

# Biomedical Equipment Service Terms of Sale - Primary Care

The terms of sale set forth in this Agreement ("Agreement") apply to all biomedical equipment (the "Equipment") owned by you ("Customer"), on your own behalf or on behalf of your Facilities, and serviced by McKesson Medical-Surgical Minnesota Supply Inc. as more defined in Section 1 below ("Equipment Services"), acting on behalf of itself and its affiliates ("McKesson Medical-Surgical"). "Facility" means any extended care facility including long term care, home health care, assisted living, Durable Medical Equipment, home infusion therapy location, pharmacy, or other location with respect to which Customer exercises control over the selection of a biomedical equipment service provider, whether by ownership, contract or otherwise, that is purchasing Equipment Services under this Agreement. McKesson Medical-Surgical and Customer are sometimes referred to individually as a "Party" and collectively as "Parties." This Agreement supersedes the terms and conditions of any written agreement between the Parties, unless such written agreement is executed by an authorized representative of McKesson Medical-Surgical, any Customer purchase order or other business form, or any oral agreement between the Parties. In the event of any conflict or inconsistency between this Agreement and a separate document signed by both Parties, the terms of the separate document signed by both Parties shall control. McKesson Medical-Surgical may modify this Agreement from time to time, subject to applicable law. Prior courses of dealings between the Parties will have no effect on this Agreement and would be inadmissible to explain, modify, or contradict this Agreement.

**1. Equipment Services.** Equipment Services shall include the following:

**1.1. Preventative Maintenance.** Preventative maintenance services shall include, but not be limited to, the cleaning, inspection for damage, evaluation, adjustment, calibration, or testing of Equipment pursuant to original equipment manufacturer ("OEM") specifications, and the application of a preventative maintenance certification label (individually and collectively, as the context may require, "Preventative Maintenance Services"). Preventative Maintenance Services performed by McKesson Medical-Surgical on Equipment shall be subject to a per unit preventative maintenance fee ("PM Fee") as mutually agreed upon by the Parties. Preventative Maintenance Services do not include any on-call maintenance and repair services.

**1.2 Repairs.** In the event that a McKesson Medical-Surgical technician determines that Equipment requires repair that exceeds the scope of the above-defined Preventative Maintenance Services ("Equipment Repair"), McKesson Medical-Surgical shall provide Customer a written service estimate ("Service Estimate") detailing the required Equipment Repair and the associated fees for performing such Equipment Repair. Equipment requiring Equipment Repair shall be shipped to the nearest McKesson Medical-Surgical biomedical distribution facility at Customer's sole cost and expense. McKesson Medical-Surgical shall begin performing Equipment Repair upon receipt of Customer's written approval of the applicable Service Estimate ("Customer Approval") and will use commercially reasonable efforts to complete Equipment Repairs on the applicable Equipment within ten (10) business days of receipt of Customer Approval. The Parties acknowledge that there may be occasions on which Equipment Repairs can only be completed by the OEM ("OEM Repair Service(s)"). In such cases, McKesson Medical-Surgical shall notify Customer, in writing, of the estimated time required and the cost of such OEM Repair Services. Customer acknowledges and agrees that McKesson Medical-Surgical shall not be responsible for any OEM Repair Service delays. Customer further acknowledges and agrees that McKesson Medical-Surgical shall have no responsibility or liability in connection with the OEM Repair Services. Customer will defend, indemnify, and hold harmless McKesson Medical-Surgical from and against any and all losses arising out of or resulting from any OEM Repair Services. In addition to the cost of OEM Repair Services, Customer shall be responsible for the shipping and handling charges to ship Equipment in need of repair to and from the OEM.

**1.3. OneTrack.** To the extent applicable and in connection with the performance of Equipment Services, McKesson Medical-Surgical will utilize its proprietary web-based application ("OneTrack") to manage and track Equipment on which Preventative Maintenance Services and/or Equipment Repairs are performed pursuant to Section 1.1 and Section 1.2 above. Specifically, upon completion of the initial inspection and evaluation of the Equipment, Customer agrees McKesson Medical-Surgical shall affix standard bar code labels and/or stickers to each unit of Equipment and shall scan and upload data related to such Equipment into OneTrack.

