

Hillrom Terms and Conditions for Products

1. AGREEMENT; PURCHASING

- 1.1 **Entire Agreement.** Hillrom’s purchase order, including any exhibit, schedule, Specifications, or other supporting document or materials referenced by, incorporated in, or attached to such purchase order (“**Purchase Order**”), these Hillrom terms and conditions (“**Terms and Conditions**,” and any written contract and/or statement of work entered into by the parties that governs the Purchase Order and Seller’s provision of Products, excluding any confidentiality or non-disclosure agreement (“**Contract**”) (the Purchase Order, these Terms and Conditions, and any Contract collectively, the “**Agreement**”) constitute the sole and entire agreement of the parties with respect to the subject matter of the Purchase Order, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, promises, and communications, whether written or oral. Hillrom rejects any additional or inconsistent terms and conditions offered by Seller at any time. Any reference in the Purchase Order to Seller’s quotation, bid, or proposal does not imply Hillrom’s acceptance of any terms and conditions contained therein. No course of prior dealing or usage of the trade may modify, supplement, or explain any terms and conditions in the Agreement. In the event of a conflict between any component of the Agreement and any other component of the Agreement, the following order of precedence applies: (1) the Contract, (2) the Purchase Order, and (3) these Terms and Conditions. If Seller becomes aware of any ambiguities or discrepancies between the Purchase Order and any exhibit, schedule, Specifications, or other supporting document or materials referenced thereby, incorporated therein, or attached thereto, Seller shall immediately submit the matter to Hillrom, whose written interpretation will be final.
- 1.2 **Purchase Orders.** The Purchase Order constitutes an offer by Hillrom to purchase Products expressly in the quantities and at the prices set forth therein and will become binding upon Seller’s issuance of an executed acknowledgment thereof or performance thereunder, in whole or in part. The Purchase Order may be a blanket Purchase Order against which Hillrom may make multiple purchases of Products over a specified period of time. A blanket Purchase Order is the equivalent of a Forecast and does not obligate Hillrom to purchase any quantity of Products. Only a release issued by Hillrom against a blanket Purchase Order (“**Release**”) will be binding (upon Seller’s issuance of an executed acknowledgment thereof or performance thereunder, in whole or in part).
- 1.3 **No Required Purchases.** Nothing in the Agreement shall require Hillrom to purchase from Seller any or all of Hillrom’s requirements for products that are the same or similar to the Products provided under the Agreement.
- 1.4 **Service Parts.** If requested by Hillrom, Seller will provide Hillrom with service parts for Products for ten (10) years after Hillrom’s final Purchase Order at price(s) negotiated by the parties at the time of Hillrom’s request.
- 1.5 **Improvements to Current Products and Introduction of New Products.** Seller shall present enhancements and total cost out projects to current Products and introduce new products similar to the Products or otherwise of interest to Hillrom on an annual basis to Hillrom’s marketing resources, sourcing resources or such other resources as Hillrom deems appropriate. Seller may propose improvement in the form of Change Order, provided that all Change Orders will be governed by [Article 19](#).

2. FORECASTS

Hillrom may periodically deliver to Seller a forecast of its anticipated Products requirements for the period of time specified therein (the “**Forecast**”). Forecasts are non-binding estimates for informational purposes only and do not obligate Hillrom to purchase any quantity of Products.

3. PAYMENT TERMS; INVOICES; TAXES

- 3.1 **Payment Terms and Invoicing.** Payment terms are three percent (3%) thirty (30), net ninety (90) days from the date of Seller’s correct invoice unless otherwise stated in the Purchase Order or the Contract, if any, provided, however, that in the event applicable law requires a payment terms period of shorter duration, payment terms will be the maximum period permissible. Payments falling due on a weekend or bank holiday may be made on the following business day without incurring late payment interest penalties. All invoices submitted by Seller to Hillrom must (1) reference the applicable Purchase Order number, (2) identify each Product in detail (including part number, unit of measure, quantity, price, and extended total), and (3) reflect a separate line item for each additional approved charge (such as shipping, handling, expediting, etc.), if any. Hillrom will not be required to pay any Invoice until the invoiced Products are received by Hillrom or its designee. Seller warrants that each Invoice will be complete and accurate in every respect.

- 3.2 **Disputed Invoices.** Hillrom may return to Seller any incomplete or inaccurate invoice. Payment of any invoice, including prompt payment made to secure a cash discount, does not constitute acceptance of, or waiver of the right to dispute, such invoice. If Hillrom disputes any invoice, Hillrom will pay such part of the invoice that is undisputed, and, after resolution of the dispute, will promptly pay any remaining balance due.
- 3.3 **Set Off.** In addition to any other rights and remedies of Hillrom under the Agreement or otherwise arising in law or in equity, Hillrom may set-off or otherwise withhold from invoiced amounts owed to Seller any amounts owed to Hillrom by Seller under the Agreement and any such set-off amount shall be treated as a “payment” under the Agreement.
- 3.4 **Taxes.** Seller shall be solely responsible for filing the appropriate national, federal, state, provincial and local tax forms and paying all such taxes or fees, including income, sales, use, excise, personal property and employment taxes, tariffs, import duties and other governmental charges, due with respect to Seller’s receipt of payment under the Agreement. Seller further agrees to provide Hillrom with reasonable assistance in the event of a government audit of Hillrom. Hillrom shall have no responsibility to Seller to pay or withhold from any payment to Seller under the Agreement, any national, federal, state, provincial, or local taxes or fees. Hillrom will regularly report amounts paid to Seller by filing the appropriate forms with the Internal Revenue Service (“**IRS**”) and any other applicable agencies.
- 3.5 **Foreign Entities.** If (1) Seller is not a State entity, (2) Seller is providing anything other than tangible personal property (for example, services) in the United States (“**U.S.**”), and (3) the Hillrom entity on the Purchase Order is established under the laws of a State, Seller shall promptly provide IRS Form W-8BEN, Form W-8ECI, Form W-8CE, Form W-8EXP, Form W-8IMY or Form W-9, whichever form is applicable, to Hillrom. Failure to furnish the appropriate IRS Form may result in withholding thirty-five percent (35%) of payments pursuant to the Agreement in accordance with Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (“**IRC**”).

4. DELIVERY; SHIPMENT

- 4.1 **Delivery.** Because Hillrom’s business and operations are in part dependent on receipt of Products, timely delivery of all Products is essential to the performance of Seller’s obligations hereunder. Deliveries of Products shall be strictly in accordance with (1) the quantities and/or lot sizes specified in the Purchase Order or the Contract, if any, without shortage or excess, (2) the delivery schedules specified in the Purchase Order or the Contract, if any, neither ahead of nor behind schedule, (3) the carrier specified, if any, in the Purchase Order or the Contract, if any, and (4) the destination specified in the Purchase Order or the Contract, if any. Seller shall use its best efforts to comply with any requests for urgent deliveries in a shorter time frame. Seller shall pay return shipping charges for unauthorized or untimely (either early or late) deliveries and pay for the proper disposal of excess quantities of Products and for any damaged Products as determined by Hillrom in its sole discretion. Seller shall promptly, but in any event within three (3) business days, notify Hillrom verbally, with written confirmation, of any anticipated or actual delay in making any delivery. Seller shall, at Seller’s expense, avoid or minimize the delay to the maximum extent possible by appropriate methods, including by incurring expenditures at Seller’s expense for overtime and expedited shipment.
- 4.2 **Shipping.** Unless otherwise agreed by the parties, delivery of Products shall be in accordance with the following chart:

If the Hillrom Delivery Point is located in:	Hillrom is	and	If the Seller Shipping Point is located in:	Shipping Term
U.S., Canada or Mexico	or	and	U.S., Canada or Mexico	FOB Origin
U.S., Canada or Mexico	or	and	outside of the U.S., Canada and Mexico	EXW
European Union		and	European Union	FOB Destination
A country outside of the U.S., Canada, Mexico and the European Union		and	The same country as the Hillrom delivery point	FOB Destination
A country outside of the U.S., Canada, Mexico and the European Union		and	A different country than the Hillrom delivery point	DDU

