

Product Purchase Agreement
Standard Terms and Conditions
United States

1. **Purchase and Sale of Products.** Unless otherwise provided in this Agreement, Customer agrees to purchase from Vendor and Vendor agrees to sell and supply the Products identified in orders issued by Customer pursuant to this Agreement. Customer further agrees not to resell Products to other hospitals, clinics, wholesalers, dealers or any other third parties, without the prior written consent of Vendor. In fulfilling the terms and conditions of this Agreement, Vendor shall not pay costs, fees, or other charges, not included in this Agreement.

2. **Product Orders.** Each order of Products by Customer is subject to this Agreement (including, without limitation, the Standard Terms and Conditions of the Product Purchase Agreement and all exhibits and attachments to this Agreement). While Vendor will make its best effort to fill orders and meet specified delivery dates, if Vendor does not fulfill an order received from the Customer or deliver Products to Customer by a specified delivery date, such act or non-act shall not constitute a breach by Vendor of this Agreement. If applicable, Vendor's representative will submit delivery documents for implant cases to Customer's purchasing department within twenty-four (24) hours after surgery, and Customer will submit a purchase order within forty-eight (48) hours after receipt of the delivery documents for the implant case.

3. **F.O.B. Origin.** Unless otherwise agreed in writing by the Parties, Products will be delivered F.O.B. origin. Pricing does not include freight charges, taxes or storage fees. Freight will be prepaid by Vendor and added to the invoice as a charge to be paid by Customer.

4. **Payment Terms and Invoicing.** Vendor shall provide to Customer an invoice for each order placed and shipped/delivered to the Customer pursuant to this Agreement. Customer shall remit full payment to Vendor within thirty (30) days from the invoice date. Any amount not paid on time may be subject to a late fee of 1.5% per month prorated (18% per annum), or the maximum interest rate allowable by law whichever is the highest. Additionally, Customer may be subject to a fee of fifty dollars (\$50.00) for any checks returned unpaid to Vendor for any reason. In the event an attorney is employed or expense is incurred to compel payment of the invoice or to declare any action or proceeding is commenced, Customer agrees to pay all costs and expenses associated with collection of unpaid sums, including but not limited to attorneys' fees and costs. Vendor, in its sole discretion, reserves the right to change terms of payment and/or discontinue further shipments, without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Customer's credit standing is received by Vendor. Should Customer elect to cancel its order, in whole or in part, Customer shall be liable to Vendor for reasonable cancellation charges that shall include but not be limited to all costs and expenses incurred by Vendor in connection with procuring and filling Customer's purchase order.

If any amount of an invoice is disputed by the Customer in good faith, Customer shall pay the undisputed invoice amount when due along with a written explanation specifying the amount in dispute. Upon resolution of the amount in dispute, any disputed amount that is determined to be due and owing to Vendor by the Customer shall be paid by the Customer to Vendor immediately upon such resolution. Customer must notify Vendor in writing of any dispute of an invoice; any such dispute is waived by Customer if such notice is not received by Vendor within thirty (30) days of the invoice date.

5. **New Products.** During the Term, Vendor may develop and offer additional products ("New Products") that are not listed as a Product in Exhibit A. The Parties acknowledge and agree that Exhibit A is not an exclusive list and Vendor may communicate New Products (and corresponding pricing) to Customer that are to be covered by this Agreement. In the event that Vendor determines that New Products are to be covered by this Agreement, Vendor will notify Customer (by email or other writing) regarding the New Products and their prices and such New Products shall be deemed Products for purposes of this Agreement. If products that are not included in Exhibit A are used by Customer without prior product and pricing approval, pricing for such items shall be the pricing for the nearest comparable (e.g., technical advances, features, primary versus revision, etc.) Product for which pricing has been agreed upon by Vendor and Customer. Vendor and Customer agree that pricing, under this methodology, shall be deemed agreed-upon, and incorporated into Exhibit A, within thirty (30) days of Vendor's notice to Customer of the availability of a New Product.

6. **Single-Use Products.** Customer represents and warrants that units of Single-Use Product that it purchases shall be used once and only once in delivering patient care. Vendor conveys no right in any patented Single-Use Product other than the right to use those units once and only once. A "Single-Use Product" means any product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the Product is to be used once and only once in delivering patient care. The Vendor does not grant the Customer or any other person or entity any license to reprocess, remanufacture, or reconstruct any patented Single-Use Product. In addition to other available remedies, the sale or use of any reprocessed, remanufactured or reconstructed patented Single-Use Product will be subject to available remedies for patent infringement.

