



**INVIVO CORPORATION**  
**TERMS AND CONDITIONS OF SALE (Rev. Q)**

The products and services listed in the quotation are offered by Invivo Corporation; a Philips Company ("Invivo") only under the terms and conditions described below.

**1. Taxes.** The purchase price stated in the quotation does not include applicable sales, excise, use, other taxes, or government surcharges in effect or later levied. Customer shall provide Invivo with an appropriate exemption certificate reasonably in advance of the date the product is available for delivery, otherwise, Invivo shall invoice Customer for those taxes, as well as any government surcharges, and Customer shall pay those taxes in accordance with the terms of the invoice. Government surcharges are non-exempt under the law. Customer is defined as a legal entity its affiliates and or subsidiaries who purchase product(s), and take title of the purchased product(s) from Invivo.

**2. Standard Payment Terms.**

- 2.1. 100% of the Purchase Price shall be due thirty days from Invivo's invoice date.
- 2.2. Orders are subject to Invivo's on-going credit review and approval.
- 2.3. Customer shall pay interest on any amount not paid when due at the rate of 1% per month (12.86% per annum) or the highest permissible rate under applicable laws, whichever is less. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Invivo at law or in equity, Invivo may discontinue the performance of services discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Customer by Invivo under any agreement with Customer. In any action initiated to enforce the terms of the quotation following a Customer default, Invivo shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.
- 2.4. Payment Methods. Payments may be made by check, ACH or wire. Invivo does not accept transaction fees for wire transfers.
- 2.5. If the quotation indicates net prices that are each associated with a payment method, then Invivo will invoice Customer, and Customer will pay, the net price that corresponds to Customer's elected payment method.

**3. The Quotation, Order Cancellation, Returns.**

- 3.1. Quotation. The quotation is subject to change or withdrawal prior to written acceptance by Customer. All purchase orders issued by Customer are subject to acceptance by Invivo. If Customer postpones delivery beyond the date specified on the face of the quotation, the prices will be subject to renegotiation. If no agreement is reached, the price shall be the price in effect at the time of shipment. Unless otherwise stated otherwise on the face of the quotation, the quotation will remain valid for sixty (60) days unless withdrawn or changed by Invivo. Support Services, if any, shall be invoiced and paid as set forth on the quotation.
- 3.2. Cancellation. If Customer cancels an order prior to product shipment, Customer shall pay a cancellation charge of fifteen percent (15%) of the net order price. Orders are non-cancellable for Products shipped.
- 3.3. Return Policy. If there is a problem with an order, Invivo wants to correct it as soon as possible. Please note the following instructions before returning merchandise to Invivo.
  - 3.3.1. Buyer must first receive a Returned Goods Authorization (RGA) from the Invivo Customer Service Department in Gainesville, Florida at 1-877-INVIVO1. If an RGA is issued, Buyer is

responsible for all costs associated with the return. Returns will be subject to a fifteen percent (15%) restocking fee.

3.3.2. Returns after sixty (60) days of shipment shall be subject to a restocking charge.

3.3.3. Invivo does not accept returns of Consumables Products that have been opened, are expired or damaged. Please contact Invivo Customer Service Department at 1-877-INVIVO1 for guidance on any returns.

#### **4. Trade - In.**

If Customer will be trading-in any equipment ("Trade-In"), then:

- 4.1 Customer represents and warrants that Customer has good and marketable title to such Trade-In;
- 4.2 Title to the Trade-In shall pass from Customer to Invivo upon Invivo making the new equipment available to Customer for first patient use. Removal of the Trade-In from Customer's site shall occur no later than the date Invivo makes the new product available for first patient use, unless otherwise agreed in writing between Invivo and the Customer; and
- 4.3 Notwithstanding anything to the contrary in a current, applicable, Business Associate Addendum ("BAA"), Customer represents and warrants that Customer has removed or de-identified all Protected Health Information ("PHI") from the Trade-In equipment as of the date the equipment is removed or de-identified all Protected Health Information ("PHI") from the Trade-In equipment as of the date the equipment is removed and will otherwise comply with all applicable privacy laws. To the extent Customer has not done so, Customer agrees to reimburse Invivo for any out-of-pocket costs Invivo incurs to remove or de-identify PHI from the Trade-In.
- 4.4 Customer will ensure that the Trade-In is clean and sanitized and that all potentially infected materials and biological fluids are removed prior to its de-installation and removal.
- 4.5 If (a) the condition of the Trade-In is not substantially the same when Invivo removes the Trade-In (ordinary wear and tear excepted) as it was when Invivo quoted the Trade-In value; or, (b) Customer delays the removal of the Trade-In, then Invivo may reduce the price quoted for such Trade-In or cancel the Trade-In and Customer will pay the adjustment amount within thirty (30) days of the date of invoice.
- 4.6 If Invivo does not receive possession of the Trade-In, Invivo will charge Customer the amount of the Trade-In allowance or rental fee within thirty (30) days from the invoice date.
- 4.7 Evidence that Customer intends to trade in an asset as part of the purchase or lease of any product(s) shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Invivo on the value of the asset to be traded in; (b) providing Invivo with serial numbers of assets to be traded in; and/or, (c) providing Invivo with a de-installation date to remove an existing asset in order to install Invivo's quoted equipment.

**5. Security Interest.** By signing the quotation or issuing a purchase order for the products described, Customer hereby grants to Invivo a purchase money security interest in the products until all payments have been made. Invivo may file a financing statement for such security interest and Customer shall sign any financing statements or other documents necessary to perfect Invivo's security interests in the products. Where permitted by applicable law, Customer's signature on the quotation or on a purchase order issued as a result of the quotation gives Invivo the right to sign on Customer's behalf and file any financing statement or other documents to perfect Invivo's security interest in the product.

## **6. Shipment, Delivery, and Risk of Loss.**

- 6.1. Title/Risk of Loss. Title to any product (excluding software), and the risk of loss or damage to any product shall pass to the Customer F.O.B. Factory - Freight to destination prepaid and added to invoice.
- 6.2. Claims. Claims for merchandise, defective shipping cartons, or missing cartons should be filed within 48 hours by the Customer with Invivo's Customer Service Department. Prior to the shipment of any product, Invivo may change the construction or the design of the product without notice to the Customer as long as the function, footprint, and performance of the product is not substantially altered.
- 6.3. Shipment. Invivo will use reasonable efforts to ship the product to the Customer (i) by the mutually agreed upon shipment date, (ii) by the date stated in the quotation, or (iii) as otherwise agreed in writing. Invivo will ship the product according to Invivo's standard commercial practices.
- 6.4. Delivery. Invivo will make reasonable efforts to meet Customer's delivery requirements. If Invivo is unable to meet Customer's delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order. If Customer requests a major delay in the date of delivery of the product, Invivo may attempt to arrange re-delivery within a reasonable time or may terminate the order.

**7. Installation, Acceptance, Remote Services Connection.** For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Invivo and applications training handover. For Products without installation included in the purchase price, acceptance by customer occurs upon delivery. If Customer schedules or delays installation by Invivo more than thirty (30) days after delivery, Customer's acceptance of the Products will occur on the thirty-first (31st) day after delivery. Customer shall at all times during the warranty period specified in this Agreement provide Invivo with a suitable connection to the product through the Customer's network for Invivo's use in remote servicing of the product.

## **8. Product Warranty.**

- 8.1. In addition to the limited warranties stated herein, Invivo may provide limited product-specific warranties that are set forth in separate Invivo warranty documents incorporated herein by reference.
- 8.2. Subject to the product-specific warranties, and except as otherwise stated therein or except for equipment manufactured in compliance with design or specifications of Customer, Invivo warrants to Customer that the Invivo equipment will perform in substantial compliance with its performance specifications in the documentation accompanying the products for a period as set forth below from the date of original delivery.

