

Biomet Purchase Order Terms and Conditions

GENERAL. As used herein "Biomet" means Biomet, Inc. and its subsidiaries. The term "Goods and Services" means anything provided hereunder to Biomet by the seller (hereinafter, "Seller"). All specifications, drawings and data submitted by/or to Seller relating to the purchase order and these purchase order terms and conditions (collectively, the "Purchase Order") are hereby incorporated herein. All Goods and Services shall be produced in accordance with materials specifications and drawings received with the Purchase Order only. Except as otherwise agreed to in writing by the parties, including in a separately negotiated contract or statement of work, the terms of the Purchase Order shall control over any invoice, confirmation or other document proposed by Seller or accompanying the Goods and Services.

ACCEPTANCE. Seller shall accept and be bound by the terms of the Purchase Order by either (a) signing and returning a counterpart of the Purchase Order to Biomet, or (b) shipping all or part of the Goods and Services ordered hereunder. Biomet is not bound by the Purchase Order until Biomet receives a valid written acceptance thereof from Seller or Biomet receives and accepts all or part of the Goods and Services ordered hereby. No modification, variation or amendment of the Purchase Order or of a contract arising from Seller's acceptance of the Purchase Order shall be valid or binding on Biomet unless agreed to in writing by a duly authorized officer or representative of Biomet. Biomet reserves the right to rescind the Purchase Order at any time prior to acceptance by Seller.

MODIFICATION. Biomet may at any time prior to its acceptance of the Goods and Services, by written order make changes within the general scope of the Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for the performance of, any part of the Goods and Services purchased under the Purchase Order, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for shall be asserted within ten (10) business days from the date of Seller's receipt of the written order directing the change. If such changes render any items not yet delivered to Biomet nonconforming or obsolete, Biomet shall have the right to prescribe the manner of disposition of such items.

PRICE. Seller's quoted prices shall be exclusive of VAT, and the applicable VAT rate and amount shall be listed separately. In case a VAT rate and amount are not so listed, the quoted prices are considered to be inclusive of VAT. Seller shall not invoice Biomet at prices higher than those set out on the Purchase Order without Biomet's prior written authorization. Seller shall invoice Biomet at prices set out on the Purchase Order. By acceptance of the Purchase Order, Seller represents that the price charged for the Goods and Services is the lowest price charged by Seller to other purchasers of a class similar to Biomet's under similar circumstances and that Seller's prices comply with applicable government regulations affecting the same. Seller agrees that any general price reduction in Goods and Services covered by the Purchase Order at any time prior to the shipment of the same will be applicable to the Purchase Order. Biomet shall have the right to off-set any payment or other obligation owed by Biomet to Seller, in whole or in part, against any payment or other obligation owed by Seller to Biomet.

SELLER REPRESENTATIONS. Seller shall use commercially reasonable efforts (i) to provide to Biomet the Goods and Services ordered in accordance with the terms stipulated in the Purchase Order; (ii) to keep Biomet advised of the status of the Purchase Order; (iii) to permit duly authorized representatives of Biomet to access Seller's facilities from time to time upon reasonable notice to inspect the Goods and Services and review and observe the manufacture and processing of Goods and Services and/or examine all records related thereto; (iv) to provide Biomet with such reports as are appropriate to the nature of the Goods and Services ordered and as may be reasonably requested by Biomet from time to time; (v) to retain records and other documentation regarding the manufacture process; and (vi) to keep, for orders requiring payment based on hours worked, cost of materials used and/or expenses incurred, records of hours worked, cost of materials used, and reasonable out-of-pocket expenses incurred in filling the Purchase Order, which records Biomet's duly authorized representatives may examine from time to time upon reasonable notice. Further, if the Goods and Services include services, Supplier represents and warrants that (i) such services will be performed or provided by

qualified individuals skilled and trained in the performance of such services; (ii) such services will be performed or provided in a workmanlike, professional manner in accordance with applicable industry standards; (iii) its providing of the services will not violate or breach any obligation of Seller to a third party; and (iv) providing or performing the services will not violate any third party patents, copyrights, trade secret, trademark or intellectual property rights.

CANCELLATION. Shipments or deliveries shall be strictly in accordance with the quantities and the schedule specified in the Purchase Order. Seller shall promptly notify Biomet in writing of reasons for any delay, the estimated duration of the delay and, if requested by Biomet, ship via means which will avoid or minimize delay to the maximum extent possible, the added cost to be borne by Seller. This is in addition to Biomet's other remedies, including, without limitation, cancellation after thirty (30) days for non-compliance, cover and any incidental and consequential damages. Biomet reserves the right to terminate and cancel the Purchase Order by written notice at any time as to all or any part of undelivered Goods and Services hereunder, and Biomet's liability therefore shall be limited to Seller's noncancellable cost for materials and labor incurred for such undelivered Goods and Services cancelled prior to receipt of the cancellation notice. Biomet shall have no liability for any cancellation of a Purchase Order for Goods and Services that have not been delivered within sixty (60) days after the delivery date.

PACKAGING REQUIRMENTS. Seller shall be responsible for safe packing, which must conform to the requirements of carrier's tariffs. Seller shall separately number all cases, packages, etc. showing the corresponding numbers on the invoices. All itemized packing slips, bearing the Purchase Order Number, must be placed in each container. No extra charge shall be made for packaging materials unless authorized by Biomet in the Purchase Order. The following abbreviations shall be used to designate specific packaging requirements for Goods as stated on the Purchase Orders: PKG/S – Goods to be packaged and sterilized by Seller; PKG/FS – Goods to be packaged by Seller and will be sterilized by Biomet; and PKG/NS – Goods to be packaged by Seller but not sterilized by either Seller or Biomet.

MATERIAL SAFETY DATA SHEETS. If required by law, an applicable Material Safety Data Sheet ("MSDS") and labeling will precede or accompany each shipment of Seller. Seller shall further provide Biomet with updated MSDS's and labeling as required by law.

RAW MATERIAL. Parts produced from implantable grade alloys must comply with the appropriate standard listed in the Biomet Global Approved Supplier List for that specific alloy. Examples include, but are not limited to, Titanium, Cobalt Chrome and Stainless Steel 316 or 316LVM.