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7. **Discontinued Products.** The decision to discontinue any Product, product line or business segment shall be in Vendor's sole discretion and shall not constitute a breach of this Agreement. In the event that Vendor's discontinuation of a Product, product line or business segment materially and adversely affects Customer's rights and obligations concerning remaining Products, product lines or business segments, the Parties shall negotiate in good faith an amendment to this Agreement with an equitable modification of those rights and obligations. In the event the Parties are unable to reach agreement on such an amendment, Customer's sole remedy shall be to terminate this Agreement on ninety (90) days' written notice to Vendor.

8. **Returns on Purchased Products.** Unless otherwise specified in Vendor's materials pertaining to a particular Product, Customer may return Products (except Non-Returnable Products) for full credit within thirty (30) days of purchase. Products must be returned to a Vendor sales associate or the Vendor manufacturing site, shipping prepaid, at Vendor's discretion. Products must always be accompanied by one of the following: (a) copy of the invoice with the reason for the return in writing; or (b) reason for the return in writing, indicating the invoice number and date of purchase. In order to receive full credit for a return, the Product must be received by Vendor in the original, unopened and undamaged shelf package. For Products returned after thirty (30) days of Customer receipt, but before one hundred fifty (150) days of Customer receipt, a minimum twenty percent (20%) handling and restocking fee will be charged. Additional fees may be assessed for repackaging and/or re-sterilization. No credit will be given for returned sterile packaged Products unless the Product is returned in the original, unopened and undamaged shelf package. All returned Products are subject to quality assurance inspection by Vendor, which inspection will determine any credit due to Customer.

Products that are discontinued, damaged, patient-specific, or custom made, comprised of human or animal-derived tissue, or biologically active such as bone graft substitutes, and Products returned after 150 days, are "**Non-Returnable Products**". Non-Returnable Products are not returnable for credit at any time. Upon shipment of any human tissue product to Customer, Customer is responsible for shipping, receiving, control, storing, handling and using (collectively all defined as "**Control**") of the tissue and Vendor fully disclaims any liability whatsoever. Additionally, Customer shall indemnify and hold Vendor, its agents, officers, trustees, employees and representatives harmless from and against all actions, claims, demands, damages, expenses, costs, fines, charges, liabilities, suits, fees (including attorneys' fees) and judgments whatsoever rising out of the Control of the tissue.

Zimmer Biomet CMF & Thoracic, LLC Return Goods Policy. All requests to return merchandise must be authorized by Vendor's customer service representative. Shipments must have a Return Goods Authorization (RGA) number clearly marked and displayed on each carton and returned on a freight-prepaid basis. Vendor recommends that the return shipment be insured for the protection of Customer. All returns must be made within ninety (90) days from date of invoice. Products returned after thirty (30) days will incur a twenty percent (20%) restocking fee. Products must be in original packaging, unused, and in saleable condition. Vendor reserves the right to charge twenty percent (20%) for the repackaging of any opened surgical instrument. The following types of merchandise cannot be accepted for return at any time: (a) custom made products; (b) special orders; (c) discontinued products; (d) engraved instruments; (e) implants and sterile products not in original unopened package; and (f) merchandise held longer than ninety (90) days.

Returned Goods Policy for Surgical Equipment

Unless otherwise specified in Vendor written materials pertaining to a particular type of Equipment, Customer may return damaged or defective Equipment for credit within thirty days of receipt. Equipment must be returned to Vendor's designated manufacturing site. Equipment must always be accompanied by one of the following: (a) copy of the invoice with the reason for the return in writing; or (b) reason for the return in writing, indicating the invoice number and date of purchase. In order to receive credit for a return, the Equipment must be received by Vendor within thirty days of purchase and all returned Equipment must be in undamaged condition. A minimum twenty percent (20%) handling and restocking charge will be charged for any Equipment returned, but found not to be defective. All returned Equipment is subject to quality assurance inspection by Vendor, which inspection will determine any credit due to Customer.

9. **Cancelled Cases.** In the event a surgery is cancelled for which Customer ordered a Product from Vendor pursuant to this Agreement, Customer shall provide Vendor notice of such cancellation within twenty-four (24)

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hours of the scheduled surgery to avoid delivery of the Product, and if Customer fails to provide such notice, Customer shall bear responsibility for all shipping costs for such Product and the return policy provided in Section 3 shall apply.