**2. Invoice, Payment, and Finance.**

**2.1. Standard Credit and Payment Terms.** Any invoiced amount remaining unpaid after the due date will be "Past Due." Past Due balances are subject to an interest charge of one and one-half percent (1.5%) per month. Any interest charged and collected in excess of applicable state law will be returned. If Customer or a Facility fails to pay any or all of the invoiced amount when due or if Customer's or a Facility's credit or financial status erodes or otherwise renders McKesson Medical-Surgical insecure, McKesson Medical-Surgical may, in its sole discretion: (i) immediately suspend McKesson Medical-Surgical's performance or cancel all or any part of an order hereunder; (ii) change any payment term to a payment term determined by McKesson Medical-Surgical (including imposing the requirement of cash payment upon completion of Equipment Services); (iii) pay any incentives, rebates, fees, or other discount arrangements net of (a) any amounts due hereunder from Customer or a Facility; and (b) any unauthorized deductions and service charges; (iv) terminate and/or declare Customer or a Facility ineligible for any incentives, rebates, fees, or other discount arrangements; (v) declare immediately due and payable all other amounts invoiced by McKesson Medical-Surgical to Customer or the Facility regardless of when such payments would otherwise be due from Customer or the Facility; and/or (vi) increase the prices for Equipment Services. If any of the specified payment term due dates fall on a weekend day or holiday, payment is due and payable on the preceding business day.

**2.2.** Equipment Services shall be invoiced the day such Equipment Services are completed. Customer agrees to render payment in full to McKesson Medical-Surgical on the applicable due date without making any deductions or adjustments to such payment obligation or seeking to condition such remittance on any demand for or receipt of proofs of delivery.

**2.3.** In the event Customer files or is involved in any bankruptcy, insolvency, or similar case or proceeding, McKesson Medical-Surgical shall apply any amounts owed by McKesson Medical-Surgical to the Customer, first to any pre-bankruptcy, non-11 U.S.C. § 503(b)(9) claims, and then to the 11 U.S.C. § 503(b)(9) claims.

**2.4.** McKesson Medical-Surgical may set-off any amount owing at any time from Customer (and with respect to any Customer account) to McKesson Medical-Surgical (including its subsidiaries and affiliates) against any amount payable at any time by McKesson Medical-Surgical to Customer, whether arising under this Agreement or otherwise.

**2.5.** Customer agrees to provide McKesson Medical-Surgical with financial statements upon request. Customer authorizes McKesson Medical-Surgical, its employees, representatives, and agents to (i) investigate information provided and Customer's credit, financial and banking records; (ii) obtain Customer's credit bureau report; and (iii) share with its affiliates experiential and transactional information regarding Customer and Customer's account. McKesson Medical-Surgical is authorized to retain information obtained as part of the application process whether or not the requested account and/or credit is granted. Customer hereby unconditionally guarantees the performance of all obligations of any of its Facilities under this Agreement, including the prompt payment of the purchase price and any applicable interest and other charges for all Equipment Services provided to the Facilities, and agrees to pay any outstanding Past Due amounts to McKesson Medical-Surgical immediately upon demand by McKesson Medical-Surgical.

**2.6.** Customer agrees to pay all reasonable attorneys' fees, expenses, or costs incurred by McKesson Medical-Surgical in enforcing its rights to collect amounts due from Customer.

**2.7. Taxes.** All amounts payable under this Agreement are exclusive of sales, use, value-added, gross receipts, and other transaction taxes ("Transaction Taxes"). Customer will promptly pay and indemnify McKesson Medical-Surgical against all such Transaction Taxes legally imposed upon and payable by Customer, unless Customer provides McKesson Medical-Surgical satisfactory evidence of a valid tax exemption within applicable statutory requirements. McKesson Medical-Surgical shall be fully responsible for and not entitled to any reimbursement for any taxes imposed upon McKesson Medical-Surgical's net income, unemployment insurance or social insurance, or pensions maintained pursuant to any laws, ordinances, codes, or regulations.

**3. External Event.** Pricing for Equipment Services may be adjusted by McKesson Medical-Surgical in its sole discretion: (i) to reflect actual or reasonably anticipated changes in McKesson Medical-Surgical's cost of performing Equipment Services hereunder or supplier price change(s); (ii) due to an External Event; or (iii) if Customer becomes a Non-Compliant Customer (as defined herein). "External Event" shall mean an event or series of events external to and beyond the control of McKesson Medical-Surgical that has or is likely to have a significant adverse impact on McKesson Medical-Surgical's business or operations, including but not limited to material market fluctuations, actual or prospective changes in laws or regulations, actual or proposed enactment or promulgation of regulations or administrative actions, a fundamental change in McKesson Medical-Surgical's cost of performing Equipment Services, a supplier's pricing or distribution policies, or changes in the demand for or availability of a particular biomedical equipment model. Customer will be considered a "Non-Compliant Customer" if Customer fails to perform any other obligation or commitment set forth in this Agreement, including, but not limited to, applicable credit terms.

**4. Discrepancies.** The prices for Equipment Services shall be in accordance with McKesson Medical-Surgical's standard prices in effect at the time McKesson Medical-Surgical performs such Equipment Services. McKesson Medical-Surgical will have no obligation to resolve and Customer will hold McKesson Medical-Surgical harmless and waives any rights to any discrepancy or to issue any credit or refund, to perform any additional Equipment Services, or to replace any goods if such claim is not made within the applicable period below. All requests for proof of delivery must be made within sixty (60) days of McKesson Medical-Surgical's invoice date.

