURCHASE OF PRODUCTS

1.1 Purchase of Products. During the Term, Customer may purchase, and Seller shall sell and provide, Products as provided for in this Agreement. Customer shall have no obligation to issue Purchase Orders for any quantity of Products during the Term, and Seller shall have no obligation to provide any particular quantity of Products during the Term, except pursuant to accepted Purchase Orders. Customer may contract with other manufacturers and/or suppliers for the procurement of products comparable or similar to the Products, and Seller may sell products comparable or similar to the Products to any party.

1.2 Issuance of Purchase Orders. Customer may, from time to time, issue Purchase Orders for Products. Purchase Orders shall contain the identity and quantity of the Product being ordered, the requested date of Delivery, the Delivery destination and carrier instructions. By issuing a Purchase Order, Customer acknowledges that it has read, understood and agrees to be bound by the terms and conditions set forth in this Agreement, which shall be deemed incorporated into and made a part of each Purchase Order and any amendment thereto. Acceptance by Seller of a Customer Order is expressly conditioned upon Customer's agreement that this Agreement shall provide the sole and exclusive terms and conditions applicable to such Purchase Order. Seller specifically rejects, and Customer expressly disclaims, all terms and conditions in Customer's Purchase Order, request for quotation or other documentation if such terms and conditions are additional to, different from or inconsistent with this Agreement. Any performance by Seller pursuant to a Purchase Order, including, without limitation, manufacture or shipment of products, shall be deemed to be an acceptance solely upon the terms of this Agreement. Purchase Orders shall be deemed accepted upon the earlier to occur of (a) Seller's written acceptance or confirmation of such Purchase Order; or (b) Seller's performance under such Purchase Order.

2. PAYMENT, RISK OF LOSS, AND ACCEPTANCE

2.1 Prices. Seller shall charge and invoice Customer for Products in accordance with the prevailing price made available by Seller to Customer at the time of Seller's acceptance of a Purchase Order. Prices are subject to change by Seller at any time without prior notice to Customer.

2.2 Shipping, Taxes and Other Charges. Unless otherwise specifically provided on the face of an acceptance or acknowledgment from Seller, the prices for the Products purchased do not include sales, use, excise or similar taxes, whether federal, state or local. Unless Customer requests shipment by a designated carrier and pays such carrier

directly, shipping charges shall be prepaid by Seller and invoiced to Customer. Seller shall ship the Products in accordance with the shipment terms of each Purchase Order. Any dates specified for Delivery shall be an estimate only, and the time for Delivery shall not be made of the essence.

2.3 Invoices; Partial Shipments. Seller may issue invoices to Customer for Products on the date of Delivery. Unless otherwise specified by Customer on the face of a Purchase Order, Seller shall be permitted to make partial shipments of Product included in a Purchase Order and invoice Customer for the partial shipment on the date of Delivery of the partial shipment.

2.4 Payment. Payment in full is due from Customer in accordance with the terms set forth on the face of Seller's invoice, or, in the absence of such terms, within 30 days after the date of invoice. A service charge shall accrue on all past due accounts at the rate of 1.5% per month or the highest rate allowed by applicable Law, whichever is less. Each shipment of Products is to be treated as a separate and independent transaction for purposes of payment and settlement of Claims, and Customer shall not be entitled to set-offs or deductions of any kind against the amounts due under any invoice.

2.5 Title and Risk of Loss or Damage. Seller shall convey good title, free from any lien, claim or encumbrance, to all Products and all components thereof, shipped by Seller under this Agreement. "Delivery" shall occur upon delivery to the shipping carrier at Seller's factory, distribution center or warehouse. Title and risk of loss to the Products shall pass at the time of Delivery.

2.6 Acceptance of Products. Upon receipt of a shipment, Customer shall immediately inspect the Products. Unless Customer provides Seller with written notice within 10 days of receipt of such shipment of any Claim for any overages, shortages, loss, damage or defects in the Products, such Products shall be deemed to be finally inspected, checked and irrevocably accepted by Customer. Seller shall have the right to cure any overages, shortages, loss, damage or defects in the Products within a reasonable time after receipt of Customer's timely Claim. Any fault in delivery or quality on any Purchase Order or shipment shall not affect Customer's obligations under any other Purchase Order, shipment or invoice.