10. **Warranty.** Unless otherwise specified in Vendor written materials pertaining to a particular Product, Vendor warrants to Customer that Products purchased under this Agreement conform to Vendor's published specifications (“**Specifications**”) and are free from defects in workmanship and material at the time of shipment. If, upon inspection within a reasonable time after delivery and before implantation or use, Customer discovers a failure of a Product to conform to Specifications or a defect in material and workmanship, it must promptly notify Vendor in writing. Within a reasonable time after such notification, Vendor will correct any failure of the Product to conform to the warranty by providing, at its option, repair of the Product, a replacement unit, or a refund of the purchase price, if applicable. The aforementioned remedies are Customer’s exclusive remedies for breach of warranty under this Agreement.

The foregoing warranties, unless otherwise agreed by the Parties in a written addendum to this Agreement or expressly provided in the Specifications, shall extend for a period of one (1) year commencing on the date of shipment of the Product to Customer.

This warranty does not extend to or cover: (a) any product, components, or parts not manufactured or sold by Vendor; (b) damage caused by use of any Product for purposes other than those for which it was designed as indicated in Vendor’s published materials; (c) damage caused by unauthorized attachments or modification; (d) any other abuse or misuse by Customer, its employees, representatives, contractors and agents; or (e) any Vendor Product where the Customer is not the first purchaser of the Product.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THIS AGREEMENT OR THE PRODUCTS OR MATERIALS TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

11. **Limitation of Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THE LIABILITY OF VENDOR TO CUSTOMER FOR A GIVEN YEAR DURING THE TERM, ON ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE OR BREACH OF THIS AGREEMENT, EXCEED THE TOTAL PRICE OF PRODUCTS ORDERED BY CUSTOMER FOR SUCH YEAR AT THE TIME OF A CLAIM. FURTHERMORE, TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO CASE SHALL VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES.

12. **Mutual Indemnification.** Each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party (the “**Indemnified Party**”) and its affiliates and their respective shareholders, directors, officers, employees, agents, and affiliates from and against any and all liabilities, damages, losses, penalties, fines, costs and expenses, including reasonable attorneys' fees, paid or incurred by them in connection with any third party action, suit, claim or proceeding (a “**Claim**”) brought against the Indemnified Party based upon or arising from any negligent or more culpable act or omission of the Indemnifying Party or its affiliates or subcontractors or any of their respective employees or agents, including, for example, surgeons or sales representatives performing services at Customer, relating to the activities, Products, and equipment subject to or sold pursuant to this Agreement. To the extent that Vendor and Customer have indemnification obligations to one another in connection with a single Claim, Vendor and Customer shall contribute to the aggregate damages arising from such Claim in such proportion as is appropriate to reflect their relative responsibilities for such damages, as well as any other relevant equitable considerations. The amount paid or payable by Vendor or Customer for purposes of apportioning the aggregate damages shall be deemed to include all reasonable attorneys’ fees and expenses incurred by such Party in connection with investigating, preparing for or defending against such Claim.

13. **Force Majeure.** The obligations of either Party to perform under this Agreement shall be excused if a Party’s failure to perform or delay in performance of its obligations or responsibilities under this Agreement is caused by matters beyond the claiming Party’s control, which shall include, but not be limited to, acts of God, strikes or lockouts, embargo, national emergency, fire, flood, natural disaster, civil commotion, riots, wars, revolution, acts of terrorism, blockade or acts of government preventing performance (a “**Force Majeure Event**”). Upon a Force Majeure Event, the claiming Party shall notify the other Party in writing of the delay. Upon the

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occurrence of such an event, the duties and obligations of the Parties shall be suspended without liability for the duration of the Force Majeure Event; provided, however, that if such suspension shall continue in excess of ninety (90) days, the Parties shall attempt to arrive at a mutually acceptable compromise. If the Parties are unable to reach a compromise, then this Agreement may be immediately terminated upon written notice by the non-affected Party.

14. **Default and Termination.** A Party may terminate this Agreement in accordance with the following events: (a) due to a breach of this Agreement by the other Party, if the breaching Party does not cure such breach within thirty (30) days after receipt of notice specifying the nature of the breach; (b) due to a Force Majeure Event; or (c) by Customer, due to discontinuation of Products. Termination of this Agreement shall not relieve any Party of any obligations that are expressly indicated to survive termination and shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination.

15. **Records & Disclosure of Discounts.** Pursuant to the requirements of 42 CFR 420.300 et seq., Vendor agrees to make available to the Secretary of Health and Human Services (“HHS”), the Comptroller General of the Government Accounting Office (“GAO”) or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of costs hereunder for a period of four (4) years after the furnishing of Products hereunder for any and all Products furnished under this Agreement. In addition, Vendor hereby agrees to require by contract that each subcontractor makes available to the HHS and GAO, or their authorized representative, all contracts, books, documents and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of services thereunder.