Seller hereby agrees that there shall be no additional charge for packaging or storage before shipment of the Products. Seller shall package all Products in

Hillrom Terms and Conditions for Products

suitable containers to permit safe transportation and handling and in accordance with all instructions provided by Hillrom. Each delivered container must be labeled and marked legibly to identify the contents thereof, Purchase Order number and Products' line item numbers without opening the container, and all boxes and packages must contain packing slips listing the contents thereof. Upon shipment of Products, Seller shall furnish to Hillrom all shipping documents, including compliance documentation, packing sheets, delivery tickets and bills of lading, indicating Purchase Order number, description of Products, Hillrom part number and Hillrom revision level, and quantity shipped on all packages and documents. Seller represents and warrants that it will classify, describe, package, mark, label, provide material safety data sheets for, and otherwise pack and ship Products in compliance with all laws, regulations, ordinances and orders. Material safety data sheets and labeling, if required by law, shall precede each shipment, and Seller shall update them as required by law. Seller shall promptly, but in any event within three (3) business days, reimburse Hillrom for all expenses incurred by Hillrom as a result of improper packing, marking, documentation or shipment.

5 ACCEPTANCE AND REJECTION

5.1 **Acceptance.** Notwithstanding any prior inspections, tests or payments made by Hillrom, (1) all Products provided by Seller shall be subject to final inspection at Hillrom's facilities, and (2) Hillrom shall not be deemed to have accepted any Products if Hillrom notifies Seller that Hillrom has rejected them within a reasonable time after delivery. If Hillrom receives Products the defects or nonconformity of which are not apparent on examination, Hillrom reserves the right to require replacement as well as payment of damages.

5.2 **Rejection.** Any Products that are non-conforming as to quality or quantity ordered, that are damaged in any manner, that are not delivered in accordance with the specified delivery schedule, or that are manufactured, packaged, shipped, delivered or are in any way not in conformity with the Agreement shall constitute a breach of the Agreement. In such event, Hillrom shall have the right to, in its discretion, each of which shall be at Seller's risk and expense: (1) reject such Products or revoke acceptance, in whole or in part and return such non-conforming Products to Seller, at Seller's expense, (2) replace or correct such Products, (3) require Seller to replace, re-work or correct such Products or supply replacement parts at Seller's, Hillrom's or its customer's location, as specified by Hillrom in its sole discretion, (4) accept such nonconforming Products subject to an equitable price reduction, (5) recover by offset or otherwise any and all expenses, costs, losses resulting from affected operations, price reductions, and damages paid, incurred or suffered by Hillrom or any of its Affiliates as a result of such non-conformity, or (6) terminate the Agreement or any outstanding delivery of Products, without prejudice to Hillrom's rights to claim damages. Seller's expense shall include the cost of transportation, handling and restocking and all expenses of unpacking, examining, and repacking such Products. Replacement Products shall be sent freight prepaid at Seller's expense and Seller shall use expedited delivery if requested by Hillrom. Hillrom may base rejection of Products on inspection by sampling. If defects are revealed in such sampling, Hillrom may elect in its discretion either to reject the entire shipment on the basis of such sampling or to inspect the entire shipment. If, because Products (a) are damaged in any manner, (b) are not delivered in accordance with the specified delivery schedule, or (c) are manufactured, packaged or are in any way not in conformity with Specifications or the Agreement, Hillrom must shut down an assembly line at its facility. Seller shall be required to pay Hillrom for the Line Down Charges. "Line Down Charges" means amounts equal to Hillrom's costs for the assembly line being down, including rework at current production rates, expedite charges, and any other charges incurred by Hillrom as a result of the assembly line being down, up to the fees paid by Hillrom to Seller over the preceding twelve- (12-) month period, aggregated over all Purchase Orders (or the projected aggregate fees for the first twelve (12) months if Hillrom has not purchased from Seller for an entire twelve months when the assembly line goes down). All such Line Down Charges shall be due and payable within thirty (30) days of notice to Seller by Hillrom of same.

6 QUALITY SYSTEM

Seller shall maintain a formal quality system that meets Hillrom quality system requirements, including appropriate controls on the design, production, sourcing, inspection and testing, lot traceability, shipping, service and repair, documentation and record keeping, and corrective and preventive action to address defects in Products and underlying processes, and ensures that all Products meet Specifications. In addition, Seller shall comply with the additional quality and other requirements in Attachment I.

7 CERTIFICATES OF ORIGIN

Upon request, Seller shall immediately furnish to Hillrom all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of Products and the components thereof, as may be requested by Hillrom to comply fully with all customs, tariffs and other

applicable governmental regulations. Any change which may change the country of origin of Products shall be deemed a change requiring notice under Article 19. Seller shall comply strictly with any country of origin specifications for the Products.

8 RECORDS

Seller shall maintain records as may be necessary to adequately reflect the accuracy of its charges to Hillrom, and maintain such other additional records as Hillrom may reasonably request. Seller shall preserve such records for a minimum of ten (10) years after the date the last payment is made by Hillrom to Seller for Products. Hillrom and its Representatives shall have the right from time to time, upon reasonable notice to Seller, to audit, inspect and/or verify the records kept by Seller in connection with the Agreement.

9 PRODUCT WARRANTY

9.1 In addition to Seller's customary warranties, express warranties associated with Products, and any other warranties contained herein or required by law, Seller warrants to Hillrom that Products and all of their components shall (1) comply fully with the requirements of the Agreement, including, if applicable, all designs, drawings, technical requirements, specifications, samples, and descriptions referenced by, incorporated in, or attached to the Purchase Order or the Contract, if any, or provided by Hillrom or at Hillrom's instruction (the "Specifications"), (2) be fit, sufficient and suitable for the particular purpose for which Hillrom intends to use Products, including the specified performance in the component, system, subsystem and product location and the environment in which they are or may reasonably be expected to perform, (3) not infringe or contribute in any way to the infringement of any Intellectual Property Right of any third party, regardless of whether Products are combined, used, or sold with other components or products, or included in a Hillrom product, (4) be free from all liens, claims and encumbrances, (5) be free from defects in design, materials (to the extent of Seller's responsibility for the design or materials, even if the design or materials have been approved by Hillrom) and workmanship, and (6) comply fully with all laws, regulations, and governmental rules in the place where Products are, and will be, used, sold, and offered for sale.

9.2 If Hillrom receives a complaint or otherwise becomes aware that any Products supplied by Seller fail to conform to the warranties set forth herein or any other warranty approved by Seller in writing, Hillrom shall notify Seller of such defect or failure. Seller shall, at Hillrom's option, refund the full purchase price or repair or replace defective Products free of charge to Hillrom. Seller acknowledges that Hillrom has an obligation to service its customers, and therefore, Hillrom may choose to replace defective Products with other Products, or with substitute products, at Hillrom's discretion and without input from Seller. If Hillrom replaces any Product that is covered by the warranty specified in Section 9.1, Seller shall be responsible for any out of pocket costs incurred by Hillrom, including the cost of procuring the replacement product from another source. Such replacement will not relieve Seller of any of its obligations under this Article 9. Each party shall assist and cooperate with the other party in connection with any and all such defects and failures.

9.3 Seller hereby assigns to Hillrom all rights under any and all warranties and guarantees of any of its suppliers as related to Products.

9.4 Seller shall not contact a Hillrom customer directly and Seller further agrees that if a Hillrom customer contacts Seller directly in order to report a warranty claim, request a repair or replacement part or make another inquiry, Seller shall immediately direct such customer to contact Hillrom directly.

10 ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller represents, warrants, and covenants to Hillrom, its Affiliates and their respective customers and any subsequent owners, operators or recipients of Products, that:

10.1 It has the right to enter into the Agreement, and has not made, and will not make, any contract or commitment contrary to the terms of the Agreement or in derogation of the Intellectual Property Rights acquired or to be acquired hereunder by Hillrom.