### **STANDARD PRODUCT AND SOLUTIONS WARRANTY PERIODS**

- MRI Coils - Three (3) years, parts and factory repair labor
  - Solution Products- One (1) year, parts and factory repair labor
  - MRI Sentinelle Coils - One (1) year, parts and factory repair labor
  - Parts and Accessories - Ninety (90) days, replacement Supplies
  - Consumable Items and repaired product - Thirty (30) days, replacement
- 8.3. Invivo's sole obligations and Customer's exclusive remedy under any product warranty are limited, at Invivo's option, to the repair or the replacement of the product or a portion thereof, within thirty (30) days after receipt of written notice of such material breach from Customer (Product Warranty Cure Period) or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request. Warranty service outside of normal

working hours (i.e., 8:00 AM to 5:00 PM, Monday through Friday, excluding Invivo's observed holidays), will be subject to payment by Customer at Invivo's standard service rates.

- 8.4. This warranty is subject to the following conditions: the product (a) where applicable, is to be installed by authorized Invivo representatives (or is to be installed in accordance with all Invivo installation instructions by personnel trained by Invivo), (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Invivo's written instructions and for the purpose for which the products were intended, (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product and Customer is to notify Invivo immediately if the product at any time fails to meet its printed performance specifications. Invivo's obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software (except DAT file changes) running in connection with the Licensed Software without prior approval by Invivo; use or operation of the product other than in accordance with Invivo's applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network. Invivo does not provide a warranty for any third party products furnished to Customer by Invivo under the quotation; however, Invivo shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Invivo described herein and in the applicable product-specific warranty document are Invivo's only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.
- 8.5. THE WARRANTIES SET FORTH HEREIN AND IN INVIVO'S WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE ONLY WARRANTIES MADE BY INVIVO IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Invivo may use refurbished parts in the manufacture of the products which are subject to the same quality control procedures and warranties as for new products.

- 9. Proprietary Service Materials.** Any Invivo maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Invivo and its authorized agents to install and to test the products or to assist Invivo and its authorized agents to maintain and to service the products under warranty or a separate support agreement with Customer. Customer agrees to restrict access to such software and documentation to Invivo's employees and those of Invivo's authorized agents only and to permit Invivo to remove its Proprietary Service Materials upon request.

**10. Intellectual Property Indemnification.**

- 10.1 Invivo shall indemnify, defend, and hold harmless Customer against any new claim that a Invivo product provided in the quotation infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Invivo prompt written notice of the claim; (b) grants Invivo full and complete information and assistance necessary for Invivo to defend, settle, or avoid the claim; and (c) gives Invivo sole control of the defense or settlement of the claim.

- 10.2 If (a) an Invivo product is found or believed by Invivo to infringe a valid patent or copyright; or, (b) Customer has been enjoined from using the Invivo product pursuant to an injunction issued by a court of competent jurisdiction, Invivo may, at its option: (i) procure the right for Customer to use the product; (ii) replace or modify the product to avoid infringement; or (iii) refund to Customer a portion of the product purchase price upon the return of the original product. Invivo shall have no obligation for any claim of infringement arising from: Invivo's compliance with Customer's designs, specifications, or instructions; Invivo's use of technical information or technology supplied by Customer; modifications to the product by Customer or its agents; use of the product other than in accordance with the product specifications or applicable written product instructions; use of the product with any other product not sold by Invivo to customer and the Invivo product in and of itself is not infringing; if infringement would have been avoided by the use of a current unaltered release of the products; provided that, Invivo makes such current unaltered release available to customer at no additional charge; or use of the Invivo product after Invivo has advised Customer, in writing, to stop use of the Invivo product in view of the claimed infringement provided that, this shall not be a replacement for the remedies set forth under 10.2(i)-(iii) above . The terms in this section state Invivo's entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