If Vendor carries out the duties of this Agreement through a subcontract worth \$10,000 or more over a twelve-month period with a related organization, the subcontract will also contain clauses sufficient to permit access by Customer, the Secretary, the United States Comptroller and their representatives to the related organization's books and records.

Vendor agrees to comply at all times with the regulations issued by the Department of Health and Human Services published at 42 CFR 1001, and which relate to Vendor's obligation to report and disclose discounts, rebates and other reductions to Customer for Products purchased under this Agreement. Where a discount or other reduction in price of the Products is applicable, the Parties also intend to comply with the requirements of 42 U.S.C. §1320a-7b(b)(3)(a) and the “safe harbor” regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h). In this regard, the Parties acknowledge that Vendor will satisfy any and all requirements imposed on sellers by the safe harbor and Customer will satisfy any and all requirements imposed on buyers by the safe harbor.

Each Party represents and warrants that it has not made, is not obligated to make, and will not make any payment or provide any remuneration to any third party in return for Customer entering into this Agreement or for any business transacted under this Agreement.

Rights under this Section shall survive for a period of four (4) years after termination or expiration of this Agreement.

16. **Compliance with Applicable Laws.** The Parties agree that each of them shall abide by all applicable state and federal laws relating to the activities, Products, and equipment subject to or sold pursuant to this Agreement, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations (45 C.F.R. Parts 160-164), as may be modified or amended from time to time, for the protection of Protected Health Information (as defined in 45 C.F.R. §160.103) if used or disclosed in connection with the Products provided under this Agreement.

17. **Regulatory Matters.** Customer shall immediately forward to Vendor information concerning all actual or threatened charges, complaints or claims of any nature, which relate in any way to the Products and which come to Customer's attention. Customer shall cooperate with Vendor, its representatives (including regulatory), its legal counsel, its insurance carriers and their legal counsel in investigating and defending any such charges, complaints or claims. Customer and its employees shall, at Vendor's request, provide Vendor with reasonable assistance in gathering information concerning such charges, complaints or claims and in giving oral or written testimony as to all facts in their possession concerning such charges, complaints or claims.

18. **Confidentiality.** The Parties shall keep confidential and secret any and all Confidential Information disclosed to it by the other Party. “**Confidential Information**” shall include, but not be limited to, the terms of and pricing under this Agreement, trade secrets, know-how, proprietary information, formulae, processes, techniques, product designs and marketing activities that may be disclosed, whether orally or in writing, to a Party and/or a

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Party's parent, subsidiary or affiliate companies, or that may be otherwise received or accessed by a Party in the course of performing this Agreement. The Parties expressly agree that each Party shall (a) use such Confidential Information solely and exclusively in connection with the discharge of its obligations under this Agreement and (b) not disclose such Confidential Information to any other person without the disclosing Party's prior written consent. The Parties' obligation not to disclose Confidential Information to third parties and otherwise not to use Confidential Information shall survive the termination of this Agreement. The Parties acknowledge that, in the event of a breach of the provisions of this Section IV, the non-breaching Party shall suffer damages that are not easily determinable, and the non-breaching Party shall be entitled to equitable relief, including, without limitation, an injunction or an order for specific performance, in addition to all other remedies available to the Parties at law or in equity.

Notwithstanding the foregoing, if either Party is legally obligated to disclose any Confidential Information received pursuant to this Agreement in order to comply with any applicable federal, state or local law, or pursuant to an order of a court of competent jurisdiction, such Party shall promptly notify the disclosing Party prior to any such disclosure, to enable the disclosing Party to protect the Confidential Information. In such event, the receiving Party shall only disclose such portion of the Confidential Information that it is legally required to disclose.

Customer acknowledges that to comply with applicable disclosure laws Vendor may be required to report to state and federal authorities payments and other economic benefits provided by Vendor to Customer under this Agreement, and Customer agrees that such disclosures may be made by Vendor without further notice to Customer.

19. **Corporate Compliance.** The Parties hereby certify that this Agreement is not intended to violate the Anti-Kickback Statute, 42 U.S.C. 1320(a)-7b(b) or any other applicable law or regulation. Vendor has referenced and made available to Customer a copy of its Code of Business Conduct and a summary of Vendor's Anti-Kickback Statute policies and procedures on Vendor's website (www.zimmerbiomet.com). Each Party represents and warrants that neither it nor any of its affiliates, officers, directors, subcontractors, agents, employees or representatives have ever been debarred, excluded, or suspended by the Office of Inspector General of the Department of Health and Human Services; otherwise deemed ineligible to participate in federal healthcare or procurement programs, or to the extent applicable, state healthcare or procurement programs; or convicted of a criminal offense with respect to health care reimbursement.