2.7 Returns. Customer shall not cancel, revoke acceptance of, or return Products, except as expressly permitted under the limited warranty provided in Section 3.1 below. No Products may be returned for credit without Seller's express written permission, as evidenced by the issuance of a return authorization.

2.8 Intellectual Property. No transfer of IP Rights is contemplated or shall occur under this Agreement. The Parties agree that, as between Customer and Seller, Seller owns and shall continue to own any and all IP Rights with respect to the Products and any enhancements, modifications or improvements thereto, whether created before or after the Effective Date and whether created by Customer or by Seller in connection with this Agreement.

3. WARRANTIES, LIMITATION OF LIABILITY AND INSURANCE

3.1 Limited Products Warranty. Subject to the exclusions below, Seller warrants that the Products shall be free from defects in material and workmanship at the time of Delivery. If any Product is found not to be within the scope of such warranty and not to be within the applicable exclusions, upon written notice given to Seller no later than five years after the date of Delivery of such Product, then upon Seller's verification of such non-conformance, Seller shall, at its discretion, replace such Product or provide a refund for such Product. Such replacement or refund shall be Customer's sole and exclusive remedy and Seller's sole and exclusive liability for any breach of warranty hereunder. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, OR MERCHANTABILITY, AND THE PRODUCTS ARE OTHERWISE BEING PROVIDED ON AN "AS IS," "WHERE IS" BASIS. NO ADVICE OR INFORMATION GIVEN BY SELLER, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES OR AGENTS SHALL CREATE ANY WARRANTY. ALL WARRANTIES PROVIDED HEREIN SHALL BE FOR THE BENEFIT OF CUSTOMER ONLY, AND SHALL IN NO EVENT BE TRANSFERRED OR ASSIGNED OR DEEM TO RUN TO THE BENEFIT OF PATIENTS USING ANY OF THE PRODUCTS PROVIDED HEREUNDER. Without limiting the foregoing, Seller is not providing any guarantees or warranties with respect to the use of the Products in any particular patient, medical environment or setting. Seller disclaims any knowledge of Customer's intended use and makes no warranty that the standard specifications of the Products are suitable for Customer's particular use. It is the responsibility of Customer to determine whether the Products are in all respects of the proper character for the proposed application.

3.2 Limitation of Liability. NEITHER SELLER NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES OR ANY OTHER PARTY FOR ANY AMOUNTS REPRESENTING LOSS OF PROFITS, LOSS OF BUSINESS, OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES (EVEN IF PREVIOUSLY APPRISED OF THE POSSIBILITY THEREOF), ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF THE PRODUCTS OR THIS AGREEMENT OR ANY ACTS OR OMISSIONS

ASSOCIATED THEREWITH, WHETHER THE BASIS OF THE LIABILITY IS BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTES OR ANY OTHER LEGAL THEORY, UNLESS SUCH ACT OR OMISSION ARISES FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER OR ANY OF ITS AFFILIATES. THE AGGREGATE LIABILITY OF SELLER AND ITS AFFILIATES WITH RESPECT TO ANY CLAIM ARISING UNDER THIS AGREEMENT SHALL BE THE AMOUNTS PAID BY CUSTOMER TO SELLER IN THE SIX MONTHS PRECEDING THE APPLICABLE CLAIM.

3.3 Storage and Use. Customer shall comply, and shall cause each of its Affiliates to comply, with all applicable Laws regarding the storage, handling, use and/or resale of Products by Customer after Delivery.

3.4 Single Use Products. Customer agrees that it shall use Single-Use Products no more than a single time. "Single-Use Product" means any Product that is labelled "For Single Use", "Single Use Only" or "Not For Re-Use" or with similar language indicating that the Product is intended to be used only once.

3.5 Insurance. During the Term, Customer shall maintain insurance with minimum coverages and amounts necessary to cover the performance of its obligations hereunder.