10.2 Unless otherwise expressly stated in a Purchase Order, Products are manufactured entirely with new materials and not, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair their fitness, usefulness or safety.

10.3 It acknowledges that certain products manufactured and/or distributed by Hillrom are intended for worldwide distribution and must comply with applicable international environmental requirements, such as the European Union's Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation and Authorization of Chemicals ("EU REACH") and the European Union's Directive on the Restriction of Hazardous Substances (Directive 2011/65/EU) ("EU RoHS 2"). To the extent applicable, Seller represents and warrants Products are in compliance with all applicable

Hillrom Terms and Conditions for Products

- international environmental laws, rules, regulations and standards including the requirements of EU REACH and EU RoHS 2, and do not contain any chemicals over the allowed limit dictated by these laws, enabling Hillrom to distribute on world-wide basis without restrictions. Seller shall maintain compliance to the latest revisions/updates of these regulations and shall notify Hillrom if Seller determines any Product provided to Hillrom is out of compliance. As part of Hillrom's due diligence efforts, Seller shall take all actions and deliver all information requested by Hillrom in connection with such regulations and standards.
- 10.4 It shall conduct all employment and other activities related to the Agreement in compliance with the standards of integrity and human rights set out in Hillrom's Global Policy Third Party Code of Conduct available to Seller at <https://www.hillrom.com/globalassets/our-company/ethics--compliance/global-third-party-code-of-conduct-asst.-languages/global-third-party-code-of-conduct-hi-6667-en-r42.pdf> ("**Hillrom Third Party Code of Conduct**") and the Ethical Trading Initiative Base Code, in particular, prohibitions on forced and child labor, excessive working hours, discrimination, harassment and other harsh or inhumane treatment, and their standards related to freedom of association and collective bargaining, safe and hygienic working conditions, and living wages. Seller agrees to hold its suppliers and other third parties to the same standards when performing its obligations under the Agreement, and to ensure that it has human rights policies and a means of raising complaints to address any breaches of such policies. Hillrom and its Affiliates shall have the right, directly or through an independent agent, to conduct due diligence surveys and audits, staffed as Hillrom deems appropriate, to verify Seller's past and current compliance with this Section 10.4, and Seller shall cooperate fully and respond in a timely manner and in good faith, including making relevant documents and personnel available, to facilitate any such due diligence surveys or audits.
- 10.5 It and the Product shall comply with the requirements of all applicable laws, rules, orders, and regulations of governmental authorities, including, but not limited to:
- 10.5.1 Executive Orders 11246 and 13496 of the President of the United States; the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(a), which regulation bars discrimination against all individuals based on their race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, age (40 or older), disability, or genetic information; the prohibition of segregated facilities set forth at 48 C.F.R. § 52.222-21(b); and the employee notice set forth at 29 C.F.R. Part 471, Appendix A to Subpart A; all of which are incorporated herein by reference;
- 10.5.2 **41 C.F.R. §§ 60-300.5(a) and 60-741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability, and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities;** and
- 10.5.3 To the extent the U.S. government is an end user of the Product, the prohibition on contracting for hardware, software, and services developed or provided by Kaspersky Lab and other covered entities set forth at 48 C.F.R. § 52.204-23, which regulation bars contractors and subcontractors from providing to the U.S. government any part, component, service or other product that contains any hardware, software or service that is developed, in whole or in part, or provided by (1) Kaspersky Lab, (2) any successor entity to Kaspersky Lab, (3) any entity that controls, is controlled by or under common control with Kaspersky Lab, or (4) any entity of which Kaspersky Lab has a majority ownership (1)- (4) collectively, "**Covered Articles**").
- 10.5.3.1 Seller shall not use any Covered Article in the development of data or deliverables for Hillrom. To the extent Seller identifies a Covered Article that is or has been provided to Hillrom, Supplier shall immediately and not later than twenty-four (24) hours from the date of identification or notification, report, in writing, to Hillrom at supplierquestions@hill-rom.com: Seller name, brand, model number, manufacturer part number, or wholesaler number, item description, and any readily available information about mitigation actions undertaken or recommended. Seller will provide additional information as required by the regulation and/or requested by Hillrom.
- 10.6 Seller shall provide Hillrom with all information requested by Hillrom related to the use of any Conflict Minerals that originate in the Democratic Republic of the Congo or any of its surrounding countries in any Products.
- 10.7 All of Seller's representations and warranties set forth in the Agreement shall survive any delivery, inspection, acceptance or payment by Hillrom of or for
- any Products and shall be enforceable by Hillrom on its own behalf and on behalf of Hillrom's customers and any subsequent owners, operators or recipients of the Product and shall not be deemed to be exclusive of any other remedy at law or in equity available to Hillrom, its customers or any other owners, operators or recipients of Products.
- 11 HILLROM PROPERTY**
- If Products are to be produced by Seller in accordance with Specifications furnished by Hillrom, or if Hillrom pays for or furnishes to Seller any equipment, supplies, tools, tooling or other property in connection with or used in the performance of the Agreement ("**Hillrom Property**"), Hillrom shall own all right, title, and interest in and to such Hillrom Property, and Seller shall (1) hold such Hillrom Property in confidence, (2) mark such Hillrom Property in a manner that reflects that it belongs to Hillrom, (3) store such Hillrom Property apart from Seller's other property, (4) not move the Hillrom Property to any location other than the site approved by Hillrom without the prior written consent of Hillrom; (5) not sell, lease, mortgage or otherwise encumber or dispose of any Hillrom Property; (6) be responsible for the risk of loss, repair or replacement, and for keeping the Hillrom Property in good working condition; and (7) return such Hillrom Property, at Seller's expense, to Hillrom in good condition at Hillrom's request or when the Hillrom Property is no longer used by Seller or upon the termination or completion of the Agreement. Seller will use the Hillrom Property exclusively for the benefit of Hillrom. Hillrom may, upon not less than one (1) day's advance notice, enter into the premises of Seller during regular business hours and take possession of any or all of the Hillrom Property.
- 12 INTELLECTUAL PROPERTY**
- 12.1 **Product Rights.** Notwithstanding anything to the contrary herein, or in any other confidentiality or non-disclosure agreement between the parties, and notwithstanding any Intellectual Property Right of Seller, Hillrom, its Affiliates, and their respective Representatives shall have the unfettered right to use, lease, rent, loan, license, sublicense, dispose of, disclose, offer for sale, sell, maintain, import, have imported, modify, disassemble, repair, deconstruct, test, analyze, reconstruct, transfer, assign, and make Derivative Works and new products and systems from, all materials, documents, information, software, Works, Derivative Works, Products, articles, prototypes, deliverables, Inventions and components thereof provided by Seller, its Affiliates, or their respective Representatives to Hillrom, its Affiliates, or their respective Representatives in connection with the Agreement. Seller covenants and warrants that it imposes no post-sale restrictions on Hillrom relative to any Products, deliverables, prototypes or components thereof provided to Hillrom, its Affiliates, or their respective Representatives by Seller, its Affiliates, or their respective Representatives under the Agreement. Seller agrees that, notwithstanding any agreement to the contrary, all drawings, documents, deliverables, prototypes, information, and files Seller, its Affiliates, or their respective Representatives provide to Hillrom, its Affiliates, or their respective Representatives in conjunction with the Agreement have no confidentiality restrictions on them relative to Hillrom, its Affiliates, and their respective Representatives, and that Hillrom, its Affiliates, and their respective Representatives have the unrestricted right to copy, display, distribute, and disclose the same, and to use and create Derivative Works therefrom, for any purpose.
- 12.2 **Inventions, Intellectual Property Rights, and Works.** By detailed written reports, Seller shall inform Hillrom promptly and fully of all Inventions and Intellectual Property Rights, whether patentable or not, made or conceived by Seller or its Representatives, either solely or jointly with others, in connection with the Agreement, in the course of providing any services to Hillrom or its Representatives, or in the course of any collaboration with Hillrom or its Representatives, as a result of receiving information or requests from Hillrom or its Representatives, or as a result of access to the facilities, resources or funding of Hillrom or its Representatives. Hillrom shall own all rights, title, and interest in and to all such Intellectual Property Rights and Inventions, whether patentable or not, and to each U.S. and foreign patent issuing from any patent application based thereon. Seller agrees that it and its Representatives shall assign, sell, transfer and convey to Hillrom, and hereby do assign, sell, transfer and convey to Hillrom, all of the rights, title, and interests in and to such Intellectual Property Rights and Inventions, all applications for U.S. and foreign letters patent covering such Intellectual Property Rights and Inventions, all U.S. and foreign letters patent issuing therefrom, and all renewals thereof. Seller agrees that it and its Representatives will not practice, utilize, exploit, copy, disclose, or commercialize any such Intellectual Property Right or Invention, and that Hillrom shall have sole and exclusive ownership of the same. Hillrom shall have sole discretion to decide whether to prepare and file any U.S. or foreign patent applications covering any such Intellectual Property Right or Invention ("**Patent Applications**"). If Hillrom decides to prepare and file Patent