20. **EEO Affirmation.** Unless this Agreement is exempt from compliance with applicable law, Vendor shall comply with the EEO Clause in Section 202 of Executive Order 11246, as amended, 41 CFR Part 60-250 and 41 CFR Part 60-741, as amended, which are incorporated herein by specific reference.

21. **Vendor Product Recall Policy.** Vendor is committed to providing products that are defect-free and conform to our Specifications. Providing quality products to our customers is our obligation and top priority. Should Vendor discover any situation with distributed product whose continued use or exposure could result in a risk to health for the patient or the health care professional, Vendor adheres to the requirements set forth by 21 CFR Part 806, Medical Devices; Reports or Corrections and Removals.

22. **Assignment.** Neither Party may assign its rights and obligations under this Agreement to any third party without the express prior written consent of the other Party; provided, however, that Vendor may assign all or any part of its rights and obligations hereunder without the need for Customer's consent to any affiliate of Vendor or, in the event of a merger, acquisition, change of control, reorganization or sale of substantially all of Vendor's assets, to Vendor's successor.

23. **Miscellaneous.** Should conflicts arise between the third party credentialing documents and this Agreement, this Agreement supersedes all third party terms and conditions. This Agreement and its attachments constitute the entire agreement between the Parties with respect to the Products and supersede all previous negotiations, agreements, and commitments with respect thereto. If there is any inconsistency between the terms of this Agreement and the terms of any order or other documentation from Customer, the terms of this Agreement shall prevail. The Parties to this Agreement are independent contractors and nothing contained in this Agreement shall be construed to place the Parties in the relationship of employer and employee, partners, principal and agent, or joint ventures. As customarily provided, Vendor shall provide training on the safe and effective use of the Products, without additional charge to Customer. Neither Party shall have the power to bind or obligate the other Party nor shall either Party hold itself out as having such authority. This Agreement and any rights hereunder shall not be waived, released, abandoned, discharged, changed or modified in any manner except by an instrument in writing signed by each of the Parties. The failure of a Party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provision, nor affect the validity of this Agreement or such provision, nor limit the right of the Party thereafter to enforce this Agreement or such provision. No waiver of any

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breach of this Agreement shall be held to be a waiver of any other or subsequent breach. The illegality or partial illegality of any provision of this Agreement shall not affect the validity of this Agreement or any other provision of this Agreement. This Agreement may be executed in the original or electronically in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Each Party hereby acknowledges and agrees that each (a) has read this Agreement in its entirety prior to executing it, (b) understands the provisions and effects of this Agreement, and (c) has consulted with such advisors as it has deemed appropriate in connection with its respective execution of the Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties respective rights and obligations under the following provisions shall remain in full force and effect following expiration or termination of this Agreement and shall be enforceable following such expiration or termination: any applicable termination payment/ damages obligations set forth in the Agreement; payment terms and obligations; Confidentiality; Limitation of Liability; Indemnification; Compliance with Applicable Laws; and Regulatory Matters. This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Indiana, without regard to the choice of laws principles thereof. The Parties agree that any legal action relating to this Agreement shall be commenced and maintained exclusively before any appropriate state court of record in Kosciusko County, Indiana, or, if necessary, the United States District Court for the Northern District of Indiana, and the Parties hereby submit to the jurisdiction of such courts and waive any right to challenge or otherwise raise questions of personal jurisdiction or venue in any action commenced or maintained in such courts.

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CONSIGNMENT TERMS AND CONDITIONS
(non-Tissue)

Subject to the terms and conditions of the Product Purchase Agreement (the “**Agreement**”), Vendor agrees to consign to Customer, and Customer agrees to accept from Vendor, those certain implants and instruments that are agreed between the Parties (the “**Products**”), and any replacement Products, subject to the following terms and conditions:

1. **CONSIGNMENT**. Shipments and deliveries of Products for consignment at Customer’s facility shall at all times be subject to the approval of Vendor’s credit department; and in the event Customer is past due in payment of any amount owing to Vendor, Vendor may without liability and without prejudice to any other remedies, decline to make shipments or deliveries or stop any shipments in transit under the Agreement or any other contract with Customer.