3.6 Indemnification. Customer shall defend, indemnify and hold Seller and its Affiliates and their respective officers, directors, managers, employees and agents (the "Indemnified Parties") harmless from and against any Liabilities arising out of, or related to, or caused by Customer's negligence, willful misconduct or breach of this Agreement.

4. TERM AND TERMINATION

4.1 Term. With respect to Customer's right to purchase Products hereunder, the initial term of this Agreement commences on the Effective Date and expires 12 months thereafter (the "Initial Term"). Thereafter, this Agreement shall automatically renew for consecutive 12-month periods unless either party hereto notifies the other party of its intent not to renew at least 60 days prior to the expiration of the current term (the "Renewal Term," and together with the Initial Term, the "Term").

4.2 Termination for Cause. Each of Customer or Seller may terminate this Agreement and/or any Purchase Order upon written notice to the other party if: (a) the other party makes an assignment for the benefit of creditors; (b) the other party becomes insolvent; (c) voluntary or involuntary proceedings are instituted by or against such other party under any federal, state or other bankruptcy or insolvency Laws, and, in the case of involuntary proceedings commenced against such party, such proceedings are not terminated within 60 days; (d) a receiver is appointed for such other party; (e) the other party ceases to function as a going concern, subject to a permitted assignment in accordance with this Agreement; or (f) the other party fails

to perform any other material provision of this Agreement and does not cure such failure within a period of 30 days after receipt of written notice from the non-breaching party reasonably specifying such failure and stating such party's intention to terminate this Agreement if such failure is not cured, except as otherwise provided below.

4.3 Survival. Each party's obligations under this Agreement shall survive any termination or expiration of this Agreement; provided, however, that upon the termination (but not expiration) of this Agreement in its entirety by a party, all outstanding Purchase Orders shall also be deemed terminated. Any and all warranties for any Products contemplated by this Agreement shall survive termination or expiration of this Agreement and shall continue in accordance with their terms.

5. CONFIDENTIALITY

5.1 Definition. "Confidential Information" means any information or data (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations) provided or disclosed by the disclosing party or its agents to the receiving party or its agents that is: (i) marked as the confidential or proprietary information of the disclosing party; (ii) otherwise provided or disclosed by or on behalf of the disclosing party and stated to be confidential or proprietary at the time the information is provided or in a writing that is provided no later than 30 days thereafter that generally describes such information; or (iii) not falling within any of the prior clauses of this sentence, but which a reasonable person would conclude is of a confidential or proprietary nature given the facts and circumstances of such disclosure. Notwithstanding the foregoing, the term "Confidential Information" shall not include any information of the disclosing party that the receiving party can demonstrate by tangible evidence: (a) is or becomes a part of the public domain through any means other than a breach by the receiving party of its obligations under this Agreement and without the receiving party's knowledge of any other breach of any confidentiality obligation with respect thereto; (b) was in the receiving party's lawful possession before the disclosure, without the receiving party's knowledge of a breach of any confidentiality obligation with respect thereto, and was not obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party who has the right to make such disclosure and without the receiving party's knowledge of a breach of any confidentiality obligation with respect thereto; or (d) is independently developed by the receiving party without reference to or reliance on the disclosing party's Confidential Information and without the receiving party's knowledge of a breach of any confidentiality obligation with respect thereto. The terms of this Agreement shall constitute the Confidential Information of both Parties.

5.2 Use of Confidential Information. Without the prior written consent of the disclosing party, the receiving party (i) may use and/or reproduce Confidential Information of the disclosing party only as is necessary for performance of its obligations under this Agreement and (ii) shall not disclose Confidential Information of the disclosing party to any other

person or entity other than Affiliates of the receiving party (in each case, with a need to know and who are subject to appropriate confidentiality policies or are bound by appropriate confidentiality agreements with terms at least as protective as the terms set forth in this Section 5) or to receiving party's legal counsel with a need to know. As between the receiving party and the disclosing party, the Confidential Information of the disclosing party shall be owned solely and exclusively by the disclosing party.