Hillrom Terms and Conditions for Products

Applications, then Hillrom shall pay all costs incurred in the preparation, filing, prosecution, and maintenance of such Patent Applications. At Hillrom's request, Seller shall disclose to Hillrom or its counsel sufficient technical information concerning such Intellectual Property Rights and Inventions to enable Hillrom and its counsel to prepare, file, and prosecute Patent Applications covering the same. Seller shall assist Hillrom and its counsel in the preparation, filing, and prosecuting such Patent Applications. Seller shall execute, acknowledge, and deliver to Hillrom all documents required to prepare, file, prosecute, and maintain such Patent Applications and patents covering Inventions or Intellectual Property Rights, and shall execute, acknowledge, and deliver to Hillrom all documents necessary to confirm that Hillrom is the owner of all rights in and to each U.S. and foreign patent application and resulting patent. All Works, created by Seller or its Representatives, alone or with others, in connection with the Agreement, in the course of providing any services to Hillrom or its Representatives, in the course of any collaboration with Hillrom or its Representatives, as a result of receiving information or requests from Hillrom or its Representatives, or as a result of access to the facilities, resources or funding of Hillrom or its Representatives, shall be, and shall remain, the sole and exclusive property of Hillrom. Each such Work is a "work made for hire" under the copyright law and Hillrom may file applications to register copyright in such Works as author and copyright owner thereof. If, for any reason, such a Work is excluded from the definition of a "work made for hire" under the copyright law, then each of Seller and its Representatives, shall assign, sell, transfer and convey to Hillrom, and hereby do assign, sell, transfer and convey to Hillrom, the entire rights, title, and interests in and to such excluded Work, including the copyright therein. Seller will ensure any documents that Hillrom deems necessary or appropriate in connection with the assignment of such excluded Work and copyright therein are executed. Seller will take whatever steps and do whatever acts Hillrom reasonably requests to secure or aid in securing and maintaining copyright protection in such Works, including, but not limited to, placement of Hillrom copyright notice on such Works, and will assist Hillrom and its Representatives in filing applications to register claims of copyright in such Works. Seller agrees that it and its Representatives will not reproduce, distribute, display publicly, or perform publicly, alone or in combination with any other work, any such Works and will not create any Derivative Work based upon such Works without the written permission from Hillrom to do so. At any time upon the request of Hillrom, Seller will deliver to Hillrom copies of all such Works then in possession or under control of Seller and its Representatives. Upon termination of the Agreement, Seller shall deliver to Hillrom all copies of such Works then in possession or control of Seller or its Representatives, provided, however, that Seller may retain a copy of any Work that does not include Hillrom Confidential Information and that is required for Seller's standard business and accounting purposes. Hillrom and its Representatives shall have free and unlimited access at all times to such Intellectual Property Rights, Inventions, and Works, including the right to use and disclose the same, and to make, use, sell, offer for sale, exploit and commercialize products covered by the same.

12.3 **Trademarks.** If Hillrom specifies in writing that Seller is authorized to use specific Hillrom trademarks (hereafter, the "**Trademarks**"), Seller is hereby granted a limited, non-exclusive, non-transferable, non-assignable license solely in connection with the manufacture of the Products for purchase from Seller solely by Hillrom, which license Hillrom may revoke at any time with or without notice. The Trademarks and any and all associated goodwill and rights arising from use of the Trademarks shall remain the sole and exclusive property of Hillrom at all times. Seller specifically agrees that it will not at any time, use the Trademarks or any trademarks or names confusingly similar thereto, on production or manufacture of any other products for any third parties. As a condition of the grant of the license rights in this [Section 12.3](#), Seller shall, at all times, adhere to its obligations hereunder (including but not limited to [Attachment I](#)). In addition, Seller shall observe the same quality and control standards as are specified by Hillrom, and Hillrom shall have the right to monitor Seller's compliance with such obligations and quality control standards at all times. Seller agrees that it has no right of any kind to sell, resell or to otherwise dispose of any Products bearing the Trademarks to any third parties at any time. Upon the expiration or termination of the Agreement for any reason, Seller shall be absolutely prohibited from using any of the Trademarks, or from using any names or trademarks confusingly similar thereto, in any manner whatsoever.

12.4 **Seller's Breach.** If Seller breaches the Agreement for any reason whatsoever, Seller hereby grants to Hillrom a worldwide, transferable, sub-licensable right and license, under any and all Intellectual Property Rights related to Products remaining with Seller that are necessary (if any) to manufacture, have manufactured, use, import, market, reconstruct, offer for sale, and sell the Products and modifications thereof, in quantities and for a time reasonably

required to mitigate the effects of such breach. For the licenses granted by Seller under the Agreement, Hillrom shall pay a fee which is part of and reflected in the purchase price of Products.

13 PUBLICITY; CONFIDENTIALITY

13.1 **Publicity.** Except as provided in [Section 12.3](#), Seller will not use Hillrom's name or logo in any public or marketing manner or disclose to other parties the fact that Hillrom has purchased or plans to purchase Products from Seller, without Hillrom's prior written consent, or unless required by law or as part of a legal proceeding related to the Agreement.

13.2 **Confidentiality Obligations.** During the term of the Agreement and thereafter, Seller agrees not to disclose any Confidential Information owned or possessed by Hillrom or its Affiliates, or accessed via Hillrom, its Affiliates, or their respective Representatives, to any third party, and not to use such Confidential Information except solely to the extent necessary for performance under the Agreement. Notwithstanding the preceding sentence, Seller and its Affiliates may disclose such Confidential Information to their respective Representatives who: (1) have a need to know the Confidential Information in order to explore or facilitate current business and/or business discussions between the parties, (2) have work requiring such disclosure, and (3) have agreed to, or have a duty to, hold such Confidential Information in confidence in a manner consistent with the Agreement. Seller shall be responsible for its, its Affiliates', and their respective Representatives' compliance with the obligations of the Agreement. Seller shall have in place, and shall ensure its Affiliates have in place, agreements with all permitted Representatives that bind and engage Representatives to comply with all of Seller's and its Affiliates' obligations hereunder, and all such agreements shall inure to the benefit of Hillrom.

13.3 **Exceptions.** The non-disclosure and non-use obligations of [Section 13.2](#) shall not apply to information that: (1) is now in or hereafter comes into the public domain without breach of the Agreement and through no fault of the Seller; (2) is rightfully in Seller's possession free of any obligation of confidence or non-use at the time of communication thereof as documented by contemporaneous written records; or (3) is explicitly required by law to be disclosed, so long as Hillrom is provided prompt notice of such a requirement and an opportunity to seek a protective order. However, information shall not be deemed to be within the foregoing exceptions if (a) such information is specific and merely embraced by more general information in the public domain or in Seller's possession, or (b) such information constitutes a combination which can be reconstructed from multiple sources in the public domain or in the Seller's possession, none of which shows the whole combination of the information included in the Confidential Information.