## **11. Limitation of Liability.**

- 11.1. THE TOTAL LIABILITY, IF ANY, OF INVIVO AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE GIVING RISE TO THE LIABILITY. THIS LIMITATION SHALL NOT APPLY TO:
- (a) THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY INVIVO' NEGLIGENCE OR PROVEN PRODUCT DEFECT;
  - (b) CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY INVIVO'S NEGLIGENCE OR PROVEN PRODUCT DEFECT;
  - (c) OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXENT SUCH NOTICES ARE CAUSED BY INVIVO'S UNAUTHORIZED DISCLOSURE OF PHI; and,
  - (d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING INVIVO UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES
  - (e) INVIVO'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION UNDER SECTION 10 OF THIS AGREEMENT.
- 11.2. **Disclaimer.** IN NO EVENT SHALL INVIVO OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF THE TERMS IN THE CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

**12. Confidentiality.** Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, employees, and/or its patients, and the quotation and its terms, including the pricing terms under which Customer has agreed to purchase the products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by the quotation. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions of Sale or any other obligation of confidentiality or (b) is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law. Notwithstanding the foregoing, in the event that the receiving party is required by law to disclose any confidential information to a court, government department/ agency or regulatory body, the receiving party may so disclose, provided that it shall, to the extent permitted by applicable law, first inform the disclosing party of the request or requirement for disclosure to allow an opportunity for the disclosing party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto, including notifying Invivo and providing Invivo an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder.

**13. Compliance with Laws & Privacy.**

- 13.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).
- 13.2 In the course of providing project implementation related services and/or warranty services to Customer, hereunder, it may be necessary for Invivo to have access to, view and/or download computer files from the products that might contain Personal Data. “Personal Data” means information about an identifiable individual, and includes any information that is “personal information” or “personal health information” within the meaning of any applicable privacy law. Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e., date of birth, gender). Invivo will process Personal Data only to the extent necessary to perform and/or fulfill its project implementation related service, warranty service and/or warranty obligations hereunder. Customer further acknowledges and agrees that all telephone conversations between Invivo and Customer may, in Invivo discretion, be recorded.
- 13.3 Business Associate Addendums/Agreements between Invivo and Customer. Customer’s most current business associate agreement (“BAA”) duly executed with Invivo and in effect at the time of Invivo performance of the services shall apply and is incorporated into this Agreement. In the event terms expressly set forth in the BAA conflict with terms set forth in this Agreement, the terms set forth in the BAA shall govern in such instance. Otherwise, the terms expressly set forth herein shall apply.

- 13.4 It is Customer's responsibility to notify Invivo if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 13.5 Product Safety and Other Complaints. Customer will report immediately to Invivo any event of which Customer becomes aware that suggests that any services or products provided by Invivo, for any reason: (a) may have caused or contributed to a death or serious injury, or (b) have malfunctioned where and such malfunctions would be likely to cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Invivo complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels or instructions for use of the services or products provided by Invivo. Invivo shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Invivo products and services provided by Invivo hereunder, unless otherwise required by law.

**14. Excluded Provider.** As of the date of the sale of this product, Invivo represents and warrants that Invivo, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the products and services provided under these Terms and Conditions of Sale (an Excluded Provider). Invivo shall promptly notify Customer if it becomes aware that Invivo or any of its employees or subcontractors providing services hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Invivo with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Invivo a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the Parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for products and services not yet shipped or rendered prior to a date of exclusion.