5.3 Compelled Disclosure. Notwithstanding the provisions of Section 5.2, if a receiving party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or shall be advised by its legal counsel that it is obligated to disclose any of the Confidential Information of the disclosing party, the receiving party shall undertake commercially reasonable efforts to provide the disclosing party with prompt notice of such requirement or advice (if permitted by applicable Law) prior to disclosure so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or disclosing party waives compliance with the provisions hereof, the receiving party agrees to furnish only that portion of the Confidential Information of the disclosing party that it is legally required to so furnish and, at the request of the disclosing party, to use best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the disclosing party.

5.4 Return of Confidential Information. Upon the termination, cancellation or expiration of this Agreement for any reason or upon the reasonable request of the disclosing party, all Confidential Information, together with any copies that may be authorized herein, shall be returned to the disclosing party or, if requested by the disclosing party, certified destroyed by the receiving party; provided, however, that this Section 5.4 shall not apply with respect to Confidential Information that is needed in connection with the use, installation and support of the Products. The obligations of the Parties under this Section 5 shall survive for three years after the expiration or termination of this Agreement.

5.5 Equitable Relief. Each party hereto acknowledges and agrees that the other would be irreparably harmed if any of the Confidential Information of the disclosing party were to be disclosed to third parties, or if any use were to be made of such Confidential Information other than that specified in this Agreement, and further agrees that the disclosing party shall have the right to injunctive relief, without the necessity of posting any bond, upon any violation or threatened violation of the terms of this Agreement, in addition to all other rights and remedies available at Law or in equity.

6. GENERAL

6.1 Relationship of the Parties. The relationship of Seller and its successors in interest, on the one hand, and Customer and its successors in interest, on the other hand, is that of

independent contractors, and not one of principal and agent, joint venture or partnership.

6.2 Assignment; Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither party hereto may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, however, Seller may fulfill its obligations hereunder by the use of its Affiliates or related companies.

6.3 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void by a court of Law with jurisdiction, so long as the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by Law. Further, it is the intention of the parties and the parties agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

6.4 Waivers. No delay or omission by a party hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy by such party. A waiver by a party of any of the covenants, conditions or agreements to be performed by the other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreements herein contained. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the waiving party.

6.5 Remedies. Except as expressly provided otherwise in this Agreement, in addition to any remedies provided in this Agreement, the parties shall have all remedies provided at Law or in equity. The rights and remedies provided in this Agreement or otherwise under Law shall be cumulative and the exercise of any particular right or remedy shall not preclude the exercise of any other rights or remedies in addition to, or as an alternative of, such right or remedy, except as expressly provided otherwise in this Agreement.

6.6 No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer a benefit upon any entity, other than Seller, Customer, the Indemnified Parties and their respective successors and permitted assigns.

6.7 Force Majeure Events. All shipping dates are approximate based on current availability of materials, production schedules and prompt receipt of all necessary information from Customer. Seller shall not be liable for any delay or failure in performance under this Agreement due to any act of God, strike or other labor dispute, riot, fire, embargo, inability to obtain equipment or materials, delay in transportation, accident, war, action by Governmental

Authority or any cause, condition, contingency or event beyond Seller's control.

6.8 Governing Law and Venue. The interpretation, validity and enforcement of this Agreement, and all legal actions brought under or in connection with the subject matter of this Agreement, shall be governed by the Law of the State of North Carolina (except that any conflicts-of-law principles of such state that would result in the application of the Law of another jurisdiction shall be disregarded). Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the United States District Court for the Western District of North Carolina or, if such court would not have jurisdiction over the matter, then only in a North Carolina state court sitting in the City of Charlotte. Each party hereto agrees that any such suit, action or proceeding will constitute a mandatory complex business case under Chapter 7A, Section 45.4 of the North Carolina General Statutes, and, if a party initiates such a suit, action or proceeding in North Carolina state court, it must be brought in the North Carolina Business Court as a mandatory complex business case. Each party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum. Each party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the Federal or state courts sitting in the City of Charlotte, North Carolina, and agrees not to plead in such courts that any such action has been brought in an inconvenient forum. Any claim that Customer wishes to assert under this Agreement must be initiated not later than one year after the claim arose. The United Nations Convention on Contracts for the International Sale of Goods is excluded and shall not apply.