CHANGES IN GOODS AND SERVICES. Seller acknowledges that certain Goods and Services purchased hereunder may be incorporated into medical devices regulated under applicable country laws. Seller agrees that it will make no changes or modification in the manufacture or in any raw material, facilities, suppliers/subcontractors, inspection / test plans, or packaging methods and materials involving or affecting the Goods and Services without the prior written approval of Biomet. The foregoing includes, without limitation, changes to equipment, fluids used in processing or manufacture, and any other fluids, adhesives, or lubricants which may intentionally or inadvertently come in contact with the Goods and Services. All outstanding Purchase Orders are to be held by the Seller pending written acceptance of all such changes by Biomet.

DELIVERY. Any Goods shipped to Biomet facilities under the Purchase Order shall be addressed to Seller c/o Biomet. Unless otherwise directed in writing by Biomet, FCA (Free Carrier), Supplier site, INCOTERMS 2000, shall apply to all shipments of Goods under the Purchase Order, except to the extent that specific terms of the Purchase Order contradict the relevant INCOTERMS 2000, then the Purchase Order controls. Seller shall utilize the Biomet-specified carrier. Biomet shall notify Seller of the contact details for the relevant carrier and Seller shall coordinate delivery of the Goods with such carrier. All Goods and Services shall be delivered free and clear of any and all liens, claims or other encumbrances.

IMPORT/CUSTOMS. Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Export Administration Act, 50 U.S. C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730-774, the Trading With the Enemy Act, 50 U.S. C. app. 1-44 (TWEAT), the International Emergency Economic Powers Act, 50 U.S.C. app. 1701-06 (IEEPA), the Office of Foreign Assets Control (OFAC) Regulations for Exporters and Importers, and the requirement for obtaining any export license, if applicable. Seller shall provide prompt notification to Biomet in the event of any violation, or potential violation, of the laws and regulations listed above.

- Seller agrees to notify Biomet of the export classification (Harmonized Tariff Schedule (HTS) and the Country of Origin (COO)) of any deliverable under the Purchase Order, under applicable export control laws or regulations.
- Seller (Non-U.S.) agrees to fully pack for transit, mark with appropriate labels, names and numbers to identify the Goods and Services as belonging to Biomet, and provide all necessary documents, papers and certificates required to for U.S. Customs clearance, and be exported without undue delay or expense.
- Seller (Non-U.S.) agrees to provide appropriate documentation identifying Seller's FDA registration number, the Product Code(s), and Device Listing Number(s) applicable to the products exported to the U.S.
- Seller (Non-U.S.) agrees to participate in Biomet's International Shipment Pre-Alert program by providing an advance copy of shipping documents (Commercial Invoice(s), Shipper's Declaration – to be obtained from Biomet) to the following email address: import-export@biomet.com, once the AWB/Tracking Number has been obtained.
- Seller shall immediately notify Biomet if the Seller, is or becomes, listed on any Denied Parties List or if the Seller's export privileges are otherwise denied, suspended or revoked in whole or in part, by any government or agency thereof.

INSPECTION. All Goods and Services ordered hereunder are subject to inspection and acceptance by Biomet at Biomet's destination regardless of prior payment, or inspection at Seller's facilities. Biomet may reject any Goods and Services not in complete compliance with the plans, designs, drawings, samples, standards or other specification supplied by Biomet or not in accordance with any agreement arising out of Seller's acceptance of the Purchase Order and/or Seller's warranties, express or implied. Payment for or acceptance of any part of an order shall not bind Biomet to accept future shipments of nonconforming Goods and Services or negate Biomet's right to return nonconforming Goods and Services already accepted. All Goods and Services rejected by Biomet shall be returned at Seller's expense for both delivery and return transportation. No replacement or substitution of the rejected Goods and Services or any part thereof shall be made without Biomet's prior written authorization. Seller shall submit a certificate of conformance with shipment to Biomet.

INVOICE. A separate, electronic invoice shall be issued for each shipment. Unless otherwise specified in the Purchase Order, no invoice shall be issued prior to the shipment of Goods or provision of Services and no payment will be due prior to receipt of Goods and/or Services and applicable invoice. Biomet will pay for the Goods and Services within sixty (60) days of receipt of the invoice, unless discounts are offered for earlier payment. The payment date will be the date Biomet's check is mailed or payment is otherwise transmitted to Seller. Applicable discounts will be taken on full amount of invoice.

QUALITY WARRANTY. By fulfilling the Purchase Order, Seller specifically represents and warrants that the Goods and Services furnished to Biomet hereunder will be: (a) of merchantable quality and fit for the purposes intended; (b) free from defects in material and workmanship; and (c) in full conformity with any agreement arising from the Purchase Order, Biomet quality requirements, standards and specifications, and any plans, designs, drawings, samples, standards or other specifications furnished or specified by Biomet. All warranties shall run to Biomet, Biomet's customers and all users of the Goods and Services or any goods or services into which such Goods and Services may be incorporated. Such warranties are in addition to any other express or implied warranties of Seller and the same shall survive acceptance of the Goods and Services.

QUALITY/COMPLAINT PROCESS. Seller and Biomet shall fully cooperate in dealing with third party complaints arising from the Goods and Services. Seller shall provide, in a timely manner, such assistance and information as Biomet reasonably requests to fulfill its reporting obligations for the Goods and Services and each product into which the Goods and Services may be incorporated. Seller's Quality Management Procedures, device history records, and all batch and validation records related to the Goods and Services shall be maintained by the Seller in accordance with the requirements of applicable laws and shall be made available for inspection by Biomet, its representatives and/or any relevant regulatory authorities. Seller shall notify Biomet within five (5) business days of the results of any governmental inspection of its facilities related to the Goods and Services provided to Biomet. Additionally, if any deficiency is noted, Seller shall provide Biomet with its corrective action plan.

REGULATORY SUPPORT. Seller shall, at Biomet's written request, provide to Biomet any necessary regulatory support in all countries in which Biomet sells any product that includes the Goods and Services under the Purchase Order, including but not limited to, the following: (1) any available biocompatibility and mechanical testing data in raw and summary form, and updates on such data, in relation to the Goods and Services; (ii) other information related to the general performance and/or other general physical characteristics of the Goods and Services;(iii) additional information necessary for regulatory approval by any country's regulatory authority where Biomet sells its products which include the ; and (iv) if the Goods and Services are licensed or registered or approved for use in any country in which Biomet sells its products, Seller will provide Biomet notice of such registration, license or approval.

