Purchase Order Terms and Conditions

These Terms and Conditions are incorporated by reference and form an integral part of each proposal or agreement between Fenwal, Inc. and its affiliates ("Fenwal") and Supplier.

1. Acceptance. Acceptance of Fenwal's Purchase Order ("Order") is expressly limited to the terms of this Order and attachments hereto. Any shipment of goods, ordering of supplies or performance of services shall constitute acceptance of this Order. This Order and any attachments hereto represent the entire agreement between the parties and no changes are binding unless they are in writing and signed by an authorized representative of Fenwal. Any references to or attachment of Supplier's terms and conditions, or any over stamping on the acknowledgment or invoicing of this Order shall not alter the terms and conditions of this Order and shall be dis-regarded by Fenwal.

2. Warranty. Supplier warrants that all articles furnished hereunder will be merchantable, free from defects in material and workmanship, and will conform to applicable specifications, drawings or descriptions. If Supplier is responsible for design of the articles according to performance specifications established by Fenwal, Supplier warrants that the articles will be fit and sufficient for the purposes intended by Fenwal and will meet Fenwal's performance specifications. Fenwal's approval of designs furnished by Supplier shall not relieve Supplier of its obligations under this warranty. Such warranties shall survive inspection, testing and acceptance. The warranties of Supplier, together with its service guarantees, shall run to Fenwal and/or customers. Supplier will promptly reimburse Fenwal for any loss incurred by Fenwal due to any defects in such items and will hold Fenwal harmless from any claims of third parties due to any defects in such items.

3. Payment. Payment terms shall be net 60 days from the agreed upon delivery date specified in the Order.

4. Packing and Shipment.
(a) Unless otherwise specified in this Order, all items delivered shall be packed in suitable containers for protection in shipment and storage. Itemized packing slip bearing the Fenwal purchase order number must accompany each delivery, and each container must be marked to show the purchase order number and Fenwal part number. Fenwal's count will be accepted as conclusive on shipments not accompanied by a packing slip.
(b) Material must be routed in accordance with Fenwal's instructions.

5. Delivery.
(a) Time is expressly made of the essence herein. Freight terms are: CIP/CPT/DAP for Airfreight, CIF/CFR for Ocean shipments and DAP for Truck Load shipments. Fenwal's designated location (Incoterms 2010). If Supplier's deliveries fail to meet such schedule and Fenwal elects to call upon Supplier for expedited shipments, Supplier will pay the difference between the method of shipping specified in this Order and premium transportation rates unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Supplier due to force majeure.
(b) Goods delivered in advance of schedule are delivered at the risk of Supplier, and at Fenwal's option, may be returned at Supplier's expense. Payment may be withheld by Fenwal until the date the goods are actually due.
(c) Material delivered under this Order in excess of the amount ordered herein, taking into account contractually authorized tolerances, if any, shall be retained by Fenwal. If at any time during the performance of this Order, Supplier expects that it will not be able to deliver the item(s) being procured hereunder, in accordance with the delivery schedule as set forth herein, Supplier will promptly notify Fenwal regarding the anticipated delay in delivery, regardless of the reason for the anticipated delay in delivery.

6. Inspection. All items will be subject to inspection and acceptance at Fenwal's plant. Fenwal reserves the right to accept or reject any defective shipment in whole or in part. Fenwal may, at its election, either hold rejected items for Supplier's inspection at Supplier's risk or return such items to Supplier at Supplier's expense. If so requested by Fenwal, Supplier will repair or replace any rejected items at its sole cost and expense. Supplier will promptly reimburse Fenwal for any loss incurred by Fenwal due to any defects in such items and will hold Fenwal harmless from any claims of third parties due to any defects in such items. This paragraph shall not limit Fenwal's rights or Supplier's obligations under any other provisions of this Order in law or in equity. Specifically, this paragraph does not limit any right of rejection or revocation of acceptance which Fenwal may have at law. Acceptance shall not be conclusive with respect to latent defects, fraud, or such gross mistakes
as amount to fraud.