6.9 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO, AND SHALL NOT REQUEST, A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY A PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

6.10 Rules of Construction. For purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise: (i) the terms defined herein include the plural as well as the singular and include any words based upon the root of such defined terms; (ii) words importing gender include all genders; (iii) all Section headings (captions) are for convenience only and shall not affect the interpretation or construction of this Agreement; (iv) the words "including," "included" and "includes" mean inclusion without limitation; (v) in the event of any conflict between the terms in the body of this Agreement and the terms in any Purchase Orders, the terms of this Agreement shall prevail to the extent that such a conflict exists; and (vi) the rule of construction under which ambiguities are resolved against the drafting party shall not apply.

6.11 Entire Agreement. This Agreement constitutes the entire and exclusive statement of the agreement of the parties with respect to its subject matter and supersedes any and all oral or written representations, understandings or agreements relating thereto. Any other terms or conditions included in any quotes, Purchase Orders, acknowledgments, bills of lading or other documents utilized or exchanged by the parties shall not be binding unless and only to the extent that a written agreement signed by authorized representatives of the parties after the Effective Date expresses the intent of the signing parties to be bound thereby. This Agreement may be modified, supplemented or amended only by an agreement in writing which makes specific reference to this Agreement and which is signed by both parties.

6.12 Electronic Delivery. Customer's acknowledgement and agreement to this Agreement may be delivered by facsimile or other electronic transmission (including documents in Adobe PDF format).

7. DEFINITIONS

7.1 When capitalized in this Agreement, terms not otherwise defined have the following meanings:

"Affiliate" means, with respect to any entity, any owner, parent, partner, manager, entity under common control, subsidiary, agent, subcontractor, officer, assignee or hired or leased employee or worker.

"Agreement" means this Diamond Orthopedic Standard Terms and Conditions.

"Claim" means any allegation, right, claim, rights to claim, cause of action or chose in action, including all related claims, credits, rights of recovery and set-off and other similar rights.

"Customer" means the person(s), firm or company who purchases Products from Seller.

"Effective Date" means the date that this Agreement is acknowledge and accepted by Customer.

"Governmental Authority" means (i) the United States of America, any state, commonwealth, territory, or possession thereof, and any political subdivision or quasi-governmental authority of any of the same, including courts, tribunals, departments, panels, commissions (including the U.S. Food

and Drug Administration), boards, bureaus and agencies, in each case having jurisdiction over the applicable party, and (ii) any foreign (as to the United States of America) sovereign entity, including nations, states, republics, kingdoms, commonwealths, provinces, territories or possessions thereof, and any political subdivision or quasi-governmental authority of any of the same, including courts, tribunals, departments, panels, commissions, boards, bureaus and agencies, in each case having jurisdiction over the applicable party.

"IP Rights" means all forms of intellectual property rights and protections throughout the world, whether currently existing or hereafter developed or acquired and whether now known or hereafter recognized, including all right, title and interest arising under United States or foreign common or statutory Law in and to all: (i) patents and all filed, pending or potential applications for patents, including any patent disclosure, reissue, reexamination, division, continuation or continuation-in-part applications throughout the world now or hereafter filed; (ii) trade secret rights and equivalent rights; (iii) copyrights, copyright registrations, design registrations and applications therefor, moral rights or other literary property or authors' rights, whether or not protected by copyright or as a mask work; and (iv) proprietary indicia, trademarks, service marks, trade names, trade dress, logos, symbols, know-how, technical information, domain names, rights in databases, logos and/or brand names and all goodwill associated therewith.

"Law" means any applicable law, statute, ordinance, code, rule, regulation, order, judgment, decree, standard, requirement or procedure enacted, adopted, applied, enforced or followed by any Governmental Authority.

"Liabilities" means any and all losses, damages, costs, Claims, demands, judgments, assessments, deficiencies, expenses (including court costs and attorneys' fees), and other liabilities, including damage to property, bodily injury and death.

"Products" means the products sold by Seller to Customer under this Agreement and pursuant to the applicable Purchase Orders.

"Purchase Order" means a document issued by Customer pursuant to Section 1, requesting that Seller sell and provide Products in accordance with this Agreement.

"Seller" means Diamond Orthopedic LLC.