13.4 **Confidentiality or Non-Disclosure Agreement.** If the parties have entered into a separate confidentiality or non-disclosure agreement, the provisions of such agreement shall not be altered or amended by this [Article 13](#).

14 INSURANCE

Evidence of insurance shall be provided to Hillrom on certificate(s) of insurance before any products are delivered or services are performed. Seller shall maintain Commercial General Liability insurance which includes products/completed operations liability, contractual liability, personal injury liability and broad form property damage coverage with limits of at least \$5,000,000 per occurrence combined single limit. Such limits may be satisfied by a combination of primary and umbrella/excess liability policies. Coverage must include worldwide coverage territory, including the U.S. and Canada and must name Hillrom as an additional insured. Seller shall maintain Workers Compensation insurance in the state in which the work is being performed and must evidence a limit of liability for Employers Liability of not less than \$1,000,000 per accident. Coverage shall include a waiver of subrogation in favor of Hillrom. If Seller brings vehicles onto Hillrom's or Hillrom's customers' premises, Seller shall maintain insurance covering any owned, non-owned or hired vehicles with limits of at least \$1,000,000 per occurrence combined single limit bodily injury and property damage. If Seller is providing professional services (e.g., engineering, design, software/programming, etc.), Seller shall provide a Certificate of Insurance evidencing Professional Liability (Errors & Omissions) insurance for a limit of liability of not less than \$2,000,000 per loss. Such insurance must include worldwide coverage territory. Insurance evidenced above shall be primary and not entitled to contribution from any insurance maintained by Hillrom Holdings, Inc. or any of its Affiliates. In the event Seller employs any subcontractors, Seller shall require that the subcontractors carry the same coverages in the same limits as set out in the Agreement.

15 INDEMNIFICATION; LIMITATION OF LIABILITY

15.1 Seller shall indemnify, defend, and hold harmless Hillrom, its Affiliates, and their respective Representatives, from and against any and all claims, actions, damages, costs and losses, expenses (including legal costs and expenses) penalties, fines, obligations and liabilities of any kind (collectively, "**Losses**")

Hillrom Terms and Conditions for Products

asserted by a third party to the extent arising out of (1) any negligence, bad faith or willful misconduct of Seller or Seller's Representatives; (2) breach of any representation, warranty or covenant of Seller or Seller's Representatives; (3) violations of law by Seller or Seller's Representatives in the performance of the Agreement or while entering, being present at, or leaving Hillrom's or Hillrom customers' property; (4) any allegation of design (except to the extent of Hillrom's responsibility for the design) or manufacturing defect, negligence, professional liability, error or omission, willful misconduct, failure to warn, or breach of warranty relating to Products (including parts and components thereof purchased by Seller from its suppliers) purchased by Hillrom; or (5) any infringement of Intellectual Property Rights relating to Products or component thereof (whether alone or in combination or use with other products or components).

15.2 Hillrom shall indemnify, defend, and hold harmless Seller and its Representatives from and against any and all Losses asserted by a third party to the extent arising out of (1) any gross negligence, bad faith or willful misconduct of Hillrom or Hillrom's Representatives; or (2) violations of law by Hillrom or Hillrom's Representatives in the performance of the Agreement.

15.3 HILLROM SHALL NOT BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), RESULTING FROM HILLROM'S PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER, INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, EVEN IF HILLROM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.4 This [Article 15](#) shall survive the expiration or termination of the Agreement and shall survive any delivery, inspection, acceptance or payment by Hillrom for any Products.

16 CONFLICTS OF INTEREST

Neither Seller nor any subcontractor or agent of Seller shall (1) pay any amounts in any form to any Representative of Hillrom or any of his or her designees, or (2) favor any Representative of Hillrom, or any of his or her designees, with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value. Seller shall notify Hillrom immediately upon becoming aware of any other conflicts of interest that may exist from time to time between Seller, its subcontractors or any of their respective Representatives, and Hillrom. If Hillrom becomes aware of any such conflict of interest, Hillrom may request that such employee not be involved, directly or indirectly, in the work contemplated by this agreement, and Seller shall honor such request.

17 COMPLIANCE REQUIREMENTS

17.1 Seller represents and warrants that Seller and its directors, officers and employees have not been excluded, debarred, or otherwise made ineligible to participate in any "Federal health care program" (as such term is defined at 42 U.S.C. § 1320a-7b(f)) or any Federal procurement or non-procurement program (the "**Federal Programs**"). Seller represents and warrants to Hillrom that Seller and its directors, officers and employees (1) are not currently excluded, debarred, or otherwise ineligible to participate in any Federal Programs; (2) have not been convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Programs, and (3) are not under investigation or otherwise aware of any circumstances which may result in Seller being excluded from participation in any Federal Programs. This shall be an ongoing representation and warranty, and Seller shall immediately notify Hillrom in writing of any change in the status of the representations and warranty set forth in this [Section 17.1](#).

17.2 Seller represents and warrants that it has complied and will comply with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and that it has not made, offered, or authorized and will not make, offer, or authorize any payment, gift, promise or other benefit, whether directly or through any other person or entity, to any "government official" (i.e., any official or employee of any government, or any department, agency, or instrumentality thereof, including any person employed by or acting on behalf of a public agency, government-controlled enterprise, or public international organization, or any political party, political official, or candidate for political office), health care professional, any immediate family member of a "government official" or health care professional (spouse, parent, child, sibling, sibling's spouse, or financial dependent), or any other person or organization for purposes of influencing official actions or decisions or securing any improper advantage in order to obtain or retain business. Except as otherwise disclosed in writing to Hillrom, as of the effective date of the Agreement and during the term thereof, no "government official" or immediate family member of a "government official" is or will become

associated with, or presently owns or will own any interest in Seller. Seller has not received any notice, subpoena, demand or other communication (whether oral or written) from any governmental authority at any time in the last five (5) years regarding Seller's actual, alleged, possible, or potential violation of, or failure to comply with, any laws, regulations, or industry codes governing bribery, money laundering, or other corrupt practices or behavior. Hillrom shall be entitled to conduct regular due diligence surveys and audits, staffed as Hillrom deems appropriate, and at Hillrom's own cost and expense, to verify Seller's past and current compliance with the anti-corruption laws of any relevant jurisdiction, the Hillrom Third Party Code of Conduct, and Seller's obligations under this [Article 17](#). Seller shall cooperate fully and respond in a timely manner and in good faith, including making relevant documents and personnel available, to facilitate any such due diligence surveys or audits.

17.3 Seller understands that work under this agreement is subject to compliance with U.S. and any other applicable export laws, including but not limited to any local laws, the Export Administration Regulations ("**EAR**"), the anti-boycott and embargo regulations and guidelines issued under the EAR, the anti-boycott provisions of the IRC, the International Traffic in Arms Regulations ("**ITAR**"), and the various sanctions regulations and authorizations implemented by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"). Seller agrees to abide by any restrictions or conditions respecting the export, re-export, or other transfer of the deliverables that are in effect now or are hereafter imposed by the U.S. government, and will not export, re-export, transfer or otherwise release, export, disclose, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance to any foreign person or entity, whether within the U.S. or abroad, without obtaining in advance any necessary export authorizations, licenses, or other approvals from applicable governmental authorities. Seller further agrees to determine whether it is, and represents that it is not, owned directly, indirectly, or in the aggregate fifty percent (50%) or more by Specially Designated Nationals ("**SDN**") or parties designated on Sectoral Sanctions Identifications Lists ("**SSI**") or Foreign Sanctions Evaders List ("**FSE**") under Executive Orders of the President of the United States or the regulations of OFAC. Seller agrees to inform Buyer of any changes in its ownership structure that will cause it to be fifty (50%) or more owned by SDNs, SSIs or FSEs. Hillrom shall be entitled to conduct regular due diligence surveys and audits, staffed as Hillrom deems appropriate, and at Hillrom's own cost and expense, to verify Seller's past and current compliance with all applicable export controls and economic sanctions laws and the Hillrom Third Party Code of Conduct. Seller shall cooperate fully and respond in a timely manner and in good faith, including making relevant documents and personnel available, to facilitate any such due diligence surveys or audits. Nothing in the Agreement is intended to amend, waive or supersede any of the requirements applicable to Seller under applicable export controls and economic sanctions laws.