RECALL OF GOODS AND SERVICES. If at any time after acceptance of the Purchase Order by Seller or delivery and/or acceptance of the Goods and Services by Biomet, all or any part of the Goods and Services become subject to a voluntary or involuntary recall by any government agency or corrective action by Seller, Seller shall assume responsibility and costs for implementing and complying with such recall according to applicable laws, regulations, and government orders, including costs arising from the return and/or replacement of such Goods and Services, to the extent that the Goods and Services do not conform to Biomet specifications or contain latent defects that resulted in the recall. Seller shall be responsible for all communications necessary to such recall. Any communications to Biomet's customers regarding the recall or corrective action shall have the prior approval of Biomet. Seller shall credit or reimburse Biomet for the costs of recalled Goods and Services and any costs or losses incurred by Biomet as a result of the recall. Seller shall further promptly inform Biomet regarding recalls and other safety concerns regarding products similar to the items supplied by Seller to customers other than Biomet.

WORK ON BIOMET PREMISES. If Seller's obligations under the Purchase Order involve operations by Seller on Biomet's premises, Seller agrees to comply with, and require its employees and contractors performing such Services to comply with, all Biomet plant safety rules and regulations. Seller shall also perform all work in a safe manner, keeping premises free of safety hazards at all times, and conform to federal and state safety regulations while on Biomet premises. A certificate of insurance covering Seller's employees and property damage liability is required prior to the start of any work on Biomet premises. All such operations shall be conducted as an independent contractor and neither Seller nor any of its employees shall be considered employees of Biomet. Seller agrees to remove and replace any of Seller's employees and/or contractors to whom Biomet has a reasonable objection.

PROPERTY AND DESIGNS FURNISHED SELLER. Unless otherwise agreed in writing, all dies, molds, patterns, design specifications, drawings, gauges, tools and any other property (collectively "Property") furnished to Seller by Biomet or specifically paid for by Biomet, and any replacement or substitution thereof, are and remain the property of Biomet. Such Property shall not be disclosed to or used by or on for the benefit of any third party and will be used solely for Biomet. All such Property shall be subject to removal at Biomet's instruction, in which event Seller shall prepare the Property for shipment and shall deliver the Property to Biomet in the same condition as originally received by Seller, reasonable wear and tear excepted. While in Seller's custody or control, Seller shall maintain and repair such Property at Seller's expense. Seller shall be responsible for calibration of all such Property requiring calibration and shall maintain all records related to such calibration. Seller shall provide Biomet with original documentation and/or copies thereof

when requested by Biomet. Seller shall hold the Property at its risk and shall keep the same fully insured in an amount equal to the replacement cost thereof with a loss payable clause in favor of Biomet. Such Property shall be appropriately segregated from Seller's property and shall be prominently identified as belonging to Biomet. Goods and Services made according to a design furnished by Biomet (not previously a standard commercial design of Seller) shall not be furnished to any other party without Biomet's prior written consent.

PATENTS AND INTELLECTUAL PROPERTY. Seller represents and warrants that the Goods and Services and the sale and use of them, where a representation of suitability for such use, express or implied, has been made, will not infringe any United States or foreign patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property. Seller acknowledges that any patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property that Biomet provides to Seller are Biomet's exclusive property and Seller disclaims all rights in same. Where the Goods and Services include experimental, developmental, or research work to be performed in accordance with special requirements of Biomet, any such work will be considered "work for hire" and Seller agrees to disclose and on request to assign to Biomet each invention, copyright, confidential process or know-how, and trade secret or other form of intellectual property resulting therefrom and Seller shall disclaim all rights in same. All drawings, art work, special products, materials, information or data furnished by Biomet and all intellectual property resulting from this Agreement (as referenced in the foregoing sentence) are Biomet's exclusive property, shall be used by Seller only for Biomet's work, shall be kept confidential by Seller, and shall be returned to Biomet at Biomet's request. Biomet will market, distribute and/or sell the Goods and Services under its own trademark and trade name. Biomet has the right to use any of Seller's marks, names, other trade identities, copyrighted works or other intellectual property, to the extent that Seller has incorporated such property in or used such property in the manufacture of the Goods and Services that are supplied by Seller to Biomet.

INDEMNIFICATION. In addition to any other provisions of the Purchase Order, Seller agrees to defend, indemnify and hold harmless Biomet, its affiliates, and their directors, employees and agents, from all losses, liabilities, damages and expenses, including reasonable attorneys' fees, arising, directly or indirectly, from: (i) Seller's breach of any provision of the Purchase Order; (ii) negligent or wrongful act or omissions of Seller, its employees, consultants or subcontractors; and/or (iii) Seller's failure to comply with applicable laws and regulations in filling the Purchase Order to the maximum extent permitted by law. Seller agrees to defend, indemnify and hold harmless Biomet, its affiliates, and their directors, officers, employees and agents from any liability, claim, legal action, proceeding, judgment, loss or expense arising therefrom, (including without limitation reasonable attorneys fees) arising from any wrongful act or omission in the performance or provision of services or operations by Seller on Biomet's premises to the maximum extent permitted by law.

LIMITATION OF LIABILITY; STATUTE OF LIMITATIONS. In no event shall Biomet be liable for anticipated profits, business interruption, incidental, consequential or punitive damages. Biomet's liability for any claim arising out of the Purchase Order shall be limited to the price allocable to the Goods and Services. Any action by Seller arising out of the Purchase Order must be commenced within one (1) year after the cause of action has accrued.