Upon usage of any Product by Customer (“**Consumption**”), Customer will issue to Vendor a purchase order for the Product consumed (the “**Purchase Order**”) no later than twenty-four (24) hours following Consumption. Such Purchase Order must identify the catalog number, batch (lot) number, description and size of the Product consumed. Upon receipt of the Purchase Order, Vendor shall submit an invoice to Customer for the Product. Such Purchase Order will also serve as notice for Vendor to ship a replacement Product. Customer agrees to make payment to Vendor consistent with the terms contained in the Agreement.

Customer will maintain adequate records to determine the use of the consigned Products held at Customer’s facility. Vendor reserves the right to physically audit the consigned Products held at Customer’s facility during regular business hours. In the event that Vendor’s audit of such consigned Products concludes that either a shortfall or surplus exists, Vendor and Customer agree to use commercially reasonable efforts to timely account for any such discrepancy.

Vendor reserves the right to add new consigned Products or remove consigned Products on a temporary or permanent basis as required to cover case loads. A listing of new or removed consigned Products will be provided to Customer and require a Customer authorized signature, which will not be unreasonably withheld.

2. **SHIPPING**. Vendor will provide a record of shipments including the number of Products. Customer shall inspect received Products within one business day of receipt and shall verify the count and quality of shipments and within three (3) business days of receipt shall advise Vendor in writing of any count discrepancies or quality problems. Customer shall retain any rejected Products at Customer’s facility for not less than thirty (30) days to allow an opportunity for inspection by Vendor. The Parties shall use good faith efforts to agree as to the cause and responsibility for any Products rejected by Customer. Shipping costs shall be paid in accordance with the terms of the Agreement.

3. **EXPIRED PRODUCT AND RETURNS**. Unless otherwise agreed, in writing, all returns of Products supplied hereunder shall be coordinated with the local Vendor Sales Representative. Customer shall be responsible for removing expired Products from its inventory and documenting such removal. Within one business day of such removal, Customer shall contact Vendor to request replacement Products. Vendor, at its option, may either ship replacement Products or reduce the inventory of Products maintained by Customer. Vendor will not charge Customer for Products sent to replace expired inventory, unless specific replacement costs apply and are provided in writing.

4. **TITLE AND RISK OF LOSS**. Vendor will own all consigned Products until Consumption. Customer shall be responsible for the correct handling and storing of the Products and shall take reasonable steps to identify consigned Products held at its facility as consigned goods. Customer shall be responsible for all losses resulting from damage to or destruction of the Products from the time of receipt until Consumption. Customer shall use reasonable care in the handling and storage of consigned Products, and shall store any of such Products in accordance with Vendor’s Specifications and applicable quality standards or regulations related to such Products. Customer accepts the risk of loss for missing or damaged Products, except that damage to instrumentation caused by reasonable wear and tear shall be the responsibility of Vendor. Lost, damaged or missing Products shall be invoiced to Customer at the price indicated in the Agreement. Customer shall not sell the Products for use by a third party, or use the consigned Products as collateral or security, or mortgage or encumber the consigned Products in any other way. Customer shall take, or cause to be taken, such action and execute and deliver, or cause to be executed and delivered, such documents as Vendor may request (i) in connection with these Vendor Consignment Terms and Conditions and Vendor’s rights in the consigned Products and the proceeds therefrom, and (ii) to protect and maintain the protection of Vendor’s rights in the consigned Products and proceeds therefrom, including without limitation, executing and filing financing and other similar statements as may be required to protect Vendor’s ownership in any applicable jurisdiction; and Customer hereby authorizes Vendor to sign and file any such statement without its signature.

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5. **TAXES.** Customer agrees that, as applicable, it shall be responsible for payment of all taxes and other expenses incidental to the possession, safekeeping and use of the consigned Products supplied hereunder and to waive all claims against Vendor for such expenses.
6. **AFFECT OF TERMINATION AND MODIFICATION.** Either Party may terminate the consignment arrangement of any Products at Customer's facilities upon ninety (90) days prior written notice to the other Party. Within one day of termination or expiration of the Agreement in accordance with its terms, Customer shall notify Vendor of its intention to either (i) purchase all consigned Products in its possession or (ii) return the consigned Products in its possession by coordinating with the local Vendor Sales Representative and Customer shall be responsible for removing the Products from its inventory and documenting such removal. In the event that the Agreement is terminated by Vendor for Customer's breach, Vendor will be entitled to require that Customer return all consigned Products in its possession by coordinating with the local Vendor Sales Representative.
7. **MINIMUM USAGE.** Unless otherwise agreed in writing, Vendor shall have the right to terminate Customer's right to receive consigned Products under the Agreement, or retrieve the consigned Products from the Customer if the total usage by Customer does not reasonably support a business need for consignment or does not demonstrate a consistent usage where consignment is justified.