17.4 Seller shall require any subcontractors or other persons or entities that provide services to Seller in connection with Seller's obligations under the Agreement to agree to and abide by the representations and warranties in this [Article 17](#).

17.5 Periodically, as requested by Hillrom, Seller shall cause one of its authorized officers to execute and deliver to Hillrom a Certificate of Ethical Practices that confirms Seller's continued compliance with the provisions of this [Article 17](#).

17.6 Seller shall promptly notify Hillrom of (a) the occurrence of any fact or event that would render any representation, warranty, covenant, or undertaking in this [Article 17](#) incorrect or misleading, (b) any notice, subpoena, demand or other communication (whether oral or written) from any governmental authority regarding Seller's actual, alleged, possible or potential violation of, or failure to comply with, any laws or regulations governing bribery, money laundering, or other corrupt payments, or any export laws, and (c) any governmental investigation, audit, suit, or proceeding (whether civil, criminal, or administrative) regarding Seller's violation of, or failure to comply with, any such laws or regulations.

17.7 Seller shall cooperate fully with Hillrom in connection with the investigation of any allegation, event, fact or occurrence which calls into question Seller's compliance with any representation, warranty, or covenant in this [Article 17](#). If requested by Hillrom, Seller shall (a) appoint an executive with sufficient seniority and authority to respond to requests from Hillrom, and (b) promptly furnish such records and information, and provide access to such of its employees, contractors and consultants, as may be reasonably requested by Hillrom in connection with any such investigation.

17.8 Periodically, as requested by Hillrom, Seller shall provide Hillrom the names of its employees and representatives who will interact with health care professionals and government officials on behalf of Hillrom, as well as certain other employees specified by Hillrom, and shall cause such employees to undertake compliance training in a form approved by Hillrom.

Hillrom Terms and Conditions for Products

- 17.9 Seller shall designate a compliance officer to oversee and ensure Seller's compliance with its obligations under this Article 17. The compliance officer shall be of sufficient seniority, and shall be provided with sufficient resources, to fulfill his or her obligations under this Article 17.
- 17.10 Seller shall indemnify and hold Hillrom harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with the terms of the anti-corruption and export controls and sanctions clauses of the Agreement.
- 17.11 Notwithstanding anything to the contrary in the Agreement, Hillrom may, in addition to its other remedies, immediately terminate the Agreement in the event Hillrom should receive information which it determines in its sole discretion to be evidence of a breach by Seller of any representation or warranty set forth in this Article 17. In the event of such termination, Hillrom shall have no liability to Seller for any fees, reimbursements or other compensation under the Agreement.
- 18 CHANGE ORDERS**
- Hillrom may, from time to time, in an executed written document (a "**Change Order**") make changes to Specifications, packaging or shipment methods. Upon acceptance of the Change Order, Seller shall proceed immediately to make such changes. If Seller objects to such Change Order, the parties shall negotiate in good faith to mutually agree upon a modification of the Agreement to address the changes set forth in such Change Order and shall document any such changes in a Change Order to be executed by both parties. If the parties cannot reach agreement on such dispute, the Agreement shall continue in full force and effect as if the Change Order had not been submitted. Nothing herein shall excuse Seller from proceeding promptly with a Change Order pending resolution of any dispute arising from a Change Order to which Seller objected.
- 19 SELLER CHANGE NOTIFICATION**
- To allow Hillrom time to review, test, and qualify proposed changes, as soon as possible (but at least ninety (90) days) prior to the planned implementation of any of the following changes, Seller shall provide Hillrom written notice of its, any of its Affiliates', or any of their respective permitted subcontractors' intent to (1) substitute another product for any Product or component thereof, (2) make (a) any modifications to Specifications for any Product, or (b) any substantial modifications to the manufacturing or quality processes used in making any Product, (3) change the location at which any Product or components thereof is manufactured, or (4) use a new subcontractor to make any Product. Seller shall not implement any such modification unless and until it receives written acceptance of such modification by Hillrom in the form of an approved Change Order. To the extent Seller implements any such modifications in derogation of this Article 19, Seller shall be subject to financial penalties. Hillrom shall have the ability, in its sole discretion, to reject the planned modification or to require a delay in the implementation of such change in order to mitigate any associated consequences and risks. In addition, Seller shall notify Hillrom immediately of (a) any change to or loss of any certifications required by Seller or any permitted subcontractor hereunder, to manufacture, package, deliver or sell any Product or for Hillrom to purchase any Product, or (b) the sale of all or substantially all of the equity or assets of Seller or any permitted subcontractor hereunder. Seller shall indemnify, defend, and hold harmless Hillrom and its respective shareholders, employees, officers, directors, agents, suppliers and representatives, from and against any and all Losses relating to or arising out of breach of this Article 19. For the avoidance of doubt, Seller acknowledges that modifications to Products that are parts, components, or subassemblies may affect the performance or regulatory status of other products into which such Products are incorporated, and that modifications to any Product covered by the Agreement (whether a finished good or a part, component, or sub-assembly) are strictly subject to this and other modification provisions.
- 20 CANCELLATION OF ORDER**
- Hillrom may at any time, without cause, cancel one or more Purchase Orders, or any portion thereof, or change the quantities or types covered by a Purchase Order at any time, provided that (1) if Hillrom cancels or changes a Purchase Order after Seller has started manufacturing the items covered by such Purchase Order, and (2) if Seller cannot, using commercially reasonable efforts, repurpose such Products for which manufacturing has begun within a reasonable amount of time (including using such Products for a future Hillrom order), then Hillrom will compensate Seller for such reasonable expenses incurred prior to such cancellation, including material cost. Notwithstanding the above, Seller agrees that any non-compliance with the obligations set forth in Article 10 and Article 17 will be considered a material breach and, as a consequence, will entitle Hillrom to immediately terminate the Agreement and all obligations to pay consideration thereunder.
- 21 MISCELLANEOUS**
- 21.1 Assignment. This Agreement and the performance of any obligation hereunder shall not be assignable, delegated or otherwise transferred by Seller without the prior written consent of Hillrom, and any assignment or transfer in violation of this Section 21.1 shall be null and void. The rights and obligations of Hillrom and Seller under the Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of each party.
- 21.2 Governing Law. Any matters arising under or relating to the Agreement are governed and construed in accordance with the laws of Illinois, USA, without regard to any applicable conflicts of law. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 21.3 Venue. If Seller is located in the U.S., each party (1) shall bring such actions and proceedings in a State court sitting in Cook County, Illinois, or a Federal court in the Northern District of Illinois; and (2) submits to the jurisdiction any and all of the courts identified in (1), together with their respective appellate courts. If Seller is located outside of the U.S., (a) any dispute arising out of or relating to the Agreement, including the breach, termination or validity thereof, shall be finally resolved by arbitration in the English language, in accordance with the International Institute for Conflict Prevention & Resolution Rules for Non-Administered Arbitration currently in effect at the time of the dispute, (b) each party shall designate one arbitrator and the sole responsibility of the party-designated arbitrators shall be to appoint a third, neutral arbitrator, (c) such third arbitrator shall be the sole arbitrator of the dispute, (d) the arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., (e) the arbitrator shall follow Section 21.2 and (f) judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Chicago, Illinois. The foregoing is without prejudice to the right of Hillrom to (x) bring suit against Seller with the competent court where Seller has its registered office or place of business and (y) bring suit and seek relief at any court in connection with seeking injunctive relief. Each party waives any right to a jury trial and for a retrial in the local court when a local enforcement order is sought.
- 21.4 Third Party Beneficiaries. Hillrom's Affiliates (each a "**Beneficiary**") shall be third party beneficiaries under the Agreement to the extent Products provided under the Agreement impact a Beneficiary and any such Beneficiary shall have the right to enforce the Agreement as if it were a party hereto. Except as set forth in the preceding sentence, no person, other than the parties and such Beneficiaries, has any rights or remedies under the Agreement. The parties reserve the right to amend or terminate the Agreement without the consent of the any Beneficiaries.
- 21.5 Amendments. No amendments or changes to or rescission of the Agreement are effective or binding unless executed in writing by both parties.
- 21.6 Severability. In the event that any clause of the Agreement shall be found by a court of competent jurisdiction to be void or unenforceable, such findings shall not be construed to render any other clause of the Agreement either void or unenforceable, and all other clauses shall remain in full force and effect.
- 21.7 Prevailing Party. The successful or prevailing party in any legal action or other proceeding related to the Agreement shall be entitled to recover all of its reasonable attorneys' fees, court costs and other expenses related to such action or proceeding.
- 21.8 Survival of Covenants. Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive the termination or expiration of the Agreement.
- 21.9 Independent Contractor. For purposes of the Agreement, Seller is an independent contractor and nothing in the Agreement shall create, or be construed to create, any agency, partnership, joint venture or other form of joint enterprise between Seller and Hillrom.
- 21.10 Notices. All notices, requests, or demands that are required or may be given pursuant to the Purchase Order will be in writing and sent by mail, overnight courier or facsimile, to Seller at the address indicated in the Purchase Order, or to Hillrom at the address indicated in the Purchase Order, with a copy, which will not constitute notice, to Hill-Rom, Inc., 130 E. Randolph Street, Suite 1000, Chicago, IL 60601 Attn: General Counsel, or to such other address as one party may later specify to the other party in writing. Delivery of any such notices will be deemed sufficient in all respects and to have been duly given: (1) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 21.10; (2) on the next Business Day if transmitted by nationally recognized overnight courier service (with confirmation of delivery); or (3) at the time of receipt of confirmation of transmission if by facsimile.
- 21.11 Waiver. Either party's failure to enforce any of the provisions of the Agreement or to exercise any election or option provided, or to require performance by the other party, shall not be construed to be a waiver of such