COMPLIANCE WITH LAW. In providing Goods and Services under the Purchase Order, Seller agrees that it shall comply and has complied with all applicable laws, regulations and orders in the manufacture, import, export and sale of the Goods and Services and, as applicable, ISO 13485:2003, as amended from time to time. Goods and Services ordered herein may be used by Biomet in fulfilling a government prime or subcontract and may be subject to applicable specific government standards, and Seller agrees to be bound thereby and comply therewith. Seller shall inform Biomet promptly of any adverse events and/or any allegations or findings of violations of applicable laws or regulations that have the potential of affecting the quality of the goods and/or services to be delivered. Seller agrees that it will abide by, and will cause all of its directors, officers, employees, agents or representatives or any other person acting on behalf of Seller to abide by, all applicable anti-corruption laws and regulations, including but not limited to its local laws; the US Foreign Corrupt Practices Act ("FCPA"); as applicable, the Organization for Economic Co-operation and Development

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Bribery Convention") and its local country enabling legislation, and any other law that may govern its activities from time to time.

BUSINESS CONTINUITY PLANNING: Seller shall maintain and regularly update a disaster recovery and/or business continuity plan ("Plan") that details how Seller will recover from a disaster and/or unexpected event and resume or continue operations and continue to provide the Services and perform its obligations under this Agreement. Seller shall provide its Plan to Biomet upon request.

FORCE MAJEURE. Strikes, riots, wars, insurrection, embargoes, acts of terrorism, fires, floods or other casualties, government actions, acts of God, or other events beyond Biomet's reasonable control which shall effect Biomet's ability to receive and/or use the Goods and Services ordered hereunder shall constitute valid grounds for suspension by Biomet of shipment of Goods and Services covered hereby without penalty or liability, upon written notification to Seller, except that, upon cancellation for such causes, Biomet agrees to pay Seller its direct expenditures incurred for labor and materials prior to receipt of such notice of cancellation made upon the authority of the Purchase Order.

NO WAIVER. The failure of Biomet to enforce at any time any of the provisions hereof shall in no way affect the validity of the Purchase Order or any part hereof or the future right of Biomet thereafter to enforce each and every such provision. No waiver of any breach of the Purchase Order shall be held to be a waiver of any other subsequent breach.

INSURANCE. Seller shall, at its own expense, maintain appropriate insurance for a period of at least 2 years after the fulfillment of the Purchase Order which includes, but is not limited to, (i) worker's compensation statutory coverage as required by the laws of the applicable jurisdiction, and (ii) commercial general liability insurance including coverage for product liability in the minimum amount of \$5 million each occurrence in respect of claims for any losses, costs and expenses arising out of or relating to Seller furnishing the Goods and Services under the Purchase Order. A certificate of insurance will be provided to Biomet upon request. All insurance policies of Seller shall be primary as respects to any other policies held by Biomet or any other policies providing any coverage in favor of any member of Biomet. All insurance required of Seller in this Contract shall be placed with insurers acceptable to Company. These insurers shall maintain a minimum rating of A- VII by the A.M. Best Company or A by Standard & Poor's.

CONFIDENTIALITY/PUBLICITY. Seller shall consider and treat any information or any data, designs, or other information belonging to or supplied by Biomet in connection with the Purchase Order as confidential. Seller shall not use or disclose same to any third party except to the extent necessary to perform the terms of the Purchase Order or other Purchase Orders for Biomet. Seller shall return such information, data, designs, or other information and any copies thereof to Biomet on Biomet's request. Seller shall not, without Biomet's prior written consent, issue or release any public announcement, press release or other statement in any form of media, including the Internet, regarding the Purchase Order, the provisions hereof, or any of the transactions contemplated hereunder. Seller shall not use Biomet's name, or the names of any of Biomet's affiliates, Biomet's trademarks or other information regarding Biomet in any advertisement or for any promotional purpose without Biomet's prior written consent.

ENVIRONMENTAL MATTERS. Seller represents and warrants that it is in compliance and will remain in compliance with all environmental laws and regulations with respect to the environment.

HUMAN TRAFFICKING/SLAVERY. Seller certifies that the Goods and Services sold to Biomet comply with the laws regarding slavery and human trafficking of the country or countries in which Seller is doing business.

GOVERNING LAW. The Purchase Order shall be governed by the laws of the People's Republic of China, without giving effect to its conflict of laws provisions. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, shall not apply to the Purchase Order.

DISPUTE RESOLUTION. In providing Goods and Services under the Purchase Order, Seller agrees that it shall comply and has complied with all applicable laws, regulations and orders in the manufacture, import, export and sale of the Goods and Services and, as applicable, ISO 13485:2003. Goods and Services ordered herein may be used by Biomet in fulfilling a government prime or subcontract and may be subject to applicable specific government standards, and Seller agrees to be bound thereby and comply therewith. Seller shall inform Biomet promptly of any adverse events and/or any allegations or findings of violations of applicable laws or regulations that have the potential of affecting the quality of the goods and/or services to be delivered. Seller agrees that it will abide by, and will cause all of its directors, officers, employees, agents or representatives or any other person acting on behalf of Seller to abide by, all applicable anti-corruption laws and regulations, including but not limited to its local laws; the US Foreign Corrupt Practices Act ("FCPA"); as applicable, the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Bribery Convention") and its local country enabling legislation, and any other law that may govern its activities from time to time.

ARBITRATION If any matter involving claims and/or disputes or other questions arising out of, or relating to this Agreement or to a breach hereto or default hereunder cannot be settled by mutual agreement within thirty (30) days following notice by one party to the other that such party deems a claim, dispute, question, breach or default to have arisen hereunder, the parties shall submit such matter to the Shanghai Arbitration Commission for arbitration before a single arbitrator in Shanghai, in accordance with the arbitration rules of the Shanghai Arbitration Commission. The decision of the arbitrator shall be final and binding on the parties, and the judgment upon the award rendered by the arbitrator shall be enforceable in any court of competent jurisdiction. Each party shall bear its own attorney's fees, costs, and expenses incurred in such arbitration. Biomet has the right before or, if the arbitrator cannot hear the matter within an acceptable period, during the arbitration to seek and obtain, from an appropriate court, provisional remedies such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration.

ASSIGNMENT. The Purchase Order and Seller's rights and duties hereunder shall not be assignable by Seller without the prior written consent of Biomet, which consent may be withheld in its sole discretion. Biomet may assign its rights and obligations hereunder to any one or more of its affiliates.

NOTICES. All communications from Seller to Biomet relating to the Purchase Order and these terms and conditions shall be addressed to the Biomet's representative identified on the Purchase Order.