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CONSIGNMENT TERMS AND CONDITIONS
(Tissue)

Zimmer Biomet shall have delivered to Hospital on consignment certain types of human tissue products which may include frozen or freeze dried tissue (the “**Consigned Tissue Inventory**”), upon the following terms and conditions:

1. Title to the Consigned Tissue Inventory shall remain with Zimmer Biomet until such time as the Consigned Tissue Inventory is purchased by Hospital as described below. Neither Hospital nor any of its creditors nor any administrator, administrative receiver or other receiver or equivalent, shall be entitled to any lien or other possessory title or security over the Consigned Tissue Inventory which shall remain the property of Zimmer Biomet. Hospital shall use its best efforts to provide such notices to its creditors as may be required to avoid the establishment of any lien on the Consigned Tissue Inventory in accordance with local law.
2. Each Party shall perform its obligations under this Agreement in compliance with all applicable laws, rules, regulations, and orders of governmental entities. Hospital represents and warrants that it currently holds, in good standing, any and all applicable permits, licenses or registrations (“**Permits**”) required for the storage and use of the Consigned Tissue Inventory in accordance with applicable laws and regulations, and it has not received any notice of any threatened or impending revocation, suspension or disciplinary action of any such Permits.
3. Hospital shall be responsible for the shipping costs for the initial Consigned Tissue Inventory and Zimmer Biomet shall invoice Hospital for those shipping costs. Zimmer Biomet will provide a record of shipments including the number of Consigned Tissue Inventory. Hospital shall inspect received Consigned Tissue Inventory within one business day of receipt and shall verify the count and quality of the shipment; and within three business days of receipt shall advise Zimmer Biomet in writing of any count discrepancies or quality problems. Hospital shall retain any rejected Consigned Tissue Inventory at Hospital’s facility for at least thirty days to allow an opportunity for inspection by Zimmer Biomet. The parties shall use good faith efforts to agree as to the cause and responsibility for any Consigned Tissue Inventory rejected by Hospital. Shipping costs for replacement of Consigned Tissue Inventory shall be included on the Invoice
3. Hospital shall maintain the Consigned Tissue Inventory in a segregated area. Access to the Consigned Tissue Inventory shall be restricted only to appropriate Hospital staff and Zimmer Biomet’s representatives. No representatives of third parties shall have any access to, or in any way take or use, the Consigned Tissue Inventory. At all times, Hospital agrees

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to store and maintain Consigned Tissue Inventory under appropriate conditions including controlled temperature and humidity in accordance with the product labeling and all federal, state and other regulations for human tissue. Hospital agrees to maintain proper temperature logs and tracking logs as permanent records in conformance with the product labeling requirements for storage, all federal, state and other regulations, as well as the American Association of Tissue Banks standards. Hospital shall promptly notify Zimmer Biomet upon the discovery that any Consigned Tissue Inventory has not been stored or maintained in accordance with this Paragraph and ensure that in the event that any of the Consigned Tissue Inventory is not properly stored or maintained, such impacted tissue shall be immediately quarantined and not used or implanted. Hospital shall properly dispose of such tissue in accordance with this Agreement. Upon receipt of the Consigned Tissue Inventory, Hospital agrees that any of the Consigned Tissue Inventory shall only be used in the Hospital and not be moved therefrom, including to any affiliate or other facility of Hospital or any other location whatsoever.

4. Hospital shall bear the risk of loss of, damage to, or expiration of the Consigned Tissue Inventory. Any lost, damaged, or expired Consigned Tissue Inventory, whether or not such loss or damage was caused by Hospital, shall be deemed purchased by Hospital and shall be paid for by Hospital as described below. Hospital agrees to provide an appropriate purchase order to Zimmer Biomet for lost, damaged or expired Consigned Tissue Inventory within five business days of loss, damage or expiration. Furthermore, at all times, Hospital shall be solely responsible for appropriate disposal of any damaged or expired tissue in accordance with applicable laws and regulations. Upon disposal, Hospital agrees to provide any and all documentation reasonably requested or required by Zimmer Biomet or the originating tissue bank. Such documentation, at a minimum, shall include part and lot numbers. At all times while Consigned Tissue Inventory is in its possession, Hospital shall maintain insurance from a reputable insurer sufficient to fully insure the Consigned Tissue Inventory against damage or loss, and shall provide Zimmer Biomet with a certificate of insurance evidencing such coverage upon request. Notwithstanding such insurance coverage, Hospital's liability for lost or damaged inventory shall not be limited to the amount of Hospital's insurance coverage.