Hillrom Terms and Conditions for Products

provisions and shall not affect the right of such party thereafter to enforce any provision. The waiver by a party of any of its remedies for a breach by the other party of the Agreement is without prejudice and shall not operate to waive any other remedies that the non-breaching party shall have available to it at law or in equity, nor shall any such waiver operate to waive the non-breaching party's rights to any remedies for a future breach.

22 DEFINITIONS

In addition to the terms defined elsewhere in the Agreement, the following terms shall have the following meanings:

“**Affiliate**” means a corporation, firm, partnership, proprietorship, or other legally recognizable form of business entity that controls, is controlled by, or under common control with another legally recognizable form of business entity, but only for so long as such control exists. For purposes of the foregoing definition, “**control**” means the ability to direct the affairs of a legally recognizable form of business entity, whether through ownership of at least a majority interest in such entity or by contract.

“**Business Day**” means a day other than Saturday, Sunday or any day on which banks located in the state of the party to whom notice is being given are authorized or obligated to close.

“**Confidential Information**” means ideas, concepts, data, technology, techniques, equipment, software, prototypes, drawings, files, notes, documents, and/or other information which is considered to be proprietary, non-public, and/or confidential. Confidential Information may be in any form, including written, recorded, electronic, displayed, presented, or oral information, as well as products, samples or prototypes.

“**Conflict Minerals**” means gold, tin, tantalum and tungsten and any additional minerals added to Section 1502 of the Dodd Frank Act.

“**Derivative Works**” means Works that are based upon one or more pre-existing works, information, or material, such as: (a) for copyrightable or copyrighted material, any translation, software portation, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment, revision or other form in which such material may be recast, transformed, or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material that is protected by trade secret, any new material derived from such existing trade secret material, including new material that may be protected by any copyright, patent, and trade secret.

“**FDA**” means the U.S. Food and Drug Administration and any other organizations, whether inside or outside of the U.S., that is responsible for health and safety of clinicians and patients, or for regulatory compliance.

“**Hillrom**” means the Hillrom Affiliate specified on the Purchase Order.

“**include**”, “**includes**” and “**including**”, whether or not capitalized, shall not be construed as terms of limitation and shall introduce a non-exclusive set of examples.

“**Intellectual Property Right**” means any right relating to patents, trademarks, trade names, service marks, service names, brand names, Inventions, processes, formulae, copyrights, circuit layouts, Works, Derivative Works, business and product names, logos, slogans, trade secrets, industrial models, designs, computer programs and software (including all source codes) and related documentation, drawings, know-how, methods, processes, technology, specifications, procedures, bills of material and any other intangible property right.

“**Inventions**” means discoveries, concepts, inventions, creations, prototypes, improvements, and ideas, whether patentable or not, whether or not reduced to practice, and whether or not in the form of apparatuses, systems, devices, processes, methods, compositions of matter, techniques, formulae, know-how, or other form.

“**Product**” means any product identified in the Purchase Order or the Contract, if any.

“**Representatives**” means all directors, officers, employees, agents, legal representatives, and subcontractors of a party or any of its Affiliates.

“**Seller**” means the Seller entity specified on a Purchase Order.

“**State**” means one of the fifty (50) states comprising the U.S.

“**Works**” means works of authorship fixed in any tangible medium of expression, including, but not limited to, notes, specifications, drawings, blueprints, circuits, memoranda, correspondence, records, notebooks, databases, charts, schematics, artwork, tooling design drawings, documents, files, and similar repositories of information, regardless of the medium in which it is fixed.