**15. Omnibus Reconciliation Act (OMNI) Social Security (PL96-499, Public Law)**

Invivo and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Invivo agrees that until the expiration of four (4) years after furnishing services or products pursuant to these Terms and Conditions of Sale, Invivo shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Terms and Conditions of Sale and the books, documents and records of Invivo that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Invivo further agrees that if Invivo carries out any of the duties of these Terms and Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Terms and Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

## 16. General Terms.

The following additional terms shall be applicable to the purchase of a product:

- 16.1 **Force Majeure.** Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, health pandemics, acts of any civil military or government authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation or mandatory direction, request. For clarity, Customer requests shall not be considered 'government' requests under this section 16.1.
- 16.2 **Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Invivo may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Invivo shall remain in effect.
- 16.3 **Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the quotation without the prior written consent of Invivo, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect. Notwithstanding the foregoing, either party shall be entitled to assign this Agreement, without the prior consent of the other party, to a (i) purchaser of a sale of a substantial amount of their assets to which this Agreement relates or to a (ii) different affiliated legal entity of a party to this Agreement or their parent company to support an internal reorganization of the asserts of such party or such party's parent corporate legal entity; provided that, the assignee assumes all liabilities and obligations of the assignor and the assignor is not in breach of its payment obligations under this Agreement prior to such assignment.
- 16.4 **Export Controls.** Customer shall assume sole responsibility for obtaining any required export authorizations in connection with Customer's export of the products from the country of delivery.
- 16.5 **Governing Law.** All transactions contemplated by the quotation shall be governed by the laws of the state where the equipment will be installed, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act (UCITA), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, IT'S SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
- 16.6 **Entire Agreement.** These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Invivo product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.
- 16.7 **Headings.** The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.
- 16.8 **Severability.** If any provision of the quotation is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.
- 16.9 **Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth in the quotation.



- 16.10 **Performance.** The failure of Customer or of Invivo at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting the terms and conditions of the quotation.
- 16.11 **Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Invivo. Customer will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Invivo.

## **17. Licensed Software.**

### **17.1 License Grant.**

17.1.1 Subject to any usage limitations for the Licensed Software set forth on the product description of the quotation, Invivo grants to Customer a nonexclusive and non-transferable right and license to use the computer software package ("Licensed Software") in accordance with the terms of the quotation and these Terms and Conditions of Sale. The License shall continue for as long as Customer continues to own the product, except that Invivo may terminate the License if Customer is in breach or default of these Terms and Conditions of Sale and/or the quotation. Customer shall return the Licensed Software and any authorized copies thereof to Invivo immediately upon expiration or termination of this License.

17.1.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Invivo reserves the right to charge for backup copies created by Invivo. Except as otherwise provided under section 17.1.6, Customer may not copy, reproduce, sell, assign, transfer, or sublicense the Licensed Software for any purpose without the prior written consent of Invivo. Customer shall reproduce Invivo's copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.

17.1.3 The License shall not affect the exclusive ownership by Invivo of the Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Invivo (or any of Invivo's suppliers) relating to the Licensed Software.

17.1.4 Customer agrees that only authorized officers, employees, and agents of Customer will use the Licensed Software or have access to the Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the Licensed Software, or any portion thereof, or permit the Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified on the quotation. Customer acknowledges that certain of Invivo's rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Invivo under such third party license agreements.

17.1.5 The Licensed Software shall be used only on the product(s) referenced in the quotation.

17.1.6 Customer may transfer the Licensed Software in connection with sale of the product to a healthcare provider who accepts all of the terms and conditions of this License; provided that Customer is not in breach or default of this License, the Terms and Conditions of Sale, or any payment obligation to Invivo.

### **17.2 Modifications.**

17.2.1 If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the products shall become null and void. This does not apply to patches or software updates provided delivered from Invivo to Customer. If Customer or any of its officers, employees, or agents should devise any revisions, enhancements, additions, modifications, or

improvements in the Licensed Software, Customer shall disclose them to Invivo, and Invivo shall have a non-exclusive royalty-free license to use and to sub-license them.

17.2.2 The Licensed Software is licensed to Customer on the basis that (a) Customer shall maintain the configuration of the products as they were originally designed and manufactured; and, (b) the product includes only those subsystems and components certified by Invivo. The Licensed Software may not perform as intended on systems modified by other than Invivo or its authorized agents, or on systems which include subsystems or components not certified by Invivo. Invivo does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.