7. Intellectual Property Indemnity.
(a) To the extent that the items ordered have not originated with Fenwal, Supplier guarantees that the sale and/or use of such items delivered hereunder and their manufacture by Supplier shall not infringe any U.S. or foreign patents, trademarks, copyrights, or trade secrets. Supplier shall, at its own expense, indemnify and hold harmless Fenwal and/or its successors, assigns or customers (collectively referred to in this section as "Fenwal"), against any action, suit or claim ("Suit") brought against Fenwal which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Order, for Fenwal's use (including resale) thereof, constitutes an infringement of any patent, trademark, copyright or trade secret. Provided that Fenwal duly notifies Supplier as to any such Suit, Supplier shall defend and pay all damages, royalties and costs awarded against, and reasonable expenses incurred by, Fenwal in connection with such Suit. If the goods or services in such Suit are held to constitute infringement and the use thereof is enjoined, Supplier shall, at its own expense and at its option, either procure for Fenwal the right to continue the use of such goods and/or services, or, in a manner acceptable to Fenwal, make a replacement or modification to avoid infringement. Fenwal agrees, to the extent of its ability to do so, to supply any pertinent evidence needed to defend any Suit but only at the expense of the Supplier.
(b) The foregoing indemnity shall not apply where such goods or services are allegedly infringing as a result of Supplier's compliance with specific written instructions from Fenwal directing use by Supplier of a feature not customarily used by Supplier. Supplier waives any rights to be held harmless by Fenwal against any claims for infringement.

8. Taxes. All applicable taxes of any nature which are billed to Fenwal shall be stated separately in Supplier's invoices. Supplier shall not bill taxes subject to Fenwal's tax exemption certificates.

9. Termination. Fenwal may, in accordance with paragraphs (a), (b)and (c) below, terminate work under this Order, in whole or in part, at any time by written notice to Supplier. Upon such notice, Supplier will, as to the terminated portion of this Order, stop work immediately, notify subcontractors to stop work and protect property in Supplier's possession in which Fenwal has or may acquire an interest.
(a) Fenwal reserves the right to cancel, amend or modify this Order in any manner and at its sole discretion in the event of default by Supplier as to any of the terms and conditions hereof. The exercise by Fenwal of the rights set forth hereunder shall not constitute a waiver by Fenwal of any other claim or right, whether existing by contract or by law or otherwise, and Fenwal shall have all remedies for default or breach available and shall be entitled to damages, including loss of anticipated profits, resulting therefrom, and recovery of its attorney's fees as the prevailing party in any action in law or equity to remedy the breach.
(b) Where such termination is for convenience of Fenwal, Supplier may claim reimbursement for Supplier's actual costs incurred up to the date of termination which are properly allocable to or apportionable under recognized accounting practices to the terminated portion of this Order, including liabilities to subcontractors which are so allocable, and acceptable finished units at contract price not previously billed or paid for, but excluding any charge for interest or any materials which Supplier may be able to divert to other orders. Supplier may also claim a reasonable profit on the work actually done by Supplier prior to such termination, the rate of which shall not exceed the rate used in establishing the rate of this Order price. Supplier's claim for reimbursement under such termination shall not include anticipatory profits. The total of such claims shall not, however, exceed the canceled commitment value of this Order.
(c) In the event of any suspension of payment or the institution of any proceedings by or against Supplier, voluntary or involuntary, in bankruptcy or insolvency, or under any provisions of the U.S. Bankruptcy Act, or the appointment of a receiver or trustee or an assignee for the benefit of creditors, or a determination that the Supplier has become unable to pay debts as they become due, Fenwal may cancel this Order without liability for loss of anticipated profits.

10. Change Orders. Fenwal shall have the right at any time before completion of this Order by a written instrument to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in costs or in the time required for performance, Supplier shall promptly notify Fenwal within thirty (30) days from the date of receipt by Supplier of the notification of change and an equitable adjustment shall be made. Any change or substitution made by the Supplier must be approved in advance by Fenwal.