SUPPLIER CODE OF CONDUCT. Seller agrees to abide by the Biomet Code of Supplier Conduct located at www.Biomet.com

Seller's Company Name: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

Biomet 订购单 条款和条件

概述。本协议所使用的“Biomet”指 Biomet, Inc. 及其子公司。“商品和服务”一词指本协议下卖方（下文称“卖方”）向 Biomet 提供的所有事物。卖方提交或向卖方提交的有关订购单及其订购单条款和条件（统称“订购单”）的所有规范、图纸和数据特此纳入本协议。所有商品和服务须仅根据与订购单一起收到的材料规范和图纸生产。除双方另行书面协定并纳入特别磋商的工作合同或声明中外，订购单的条款须对卖方提供或商品和服务附带的任何发票、确认书或其他文件具控制力。

接纳。卖方须通过（a）签署并交还一份订购单副本给 Biomet，或（b）装运本协议下订购的所有或部分商品和服务，接纳并受订购单条款约束。Biomet 在收到卖方对订购单的有效接纳书或 Biomet 收到并接纳据此订购的所有或部分商品和服务之前，不受订购单约束。除非 Biomet 的正式授权高级职员或代表书面同意，否则订购单或卖方接纳订购单而产生的合同的修改、变动或修正均不生效或对 Biomet 具约束力。Biomet 保留在卖方接纳前随时解除订购单的权利。

修改。Biomet 可在接纳商品和服务之前，随时通过书面命令在订购单的一般范围内做出更改。如果任何该等变动导致订购单下购买的任何部分商品和服务的成本或履约所需的时间增加或减少，须做出公平调整，且须相应地书面修改订购单。卖方的任何索赔须在卖方收到指示变动的书面命令之日后十（10）个工作日内主张。如果任何变动使尚未向 Biomet 交付的任何项目不合格或废弃，Biomet 须有权指定该等项目的处置方式。

价格。卖方的报价须不包含增值税（VAT），且适用 VAT 率和金额须单独列明。如果 VAT 率和金额不如此列明，则报价被视为包含 VAT。卖方未经 Biomet 事先书面授权，不得按高于订购单上所列者的价格向 Biomet 开具发票。卖方须按订购单上所列价格向 Biomet 开具发票。卖方接纳订购单后，即表明对商品和服务收取的价格是卖方在类似环境下向其他与 Biomet 所购者类别相似的购买者收取的最低价格，且卖方的价格符合影响上述商品和服务的适用政府条例。卖方同意，订购单内涵盖的商品和服务在装运前任何时候的任何一般降价将适用于订购单。Biomet 须有权针对卖方对 Biomet 应承担的任何付款或其他责任，全部或部分抵销 Biomet 对卖方应承担的任何付款或其他责任。

卖方声明。卖方须尽商业上的合理努力，（i）根据订购单内规定的条款，向 Biomet 提供订购的商品和服务；（ii）使 Biomet 随时了解订购单的状态；（iii）准许 Biomet 的正式授权代表不时在发出合理通知后进入卖方的设施，以检查商品和服务，并审查和观察商品和服务的制造和加工，和 / 或检查所有与之相关的记录；（iv）向 Biomet 提供对订购的商品和服务性质恰当及 Biomet 可能不时合理要求的报告；（v）保留有关制造流程的记录和其他文件；及（vi）对于要求基于工作时数、所用材料的成本和 / 或产生的开支付款的订单，保留工作时数、所用材料的成本和履行订购单所产生的合理实付开支之记录，而 Biomet 的正式授权代表可不时在发出合理通知后检查该等记录。此外，如果商品和服务包括服务，则供应商声明和保证，（i）该等服务将由具备技能且经过该等服务执行培训的合格人士执行或提供；（ii）该等服务将根据适用行业标准，以技术熟练、专业的方式执行或提供；（iii）其对于服务的提供将不违背或违反卖方对第三方的任何责任；及（iv）提供或执行服务将不违背任何第三方专利、版权、商业秘密、商标或知识产权。

取消。装运或交付须严格地符合订购单内规定的数量和时间表。对于任何延迟，卖方须立即书面告知 Biomet 原因、估计延迟持续时间，及（如 Biomet 要求）通过将在最大可能范围内避免或最大程度减少延迟的方式装运，且增加的成本由卖方承担。这是对 Biomet 其他补救措施的补充，包括但不限于在三十（30）天后就不合规、购买替代物损害赔偿及任何附带及相应而生的损害赔偿而做出的取消。Biomet 保留随时通过发出书面通知，对于所有或任何部分本协议下的未交付商品和服务，终止和取消订购单的权利，且 Biomet 的责任因此须限于卖方在接到取消通知前，对于该等未交付商品和服务所产生的不可取消材料和劳动成本。Biomet 对于因商品和服务未在交付日期后六十（60）天内交付而对订购单的任何取消概不负法律责任。

包装要求。卖方须负责必须遵守承运人的关税要求的安全包装。卖方须对所有箱子、包裹等独立编号，并在发票上列示相应编号。所有分条列述且带有订购单编号的装箱单必须放入各容器内。除非 Biomet 在订购单内授权，否则对于包装材料不得收取额外费用。以下缩写须用于指明订购单上所列的特定商品包装要求：PKG/S—商品由卖方包装和消毒；PKG/FS—商品由卖方包装，由 Biomet 消毒；及 PKG/NS—商品由卖方包装，但卖方或 Biomet 均不消毒。

材料安全数据表。如果法律要求，将先提供适用的材料安全数据表（“MSDS”）和标签或随附于卖方的各货物中。卖方须按法律要求，进一步向 Biomet 提供更新的 MSDS 和标签。

原材料。从可移植级合金生产的部件必须符合 Biomet 全球批准供应商列表（Biomet Global Approved Supplier List）中对于该特定合金所列的恰当标准。范例包括但不限于钛、钴铬和不锈钢 316 或 316LVM。

