



Edwards

Terms and Conditions for Capital Equipment

This Capital Equipment Terms and Conditions Agreement (this "Agreement") is entered into by and between **Edwards Lifesciences LLC**, a Delaware limited liability company, with an address of One Supplier Way, Irvine, California 92614 ("Supplier") and **San Bernardino County on behalf of Arrowhead Regional Medical Center** ("Purchaser") for the purchase of equipment set forth in an applicable quote ("Equipment"). Purchaser desires to buy the Equipment listed on the applicable quote from Supplier at the prices set forth therein ("Quote"). Supplier is willing to supply the Equipment to Purchaser upon the terms and conditions set forth herein.

- Products.** Supplier agrees to supply Purchaser with the Equipment, and Purchaser agrees to buy the Equipment solely for its own use from Supplier.
- Term and Termination.** The term of this Agreement shall be as set forth in the Quote to Purchaser ("Term"). This Agreement shall not be automatically extended or renewed for successive terms. Upon termination of this Agreement, Supplier will not honor the pricing contained in this Agreement or issue credits or re-bills for Equipment ordered or received after the date of termination. This Agreement may only be terminated by Purchaser by written notice to Supplier prior to shipment of Equipment.
- Pricing; Payment.** Pricing shall remain firm for the term of the Quote. Payment terms are net 30 days from receipt of invoice date. Purchases shall be shipped F.O.B. Origin, freight prepaid and charged back and made in accordance with such further terms (including returned goods policies) as set forth in Supplier's product price list in effect on the date of shipment. Purchase order placement, confirmation, and invoices for Equipment shall be sent by use of electronic data interchange (EDI), except where Purchaser does not have such capability. Supplier shall accept all payments from the Purchaser via electronic funds transfer (EFT), directly deposited into the Supplier's designated checking or other bank account, provided that such EFT payments do not result in any fees or charges to Supplier. Supplier shall promptly comply with directions and accurately complete forms provided by the Purchaser required to process EFT payments, so long as no fees or charges are associated with the use of EFT. Supplier may suspend sales of the Equipment to Purchaser or terminate this Agreement with respect to Purchaser in the event that Purchaser delays payment or fails to pay any sum owed by Purchaser to Supplier hereunder.
- Deficit Reduction Act of 2005, Section 6032 Implementation.** As a condition of payment for Equipment provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act Employee Training and Policy Requirements in 1902 (A) of the Social Security Act (42 USC 1396 (A) (68)), set forth in that subsection and as the Federal Secretary of Health and Human Services may specify.
- Limited Warranty.** SUPPLIER WARRANTS THAT THE EQUIPMENT IT MANUFACTURES, WHEN USED IN ACCORDANCE WITH THE DIRECTIONS ON THE LABELING, IS FIT FOR THE PURPOSES AND INDICATIONS DESCRIBED IN THE LABELING FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF PURCHASE. UNLESS EQUIPMENT IS USED IN ACCORDANCE WITH ITS INSTRUCTIONS, THESE WARRANTIES ARE VOID AND OF NO EFFECT. THERE ARE NO OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER'S SOLE OBLIGATION AND PURCHASER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT SUPPLIER'S OPTION, TO REPAIR OR REPLACE THE EQUIPMENT. SUPPLIER SHALL NOT BE LIABLE FOR PROXIMATE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. SUPPLIER SHALL NOT BE OBLIGATED UNDER THIS WARRANTY TO REPAIR OR REPLACE A DAMAGED OR MALFUNCTIONING EQUIPMENT IF SUCH DAMAGE OR MALFUNCTION IS CAUSED BY THE PURCHASER'S USE OF CATHETERS, FINGER CUFFS, OR SENSORS OTHER THAN THOSE MANUFACTURED BY SUPPLIER.
- Exclusions from Coverage.** Any warranty or liability is excluded where the warranty claim, in Supplier's reasonable opinion, arises out of (1) accident, theft, misuse, or neglect; (2) use of the Equipment outside of normal operating conditions, specifications, or environment or in a manner not authorized by Supplier; (3) lack of routine care or maintenance as indicated in any Supplier's operating or maintenance instructions; (4) failure to use or take any proper precautions under the circumstances; (5) user modification of Equipment; (6) computer viruses and other changes to the operating system or environment which adversely affect the applicable Equipment; (7) defects, problems, or failures created by third party products (except those comprising parts or components of Supplier's Equipment) or their interface with Supplier's Equipment; (8) Force Majeure (as further described below), (9) latent defects discovered after the expiration of the applicable warranty period; (10) any disassembled, open, repaired, or altered Equipment or Equipment with broken internal warranty seals; (11) any attempts to copy, disassemble, decompile, reverse engineer, or otherwise attempt to derive any code or other trade secrets of or pertaining to the Equipment or software; and (12) any attempts by third party service entity or bio-med to disassemble, open, repair or alter Equipment. For greater clarity, Equipment requires only Supplier's authorized sensors to be used with them. Purchaser agrees to use only Supplier's authorized sensors in connection with the Monitors. Use of sensors other than Supplier's authorized sensors shall void Supplier's warranty and liability.
- Use of Disposable Products.** Purchaser agrees to use only Supplier disposable products with Equipment. Supplier can make no guarantee to the accuracy and validity of the parameters displayed by any monitor contained in our Equipment when used with the sensors, finger cuffs or catheters other than Supplier disposable products. Use of non-approved sensors, finger cuffs or catheters will void the Supplier product warranty and shall have the effect of immediately terminating this Agreement.
- Software Updates.** During the Term, updates to the Monitor's software may become available from time to time. Purchaser agrees that Supplier shall have the right to access the Monitors upon reasonable prior notice to install any and all such updates. If Purchaser does not permit Supplier to update the software in a timely fashion, Supplier may void the Monitor's warranty and/or terminate this Agreement.
- Force Majeure.** Supplier will use commercially reasonable efforts to fill orders, but Supplier shall not be liable for nonperformance or delays caused by shortage of raw materials, manufacturing problems, labor problems, acts of regulatory agencies, discontinuation of a product line, acts of God, or other causes beyond Supplier's control. Purchaser agrees that in such events Supplier may allocate products among all purchasers without liability. In the event that Supplier ceases to manufacture or distribute any of the Equipment for any reason, Supplier shall have no obligation to supply such Equipment.
- Direct Order Purchases.** Supplier will provide the Equipment to Purchaser for direct order purchases only at the prices set forth in the Quote.