Hillrom Terms and Conditions for Products

ATTACHMENT I QUALITY AGREEMENT

1. Legal Requirements. Seller agrees to comply with all applicable legal and regulatory requirements that apply to Products that are medical devices or Products that are components that go into a medical device, including regulations promulgated by the U.S. Food and Drug Administration under the Federal Food, Drug, & Cosmetic Act as amended from time to time at Title 21, Chapter 9 of the U.S. Code, 21 U.S.C. §§ 301–399a and 21 C.F.R. Part 820 (the “Legal Requirements”).
2. Authorizations. As applicable, Seller has obtained or made and will maintain all licenses, permits, registrations, authorizations, and submissions as are necessary to perform Seller’s services and to manufacture and sell Products. Seller will provide copies of such licenses, permits, registrations, authorizations, and submissions to Hillrom, upon request.
3. Product Changes. Seller will manufacture Products in accordance with the Agreement, the applicable Legal Requirements, Specifications, and any applicable regulatory approval, marketing clearance, or other marketing authorization. Seller acknowledges that modifications to Products may affect the performance or regulatory status of other products into which such Products are incorporated, and that modifications to any Product covered by the Agreement (whether a finished product or a part, component, or sub-assembly) are strictly subject to this and other modification provisions. Seller shall not implement any such modification unless and until it receives written acceptance of such modification by Hillrom in the form of an approved Change Order. Seller implementing any such modifications without proper approval will be subject to financial penalties. Seller shall maintain a formal process to document changes to Seller’s policies, procedures, operations, and Specifications and shall evaluate all proposed changes to the Products with regard to potential impact on Products’ safety, efficacy, performance, and intended use(s).
4. Supplier Evaluation. Seller shall establish and maintain quality requirements that must be met by suppliers, contractors, to ensure that all purchased products and services conform to specified requirements. Seller shall monitor the performance of suppliers supplying materials for use in Products. To the extent Seller subcontracts any manufacturing, Seller shall ensure that such subcontractor(s) are bound by the Agreement.
5. Manufacturing Standards; Quality Assurance
6. Manufacturing and Quality Records. Seller shall maintain complete and accurate manufacturing and quality records for Products in accordance with Legal Requirements, including as applicable master records, history records, master production and control records, batch production and control records, and laboratory records. Seller shall retain such records in accordance with Legal Requirements. Such records shall be made available to Hillrom upon request.
7. Incoming Inspections. Seller is responsible for the identification, sampling, testing, and approval of any incoming materials, components, and packaging materials used in the manufacture of Products in accordance with Legal Requirements. All sampling and testing shall become part of the batch records and shall be reviewed by Seller’s quality assurance department before release of Products. Seller shall make inspection documentation available to Hillrom upon request.
8. Material Control and Traceability. All materials and components used in the manufacturing, assembling, and packaging of Products shall be stored and handled in accordance with Legal Requirements. Materials used to manufacture the Products must be controlled, identified by lot number, and traceable.
9. Verification and Validation. Seller shall ensure that its manufacturing processes and equipment are appropriately verified and validated as required by Legal Requirements. Verification, validation, equipment calibration, and equipment validation data shall be documented and made available to Hillrom upon request.
10. Quality Control. Seller shall verify that Products are manufactured, tested, and stored in accordance with the specific processes and methods specified in applicable Legal Requirements and Specifications and otherwise comply with the representations and warranties given by Seller in the Agreement.
11. Certificate of Analysis/Batch Records. When requested by Hillrom, Seller shall complete and send with each shipment of Product a Certificate of Compliance and full batch records certifying that each Product was: (1) manufactured according to Seller’s procedures and in compliance with applicable Legal Requirements; and (2) tested and confirmed to meet all Specifications. Each Certificate of Compliance shall be signed and dated by a duly authorized official of Seller’s Quality Control or Quality Assurance department.
12. Nonconforming Products. Seller shall control and physically segregate all nonconforming Products, or any material considered unacceptable for use in the manufacture of Products, from conforming Products and approved material in accordance with Legal Requirements. Seller shall immediately notify Hillrom of any nonconforming Product that was released for shipment to Hillrom or Hillrom’s designee(s) or customers and shall provide Hillrom with all investigation reports, quality reports, or other means of reporting Seller’s investigation process. For nonconforming Products that were released, Seller, in consultation with Hillrom, shall decide whether nonconforming Products should be destroyed or returned to Seller. Seller shall pay all expenses related to destroying or returning the Products. At Hillrom’s sole discretion, Hillrom may cancel any order or payment covering nonconforming Products or may elect to have Seller replace the nonconforming Product(s), and Seller shall pay all expenses related to such replacement.
13. Product Quality Issues. Hillrom will notify Seller of any problems isolated as Seller defects that are found during the use or distribution of Products. When requested by Hillrom, Seller will promptly investigate the identified issue(s) within timeframes established by Hillrom. Seller will provide timely updates and completed investigation reports to Hillrom as reasonably requested. When the need for a corrective action has been identified, Seller will investigate appropriately, determine root cause, develop an action plan to address the problem, implement proposed corrections, evaluate and determine effectiveness in accordance with applicable Legal Requirements and Seller’s quality system.
14. Post-market Reports. Hillrom may be responsible for preparing a periodic post-market report (e.g., annual report required by regulatory standards). Promptly, upon Hillrom’s request, Seller will provide to Hillrom in writing any data required for submission of any post-market or annual report.
15. Labeling and Packaging. Seller shall label and package Products in accordance with applicable Legal Requirements and Specifications and shall include a unique identifying lot number.
16. Compliance Deficiencies. Should Seller become aware of any issue that could affect the quality, safety, identity, efficacy, or regulatory compliance of Products (whether or not already shipped and/or distributed), Seller will immediately notify Hillrom in writing (but in any event, no later than twenty-four (24) hours after the discovery of such issue). If Seller becomes aware of any safety, quality or efficacy issues relating to Products, Seller shall (1) immediately inform Hillrom of the same, (2) contain and segregate any affected Products on Seller’s premises, (3) initiate corrective actions, and (4) periodically update Hillrom regarding the status of the same, including upon Hillrom’s request.
17. Regulatory Authority Communications and Investigations. Seller will promptly notify Hillrom in writing of any Regulatory Authority communications, actions or inquiries that relate to Products, whether oral or written, of which Seller receives or becomes aware. Seller will promptly provide Hillrom with copies of any documentation relating to same. If necessary, Seller may redact names of other customers or products to protect confidentiality. In the event of an investigation or inspection of Seller by Regulatory Authorities, Seller shall notify Hillrom within two (2) business days prior to any such inspection, or if prior notice is not possible, Seller shall notify Hillrom immediately after learning of such inspection. Seller shall promptly furnish Hillrom with copies of all documentation relating to such inspection and Seller’s response(s). Seller will immediately notify Hillrom in writing if Seller becomes aware of any Regulatory Authority investigations related to a recall, field alert, stock recovery, withdrawal from the market, field correction, or other similar corrective action (each a “Recall”) or other corrective actions relating to Products.
18. Product Complaints. Seller will collect, investigate, and timely respond to complaints or inquiries from Hillrom relating to safety, quality, or efficacy of Products and will initiate corrective actions as necessary. To the extent Seller investigates any complaints relating to the safety, efficacy, or quality of Products, Seller will notify Hillrom within fifteen (15) days of Seller’s findings. Seller shall maintain a complaint file and records relating to each complaint as required by Legal Requirements.
19. Adverse Event Reports. If Seller is the Legal Manufacturer for finished goods, Seller shall be responsible for making all filings and reports of an Adverse Event relating to Products with Regulatory Authorities. Hillrom shall report to Seller any information of which Hillrom becomes aware that may constitute an adverse event relating to Products, including any death or serious injury, or

Hillrom Terms and Conditions for Products

potential malfunction of Products, whether or not such event has been definitively determined to be associated with Products (each an “**Adverse Event**”). Unless otherwise agreed in writing, any other reporting obligations relating to Products shall be the responsibility of Seller.

20. Recalls. Seller shall notify Hillrom no later than twenty-four (24) hours of discovery if any Product is alleged or proven to be the subject of a Recall, or if Seller believes a Recall may be necessary. The parties shall cooperate in the handling and disposition of such Recall; provided, however, Hillrom’s quality assurance department may institute a Recall due to any defect it considers sufficiently serious. Seller will provide at no charge (1) technical assistance and information as Hillrom may request in order to enable Hillrom to investigate quality issues that may be related to or caused by the Products; and (2) reasonable cooperation and assistance to Hillrom in executing a Recall. Seller shall be responsible for all expenses incurred by Hillrom and its customers in undertaking a Recall to the extent such Recall results from Seller’s failure to manufacture the Products in accordance with Specifications or the Agreement, or Seller’s negligence, bad faith or willful misconduct. For purposes of the Agreement, the expenses of the Recall include the reasonable direct expenses of notification and return or destruction of recalled Products, the cost to replace or refund the price of recalled Products, and any costs directly associated with distribution of replacement Products. In all cases, the parties will conduct any Recall in a manner that is appropriate and reasonable under the circumstances and in conformity with accepted trade practices and Legal Requirements.
21. Audits. “**Audit**” means an audit of Seller’s facility for purposes of reviewing Seller’s procedures, processes, facilities, personnel, and records used in or created during the design, manufacture, or distribution of Products to assure conformance to the Agreement and applicable Legal Requirements. Hillrom shall have the right to conduct Audits as needed to evaluate the Seller. Hillrom shall comply with all of Seller’s facility rules regarding safety and security notified by Seller to Hillrom. Each Audit shall be conducted during Seller’s business hours and, unless a shorter period is required by Hillrom because of an urgent issue, upon at least fourteen (14) days’ prior written notice to Seller. During an Audit, upon Hillrom’s request, Seller shall make available for Hillrom’s review, interview, and inspection all equipment, personnel, and facilities used in or in relation to the manufacture of Products, records, complaints and supporting documents (e.g., manufacturing, analytical, and testing documentation) with respect to Products and materials used in the manufacture of Products. Hillrom shall have the right to obtain copies of records concerning Products. After the Audit, Hillrom will provide a written audit report. Within thirty (30) days of audit report receipt, Seller will provide a written response to all findings that details corrective action to be implemented. Seller will ensure that all corrective actions are implemented. Hillrom may confirm corrective action by performing a follow-up Audit.