商品和服务的改变。卖方确认，本协议下购买的一些商品和服务可能被加入受适用国家法律监管的医疗设备中。卖方同意，未经 Biomet 事先书面批准，其将不改变或修改涉及或影响商品和服务的制造方式或任何原材料、设施、供应商 / 分包商、检查 / 测试计划或包装方式和材料。上述改变包括但不限于对设备、加工或制造中使用的液体，及任何其他可能有意或无意间与商品和服务接触的液体、粘合剂或润滑剂的改变。所有处理中的订购单将由等待 Biomet 书面接纳所有该等变动的卖方持有。

交付。根据订购单装运至 Biomet 设施的任何商品须注明卖方转交 Biomet 的地址。除非 Biomet 另行书面指定，货交承运人（FCA）、供应商地点、《2000 年国际贸易术语解释通则》（INCOTERMS 2000）须适用于订购单下商品的所有装运，但订购单的特定条款与有关 INCOTERMS 2000 矛盾的情况下，则以订购单为准。卖方须使用 Biomet 指定的承运人。Biomet 须告知卖方对于有关承运人的合同详情，且卖方须与该承运人协调商品的交付。所有商品和服务须在不含和清除所有和任何留置权、索赔或其他产权负担的条件下交付。

进口 / 关税。 卖方同意遵守所有适用的美国出口管制法律和法规，具体包括但不限于《美国法典》第 50 篇第 2401-2420 款《出口管理法案》、《美国联邦法规》第 15 篇第 730-774 款《出口管理条例》、《美国法典》第 50 篇第 1-44 款《与敌国贸易法》（TWEAT）、《美国法典》第 50 篇第 1701-06 款《国际紧急经济权力法》（IEEPA）、海外资产控制办公室（OFAC）关于出口商和进口商的条例，及获取任何出口许可证要求（如适用）。卖方如果违反或潜在违反上述任何法律和法规，须立即通知 Biomet。

- 卖方同意告知 Biomet 适用出口管制法律或法规下对订购单下任何交付物的出口分类（海关关税编码（HTS）和原产国（COO））。
- 卖方（非美国）同意进行运输的全面包装、标上恰当标签、名称和编号，以识别商品和服务属于 Biomet，并提供美国海关报关需要的所有必要文件、文稿和证明，并在无不恰当延迟或开支的情况下出口。
- 卖方（非美国）同意提供恰当文件，以识别适用于出口至美国产品的卖方 FDA 注册编号、产品编码和设备列表编号。
- 卖方（非美国）同意一旦获得空运提单号（AWB） / 追踪号，则通过向以下电子邮件地址：import-export@biomet.com 发送装运文件（商业发票、装运人声明—需从 Biomet 获得）的预发本，参与 Biomet 的国际装运预报（International Shipment Pre-Alert）计划。
- 如果卖方名列或变得名列任何被拒贸易方名单，或卖方的出口特权在其他方面被任何政府或其机构全部或部分拒绝、暂停或撤销，则卖方须立即通知 Biomet。

检查。 本协议下订购的所有商品和服务须在 Biomet 的目的地经由 Biomet 检查和接纳，而无论事先是否付款或在卖方的设施检查。Biomet 可能拒绝任何不完全符合 Biomet 提供的方案、设计、图纸、样本、标准或其他规范，或不符合任何因卖方接纳订购单而产生的协议，和 / 或卖方的明示或暗含保证之商品和服务。对于任何部分订单的付款或接纳任何部分订单并不约束 Biomet 接纳日后装运的不合格商品和服务，或否定 Biomet 退回已接纳的不合格商品和服务的权利。Biomet 拒绝的所有商品和服务须在卖方承担交付和退回运输费用的情况下退回。未经 Biomet 事先书面授权，不得对被拒商品和服务或其任何部分做出更换或替换。卖方须连同货物一起向 Biomet 提交一份合格证明。

发票。 对于每次装运须出具单独的电子发票。除非订购单内另行规定，否则不得在装运货物或提供服务之前出具发票，且收到货物和 / 或服务及适用发票之前概无需付款。除对于提前付款提供折扣外，Biomet 将在收到发票后六十（60）天内支付商品和服务的费用。付款日将为 Biomet 的支票邮出或付款以其他方式转至卖方之日。适用折扣将适用于发票的全部金额。

质量保证。 通过履行订购单，卖方特别声明和保证，本协议下向 Biomet 提供的商品和服务将：（a）具可销售的质量且适合拟定目的；（b）无材料和技巧上的缺陷；及（c）完全符合因订购单产生的任何协议、Biomet 质量要求、标准和规范，及 Biomet 提供或规定的任何方案、设计、图纸、样本、标准或其他规范。所有保证须适用于 Biomet、Biomet 的客户，及商品和服务或任何该等商品和服务可能被纳入其中的商品或服务的所有用户。该等保证是对卖方的任何其他明示或暗含保证的补充，且在接纳商品和服务后，该等保证仍有效。

质量 / 投诉流程。卖方和 Biomet 须全面协调处理商品和服务引致的第三方投诉。卖方须及时提供 Biomet 合理要求的协助和信息，以履行其对于商品和服务以及商品和服务可能被纳入其中的各产品的报告责任。卖方有关商品和服务的质量管理程序、设备历史记录和所有批次和验证记录须由卖方根据适用法律的要求保留，且须可供 Biomet、其代表和 / 或任何相关监管机构检查。卖方须在任何政府对其与提供给 Biomet 的商品和服务有关的设施检查得出结果后五 (5) 个工作日内，通知 Biomet。此外，如果注意到任何缺陷，卖方须向 Biomet 提供其纠正措施计划。

监管支持。卖方须应 Biomet 的书面要求，向 Biomet 提供在 Biomet 出售任何包含订购单下商品和服务的产品的所有国家内任何必要的监管支持，包括但不限于：(i) 与商品和服务有关的任何原始和概述形式的适用生物相容性和机械测试数据，及对该等数据的更新；(ii) 与商品和服务的一般表现和 / 或其他一般物理特性有关的其他信息；(iii) 获得 Biomet 出售包含商品和服务的产品所在任何国家监管机构的监管批准所必要的额外信息；及 (iv) 如果商品和服务在 Biomet 出售其产品所在的任何国家获得许可或已注册或批准使用，则卖方将向 Biomet 提供有关注册、许可或批准的通知。