Edwards Lifesciences LLC

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11. **Indemnification** Supplier agrees to indemnify, defend and hold harmless Customer and its authorized officers, employees, agents and volunteers from and against all claims, actions, losses, damages and/or liability which customer may be required to pay to third parties in settlement or judgments (including reasonable attorneys' fees and court costs) for bodily injury (including death) or property damage resulting from the negligent or wrongful act or omissions by Supplier, its agents or employees. Supplier's indemnity obligations shall not apply to the extent any claims, liabilities, damages, losses, costs, and expenses are caused by or arise from the sole negligence, acts or omissions of Customer, its agents or employees. If any demand or claim is made or suit is commenced against Customer for which Supplier has an indemnity obligation under this Section ("Indemnity Claim"), written notice of such claim shall be promptly provided to Supplier. However, Customer's failure to provide or delay in providing such notice will relieve Supplier of its obligations only if and to the extent that such delay or failure materially prejudices Supplier's ability to defend such lawsuit or claim. Supplier shall have the right to exercise sole control over the defense and settlement of any such Indemnity Claim for which indemnification or defense is sought, including the sole right to select defense counsel and to direct the defense or settlement of any such Indemnity Claim or suit; provided that Supplier shall not enter into any settlement or admit fault or liability on the Customer's behalf without the prior written consent of the Customer, which consent shall not be unreasonably withheld or delayed. Customer shall have the right to select and obtain representation by separate legal counsel. If Customer exercises such right, all costs and expenses incurred by Customer for such separate legal counsel shall be borne by Customer. If any injury is caused by the negligence or fault of both Supplier on the one hand and Customer on the other hand, the apportionment of said damages shall be shared between Supplier and Customer based upon the comparative degree of each other's negligence or fault, and each shall be responsible for its own defense and costs, including but not limited to the costs of defense, attorneys' fees, witnesses' fees and expenses incident thereto..
12. **Compliance.** The Equipment covered by this Agreement will conform to all applicable laws including applicable Safety Data Sheets.
13. **Insurance.** Supplier agrees to comply with the insurance requirements set forth in Appendix B, attached hereto and incorporated herein by this reference.
14. **Equal Opportunity.** *To the extent not exempt, the parties shall comply with all applicable laws and regulations set forth at 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a).*
15. **Most Favored Customer.** The prices for the Equipment offered through this Agreement are consistent with Supplier's net value, in the aggregate, for the particular Equipment charged to others who are the same class of purchaser as are Purchaser and who purchase in comparable volume, product mix, product purchase volume, commitment percentages, contract duration, award status, number of facilities, limitation of liability, size, geographic location, contract value and similar terms of purchase (not including Federal Government, Medicare, Medicaid or GPO). The preceding excludes discounts offered to pilot sites, the Federal Government, trade-ins, promotions, bulk-buys and "make it right" situations.
16. **Covenant Against Gratuities.** The offering of gifts, excluding token gifts of a promotional or advertising nature, or gratuities by the Supplier or any agent or representative of the Supplier is strictly prohibited. The Supplier warrants that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Supplier, or any agent or representative of the Supplier, to any officer or employee of the Purchaser with a view toward securing this Agreement or favorable treatment with respect to any determination concerning this Agreement.