5. Upon implantation or disposal of any Consigned Tissue Inventory, Hospital shall immediately return the donor tracking record included with the implanted or disposed product to the appropriate tissue bank or other entity per FDA guidelines.

6. Within forty-eight hours of the use of any Consigned Tissue Inventory, Hospital shall provide notice of such use to Zimmer Biomet by providing Zimmer Biomet with a purchase order for the Consigned Tissue Inventory purchased by Hospital. Zimmer Biomet shall invoice Hospital for such Consigned Tissue Inventory used, and Hospital agrees to pay such invoices within thirty days of receipt in accordance with Zimmer Biomet's then existing

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standard terms and conditions of sale or any pricing agreement with the Hospital and Zimmer Biomet or its distributor.

7. The initial Consigned Tissue Inventory shall be documented by Zimmer Biomet and may be amended from time to time. Zimmer Biomet shall replenish, or add to, the Consigned Tissue Inventory only after receipt of a purchase order from Hospital documenting the use of Consigned Tissue Inventory by the Hospital. Zimmer Biomet, in its sole discretion, reserves the right to refuse or reduce any order by Hospital for Consigned Tissue Inventory without Hospital's consent based on various factors including availability of tissue products.

8. The supply of Consigned Inventory Tissue is subject to the fluctuations in the demand for, and the availability of, human tissue products and a variety of other factors which Zimmer Biomet may take into account in allocating product. Accordingly, Zimmer Biomet cannot guarantee the level of Consigned Tissue Inventory and reserves all rights accordingly.

9. In the event of a recall, Hospital agrees to fully cooperate with Zimmer Biomet which shall include providing Zimmer Biomet with any and all information reasonably requested including full access to all tracking and inventory records.

10. Upon reasonable notice, the Hospital shall allow Zimmer Biomet or its agent (at Zimmer Biomet's cost) to: (a) conduct a physical audit of the Consigned Tissue Inventory; and (b) examine records of the Consigned Tissue Inventory, including auditing of all tracking and temperature logs to assure compliance with product requirements and promulgated regulations and standards. Zimmer Biomet shall conduct an actual physical inventory not less than every ninety days to reconcile used, lost, damaged or expired Consigned Tissue Inventory.

11. The term of this Agreement shall be three years from the Effective Date. Thereafter, this Agreement shall automatically renew for successive one year terms. Either party, however, may terminate this Agreement at any time and without cause upon ten days prior written notice to the other party. In the event this Agreement is terminated by Hospital without Cause or Zimmer Biomet with Cause, Hospital agrees to immediately issue a Purchase Order for any remaining inventory and purchase such inventory at the agreed upon price. In the event of termination wherein Hospital is not obligated to purchase any remaining inventory, Hospital shall fully cooperate with Zimmer Biomet to return any remaining inventory to a location designated by Zimmer Biomet at Zimmer Biomet's expense. For purposes of this paragraph, "**Cause**" shall be defined as a breach by a party of this Agreement that remains uncured for a period of thirty days after receiving written notice from the other party.

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12. The parties stipulate and agree that the terms and covenants contained in this Agreement are fair and reasonable in all respects. In the event that a court of competent jurisdiction or arbitrator determines that any of the terms or provisions of this Agreement are unreasonable, the court may limit the application of any provision or term, or modify any provision or term, and proceed to enforce the Agreement as so limited or modified.

13. Hospital cannot assign this Agreement without the express written consent of Zimmer Biomet which shall not be unreasonably withheld. Upon ten days' notice, Zimmer Biomet can assign this Agreement without the consent of Hospital. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

14. The waiver or failure of either party to exercise in any respect any right provided for under this Agreement shall not be deemed to be a waiver of any future right hereunder.

15. This Agreement (including, but not limited to, the validity, performance, interpretation and enforcement thereof), the relationship established hereunder, and any dispute involving the subject matter of this Agreement shall be governed by and subject to the internal laws (exclusive of conflicts of law provisions) and decisions of the courts of the State of Indiana. Furthermore, to the extent any legal proceedings are initiated by either party, the venue for such litigation shall take place in a court located in Kosciusko County, Indiana or the United States District Court for the Northern District of Indiana.

16. The headings used herein are for convenience only and do not limit or expand the contents of this Agreement.

17. This Agreement contains the entire agreement of the parties with respect to the relationship and shall be deemed to supersede all prior agreements with respect to the relationship, whether written or oral, and the terms and provisions of any such prior agreements shall be deemed to have been merged into this Agreement.