商品和服务的召回。如果在卖方接纳订购单或 Biomet 交付和 / 或接纳商品和服务后的任何时候，所有或任何部分商品和服务被自愿或按任何政府机构要求非自愿召回，或卖方需采取纠正措施，则卖方须根据适用法律、法规和政府命令，承担执行和遵循有关召回的责任和成本，包括在商品和服务不符合 Biomet 规范或含有导致召回的潜在缺陷的情况下，退回和 / 或更换该等商品和服务产生的成本。卖方须负责该等召回所必要的所有通讯。对于召回或纠正措施向 Biomet 客户发出的任何通讯须经 Biomet 事先批准。卖方须将召回商品和服务的成本以及 Biomet 因召回产生的任何成本或损失记帐或向 Biomet 报销。此外，对于与卖方向 Biomet 以外客户供应的项目类似的产品之召回和其他安全问题相关情况，卖方须立即通知 Biomet。

在 BIOMET 场所工作。如果卖方在订购单下的义务涉及卖方在 Biomet 的场所作业，则卖方同意遵守并要求其执行该等服务的员工和承包商遵守所有 Biomet 工厂安全规则和规章。在 Biomet 场所，卖方还须以安全的方式执行所有工作，使场所始终无安全隐患，并且遵守联邦和州安全法规。在 Biomet 场所开始任何工作之前，需要出示承保卖方员工和财产损害责任的保险证书。须作为独立承包商进行所有该等作业，且卖方或其任何员工均不得被视为 Biomet 的员工。卖方同意撤走和替换 Biomet 合理拒绝的任何卖方员工和 / 或承包商。

提供给卖方的财产和设计。除非另行书面议定，否则由 Biomet 向卖方提供的或由 Biomet 特别支付的所有模具、模子、图案、设计规格、图纸、测量仪器、工具和任何其他财产（统称为“财产”）以及当中的任何替代物或取代物均属于且将一直属于 Biomet 的财产。该等财产不得向任何第三方披露、不得由任何第三方使用或出于任何第三方的利益而使用，且将单独用于 Biomet。所有该等财产须按照 Biomet 的指示进行搬迁，在搬迁过程中，卖方须准备财产的运输工作以及在向 Biomet 交付财产时，财产的状况须与卖方最初收到时的一样，合理的耗损除外。在卖方保管或控制期间，卖方须维护和维修该等财产，费用由卖方承担。卖方须负责校准所有需要校准的财产，并且须维护与该等校准有关的所有记录。在 Biomet 要求时，卖方须向 Biomet 提供源文件和 / 或当中的副本。卖方须自行承担财产的风险，且须购买相同的全保，保额相当于替换该财产的成本，保单中必须具有以 Biomet 为受益人的损失赔付条款。该等财产须适当地与卖方的财产隔离，且须显著地识别为属于 Biomet。未经 Biomet 事先书面同意，不得将根据 Biomet 提供的设计（并非卖方之前的标准商业设计）产生的商品和服务提供给任何其他方。

专利和知识产权。 卖方声明并保证，商品和服务及商品和服务的销售和使用（若已对该等使用的适当性做出明示或暗含的声明）将不会侵犯任何美国或外国专利、商标、商业外观、版权、商业秘密或任何其他形式的知识产权。卖方确认，Biomet 向卖方提供的任何专利、商标、商业外观、版权、商业秘密或任何其他形式的知识产权是 Biomet 的独有财产，且卖方放弃当中的所有权利。当商品和服务包括根据 Biomet 的特别要求执行的试验性、发展性或研究工作时，任何该等工作将被视为“雇佣作品”，卖方同意向 Biomet 披露并应要求向 Biomet 转让由雇佣作品产生的各项发明、版权、保密流程或技术以及商业秘密或其他形式的知识产权，且卖方放弃当中的所有权利。Biomet 提供的所有图纸、原图、特殊产品、材料、信息或数据以及由于本协议产生的所有知识产权（如同前一句话中所提述）是 Biomet 的独有财产，且须由卖方仅用于 Biomet 工作、须由卖方进行保密以及须按照 Biomet 的要求归还给 Biomet。Biomet 将根据其自身的商标和商品名称营销、分销和 / 或销售商品和服务。Biomet 有权使用卖方的任何标志、名称、其他贸易特性、版权作品或其他知识产权，只要卖方已将该等财产并入或已将该等财产用于卖方向 Biomet 提供的商品和服务的制造。

赔偿。 除订购单的任何其他条文外，卖方同意就由于以下原因直接或间接产生的所有损失、法律责任、损害赔偿和费用（包括合理的律师费），为 Biomet、其关联公司及其董事、员工和代理抗辩、向其做出赔偿以及使其免受该等伤害：（i）卖方违反订购单的任何条文；（ii）卖方、其员工、顾问或分包商的疏忽或不当行为或不作为；和 / 或（iii）在法律许可的最大范围内，卖方在履行订购单时未遵守适用法律和法规。在法律许可的最大范围内，卖方同意就由于上述原因、由于卖方在 Biomet 的场所履行或提供服务或作业过程中的任何不当行为或不作为产生的任何法律责任、索赔、法律诉讼、法律程序、判决、损失或费用（包括但不限于合理的律师费），为 Biomet、其关联公司及其董事、高级职员、员工和代理抗辩、向其做出赔偿以及使其免受该等伤害。

法律责任的限度；关于时效的法规。 在任何情况下，Biomet 均不会对预期的利润、业务中断、附带、相应而生或惩罚性损害赔偿负责。Biomet 对由于订购单产生的任何索赔责任须限于可分配给商品和服务的金额。卖方因订购单提出的任何诉讼必须在诉讼因由产生后一（1）年内展开。

遵守法律。 在提供订购单下的商品和服务时，卖方同意其在制造、进口、出口和销售商品和服务时须遵守且已遵守所有不时修订的适用法律、法规和命令，以及 ISO 13485:2003（如适用）。本协议下订购的商品和服务可由 Biomet 用于履行政府主合同或分包合同并可能受适用的特定政府标准规限，且卖方同意受此约束并加以遵守。卖方须立即将任何可能影响将予交付的商品和 / 或服务质量的不利事件和 / 或任何对违反适用法律或法规的指称或发现告知 Biomet。卖方同意，其将遵守并促使其所有董事、高级职员、员工、代理或代表或任何其他代表卖方行事的人士遵守所有适用的反腐败法律和法规，包括但不限于其当地法律、《美国反海外腐败法》（“FCPA”）、（如适用）《经济合作与发展组织反对在国际商务中贿赂外国公职人员公约》（“《OECD 反贿赂公约》”）及其当地国家通过的立法，以及任何其他可能不时监管其活动的法律。