17. **General.** This Agreement, including without limitation the Quote attached hereto, shall supersede all other agreements between Supplier and Purchaser with respect to the Equipment. No changes to this Agreement, including any conflicting or additional terms contained in any purchase order or other document submitted by Purchaser, shall be valid unless approved in writing by Supplier at its home office. Supplier may not assign this Agreement, in whole or in part, except as part of a corporate reorganization, consolidation, merger, or sale of all of its assets in connection with the Critical Care business, provided that Supplier provides Purchaser with thirty (30) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 30 days after the effective date of the assignment, and Purchaser has the right to terminate this Agreement, if required by applicable law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any invoice claims or disputes by Purchaser must be made in writing within ninety (90) days of invoice date. Supplier will not make payments for, or investigate, any invoice claims or disputes which are made more than ninety (90) days after invoice date. Purchaser and Supplier agree not to disclose the financial terms and conditions of this Agreement without the prior written consent of the other party, except as required by applicable law or regulatory authority. Each party agrees that all information provided to it by the other party pursuant to this Agreement, including information concerning pricing, products and customers, is confidential and proprietary information of the disclosing party. Each party agrees not to disclose such confidential information directly or indirectly to any third party or to use such confidential information for any purpose other than for fulfilling its obligations under this Agreement, or as required by law. This provision shall survive the termination or expiration of this Agreement.
18. **Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

**San Bernardino County on behalf of
Arrowhead Regional Medical Center**

Edwards Lifesciences LLC

Signature: _____

Signature: _____

By: Dawn Rowe

By: Kurt Eberle

Title: Chair, Board of Supervisors

Title VP, Strategic Accounts & Comm

Date: _____

Date: _____

**ATTACHMENT A
INSURANCE REQUIREMENTS**

Supplier agrees to provide insurance set forth in accordance with the requirements herein.

1. Supplier shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown through a program of self-insurance or any combination thereof:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Supplier and all risks to such persons under this Agreement. If Supplier has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Supplier shall carry General Liability Insurance covering all operations performed by or on behalf of Supplier providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Personal injury.
 - v. Contractual liability.
 - vi. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per accident. If Supplier is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Supplier owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella or excess policy may be used to comply with limits. The umbrella/excess policy evidenced sits in excess of General Liability/Products only.

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
2. **Additional Insured.** All policies, except for Worker's Compensation and Errors and Omissions policies shall contain additional endorsements naming the Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Customer to vicarious liability but shall allow coverage for the Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Waiver of Subrogation Rights.** Supplier's Workers' Compensation policy shall include a waiver of subrogation in favor of Customer, its officers, employees, agents, volunteers, contractors and subcontractors.
4. **Severability of Interests.** Supplier agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Supplier and the Customer or between the Customer and any other insured or additional insured under the policy.
5. **Proof of Coverage.** Supplier shall furnish Certificates of Insurance to the Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department. Supplier shall endeavor to provide thirty (30) days written notice to Customer if such insurance shall be terminated or expire, and Supplier shall maintain such insurance from the time Supplier commences performance of Services hereunder until the completion of such services.
6. **Acceptability of Insurance Carrier.** Insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII" or through a program of self-insurance or any combination thereof.
7. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Customer has the right but not the obligation or duty to cancel the Agreement.
8. **Insurance Review.** Insurance requirements are subject to periodic review by the Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Customer. Any change requiring additional types of insurance coverage or higher coverage limits must be agreed upon by both parties and made by amendment to this Agreement.