11. Assignment. Supplier shall not assign or subcontract this Order, or any part thereof, without the prior written consent of Fenwal, and not unless the assignee or subcontractor agrees to be bound by all the terms and conditions of this Order. Any such assignment or subcontract made in derogation of this provision is expressly void. No assignment of moneys due or to become due hereunder shall be binding upon Fenwal until its written consent thereto is obtained and provided further that payment to an assignee of any claim under this Order shall be subject to setoff or recoupment to any present or future claim or claims which Fenwal may have against Supplier.

12. Proprietary Disclosures. Supplier agrees that devices, drawings, data, design, reports and other technical information or any information contained therein, supplied by Fenwal, and relating to this Order are the proprietary property of Fenwal and such information shall be held in confidence by Supplier. Such information shall only be used for the purposes of this Order, and shall not be reproduced, used, or disclosed to others without Fenwal's prior written consent, except as necessary for the performance of this Order. Except with Fenwal's prior written consent, information which Supplier shall have disclosed or may hereafter disclose to Fenwal in connection with the placement and performance of this Order shall be deemed non-confidential and non-proprietary and Supplier agrees not to assert any claims (except claims for patent infringement) by reason of the use, duplication, or disclosure thereof by Fenwal and/or its successors, assigns or customers. Upon completion of this Order, Supplier shall, at Fenwal's request, either dispose of or return all such devices, drawings, data, design, reports and other technical information, and all copies which have been made thereof to Fenwal.

13. Property Furnished to Supplier by Fenwal. Title to and the right of immediate possession of all property furnished by Fenwal to Supplier for use hereunder, including but not restricted to tooling, designs, patterns, drawings, and materials, shall be and remain the property of Fenwal in all stages of production. Such property shall not be used in the production, manufacture, or design of any other articles for Supplier or for any other purchaser or for manufacture or production of larger quantities than those specified herein, except with the express written consent of Fenwal. All such property supplied by Fenwal shall be segregated by Supplier in Supplier's plant and, wherever possible, clearly marked so as to be easily identified as Fenwal's property. Supplier shall be fully responsible for all such property upon delivery to Supplier until redelivery thereof to Fenwal and shall protect, preserve, and maintain such property in accordance with sound industrial practices. Supplier shall keep an inventory of all such property in its possession which is furnished by Fenwal, or which becomes the property of Fenwal, and shall furnish copies of such inventories to Fenwal as may be required. At the completion or termination of this Order all such property together with all excess materials shall be returned to Fenwal or disposed of as Fenwal shall direct. In the event such property is damaged or made unfit for its intended use, except for reasonable wear and tear or for the authorized use of the property in accordance with the provisions of this Order, Fenwal's cost of replacement thereof is to be paid by Supplier.

14. Insurance. Supplier shall maintain Commercial General Liability insurance, including product liability, reflecting the types and amounts of coverage that are typical for Supplier's industry. Supplier shall provide Fenwal with a certificate of insurance evidencing such insurance. Supplier's insurance policy shall cover Supplier (its employees, agents, and subcontractors) and Fenwal from any risk or liability when any of Supplier's employees, agents or subcontractors have to enter upon the premises of Fenwal or a third party. Supplier shall defend, indemnify, and hold Fenwal harmless from and against any loss, claim, damage, or expense (including legal fees and costs relating thereto) arising out of, resulting from, or caused by any act or omission of Supplier, or its employees, agents, or subcontractors.

15. Compliance with Laws. Supplier shall comply with all applicable laws and regulations.

16. Records. Supplier agrees to maintain all records, books and any other documents evidencing goods supplied and services rendered pursuant to this Order for four (4) years or longer as required by law from this Orders expiration date.

17. Governing Law. The parties hereto agree that this Order shall be controlled and governed by the law of the venue of Fenwal's contracting party and that the Courts of that venue shall have exclusive jurisdiction of any cause of action arising therefrom.

18. Severability. If any term or provision of these Terms and Conditions are found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of these Terms and Conditions, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

19. Equal Employment Opportunity Clause. Supplier shall abide by the requirements of 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and require that covered prime contractors and subcontractors take action to employ and advance in employment qualified individuals without regard to protected veteran status or disability.