业务持续性计划：卖方须维护和定期更新灾难恢复和 / 或业务持续性计划（“计划”），当中详细说明卖方将如何从灾难和 / 或意外事件中恢复，以及恢复或继续业务及继续提供服务和履行其于本协议下的义务。卖方须应要求向 Biomet 提供其计划。

不可抗力。在向卖方发出书面通知后，影响 Biomet 接收和 / 或使用根据本协议订购的商品和服务的能力的罢工、暴乱、战争、起义、禁运、恐怖主义行为、火灾、水灾或其他灾害事故、政府行动、天灾或其他超出 Biomet 合理控制能力的事件，须构成 Biomet 暂停交付本协议所涵盖的商品和服务的有效理由，而无需受罚或承担责任，除非在取消该等因由后，Biomet 同意向卖方支付其在收到根据订购单授权发出的取消通知之前所产生的直接人力和材料支出。

无放弃。Biomet 在任何时候未强制执行本协议的任何条文概不影响订购单或订购单的任何部分的有效性，亦不得影响 Biomet 随后强制执行各项该等条文的未来权利。对违反订购单的任何行为的豁免不得被视为对任何其他后续违规行为的豁免。

保险。在履行订购单后，卖方须自费投购适当的保险期限至少为 2 年的保险，有关保险包括但不限于：(i) 适用司法管辖区的法律要求的法定劳工赔偿保险和 (ii) 商业综合责任保险，包括产品责任保险，每次发生由于卖方提供订购单下的商品和服务引起的或与之有关的任何损失、成本和开支索赔的最低保额为 500 万美元。将应要求向 Biomet 提供保险证书。对于 Biomet 持有的任何其他保单或以 Biomet 的任何成员为受益人的提供任何保障的任何其他保单，卖方的所有保单须为优先保单。本合同中卖方的所有必需保险须向公司可接受的保险公司投购。这些保险公司须至少获 A.M. Best Company 评定为 A- VII 级或获标准普尔评定为 A 级。

保密 / 公开。卖方须将与订购单有关的属于 Biomet 或由 Biomet 提供的任何信息或任何数据、设计或其他信息视为保密信息。卖方不得使用或向任何第三方披露该等保密信息，但为履行订购单或 Biomet 的其他订购单的条款而必须进行的使用或披露除外。卖方须按照 Biomet 的要求向 Biomet 归还该等信息、数据、设计或其他信息以及当中的任何副本。未经 Biomet 事先书面同意，卖方不得以任何形式的媒体（包括互联网）就订购单、当中的条文或本协议预期进行的任何交易发出或发布任何公告、新闻稿或其他声明。未经 Biomet 事先书面同意，卖方不得将 Biomet 的名称或 Biomet 的任何关联公司的名称、Biomet 的商标或关于 Biomet 的其他信息用于任何广告或任何促销目的。

环境事宜。卖方声明并保证，其遵守并将一直遵守关于环境的所有适用的环境法律和法规。

人口贩运 / 奴役。卖方确认，向 Biomet 出售的商品和服务符合卖方经营业务所在国家关于反奴役和人口贩运的法律。

管限法律。订购单须受中华人民共和国法律（有关法律冲突的条文除外）管限。在适用法律许可的最大范围内，双方同意《联合国国际货物销售合同公约》（经修订）的条文不适用于订购单。

争议解决。在提供订购单下的商品和服务时，卖方同意其在制造、进口、出口和销售商品和服务时须遵守且已遵守所有适用法律、法规和命令，以及 ISO 13485:2003（如适用）。本协议下订购的商品和服务可由 Biomet 用于履行政府主合同或分包合同并可能受适用的特定政府标准规限，且卖方同意受此约束并加以遵守。卖方须立即将任何可能影响将予交付的商品和 / 或服务的不利事件和 / 或任何对违反适用法律或法规的指称或发现告知 Biomet。卖方同意，其将遵守并促使其所有董事、高级职员、员工、代理或代表或任何其他代表卖方向行事的人士遵守所有适用的反腐败法律和法规，包括但不限于其当地法律、《美国反海外腐败法》（“FCPA”）、（如适用）《经济合作与发展组织反对在国际商务中贿赂外国公职人员公约》（“《OECD 反贿赂公约》”）及其当地国家通过的立法，以及任何其他可能不时监管其活动的法律。

仲裁。如果任何涉及本协议或者违反本协议或本协议下违约所导致或与之有关的索赔和 / 或争议或其他问题的任何事项，无法在一方向另一方发出其认为本协议下已产生索赔、争议、质疑、违反或违约情况的通知后三十（30）天内通过双方协定予以解决，则双方须将该事项提交上海仲裁委员会（Shanghai Arbitration Commission），由上海的一名独立仲裁员根据上海仲裁委员会的仲裁规则予以仲裁。仲裁员的决定须为最终决定且对双方具约束力，且对于仲裁员所提交裁决的判决书须在任何具司法管辖权的法院均可强制执行。各方须承担该仲裁中产生的其自身的律师费、成本和开支。Biomet 有权在仲裁之前或（如果仲裁员无法在可接受期限内审理事件）仲裁期间，向恰当法院寻求和获得临时补救方法，如扣押、预先禁令、扣押物回复令等，以避免不可弥补的损害、维持现状或保持仲裁的目标事件。

转让。未经 Biomet 事先书面同意（Biomet 可全权酌情决定不给予同意），卖方不可转让订购单和卖方在本协议下的权利和责任。Biomet 可将其于本协议下的权利和责任转让至其任何一家或多家关联公司。

通知。卖方关于订购单及该等条款和条件向 Biomet 发出的所有通讯须发至订购单上确定的 Biomet 的代表。

供应商行为准则。卖方同意遵守 www.Biomet.com 上所载的 Biomet 供应商行为准则

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