**4.1. Shipment Discrepancies.** Any discrepancy between the Equipment Services requested by Customer under this Agreement and McKesson Medical-Surgical's corresponding performance of such Equipment Services, must be reported to McKesson Medical-Surgical for resolution within ten (10) days of McKesson Medical-Surgical's invoice date.

**4.2. Price or Payment Discrepancies.** Any price or payment discrepancies or any claims for reimbursement must be reported to McKesson Medical-Surgical for resolution before the applicable invoice is due.

**5. Shipments, Freight, Title and Risk of Loss, and Packaging.**

**5.1. Shipments.** Except as otherwise provided in Section 1.2 (Repairs), McKesson Medical-Surgical will ship Equipment from its local biomedical distribution center to Customer or Facility, as applicable, via ground delivery. McKesson Medical-Surgical shall ship Equipment Monday through Friday (excluding weekends and McKesson Medical-Surgical holidays). McKesson Medical-Surgical shall have the right to ship Equipment at all times via its own vehicle or a carrier selected by McKesson Medical-Surgical. Customer shall ship Equipment to McKesson Medical-Surgical's local biomedical distribution center via a common carrier selected by Customer.

**5.2. Freight.** Except as otherwise provided in Section 1.2 (Repairs), Customer shall be responsible for the shipping and handling charges to ship Equipment to and from McKesson Medical-Surgical's biomedical distribution center(s). Shipping and handling charges may be added to the shipping invoice for deliveries outside the contiguous forty-eight (48) states, additional deliveries, emergency orders, or rush orders, or drop shipments shipped directly from an OEM.

**5.3. Title and Risk of Loss.** Unless otherwise expressly agreed in writing by McKesson Medical-Surgical, McKesson Medical-Surgical shall not acquire title to or assume risk of loss for any of the Equipment on behalf of Customer and shall not, in the course of providing the Equipment Services in accordance with this Agreement, acquire title to or assume risk of loss for, or be deemed to have acquired title to or assumed risk of loss for the Equipment. McKesson Medical-Surgical shall not be responsible for any delay, loss or damage of any kind that occurs while the Equipment is in McKesson Medical-Surgical's care, custody, or control, except when such delay, loss or damage is due to McKesson Medical-Surgical's gross negligence or willful misconduct. In no event shall McKesson Medical-Surgical be responsible for any delay, loss, or damage of any kind that occurs while the Equipment is in the care, custody, and control of a third party. All claims against any such third-party shall be brought solely against that third party, and McKesson Medical-Surgical will reasonably cooperate with Customer, at Customer's cost, in the prosecution of any such claims.

**5.4. Packaging.** If Customer requests special packaging, the cost of such packaging shall be borne by Customer. McKesson Medical-Surgical shall, at its sole discretion, select a common carrier and shall ship in accordance with McKesson Medical-Surgical's standard practices in effect at the time of shipment. Customer agrees that it is responsible in all circumstances for ensuring that Equipment is shipped to McKesson Medical-Surgical in accordance with the OSHA Blood Borne Pathogen Standards, 29 C.F.R. 1910.1030. Customer further agrees that, prior to the shipment of Equipment, Customer will clean all Equipment, remove all contaminated disposables, remove any applicable proprietary drug library or patient data from memory modules, and package the Equipment in a clearly marked biohazard plastic bag and a box clearly labeled with a biohazard label. Receipt of Equipment by McKesson Medical-Surgical does not constitute acceptance.

**6. AED Devices.** Customer acknowledges that Customer may purchase Automated External Defibrillator ("AED") devices from McKesson Medical-Surgical; however, all AED compliance programs, and training would be offered and performed by a third party, not McKesson Medical-Surgical.

**7. Chargebacks.** In consideration of McKesson Medical-Surgical allowing Customer or Facility to purchase Products in the connection with the performance of Equipment Services at discounted prices, Customer or Facility agrees that McKesson Medical-Surgical will be paid the difference between McKesson Medical-Surgical's acquisition cost and the discounted cost of the product from the applicable supplier ("Chargeback(s)"). "Product(s)" means any and all of the items of medical surgical products and biomedical equipment device parts, and general merchandise otherwise made available for sale by McKesson Medical-Surgical. In the event McKesson Medical-Surgical is denied any Chargeback from a supplier as a result of Customer or Facility providing incomplete, inaccurate, or incorrect information to McKesson Medical-Surgical or supplier, Customer or Facility will be liable to McKesson Medical-Surgical for such Chargeback amount. In the event supplier: (i) makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to a substantial part of supplier's property or a proceeding is commenced against it which will substantially impair its ability to pay on Chargebacks; or (ii) otherwise defaults in the payment of Chargebacks to McKesson Medical-Surgical, Customer or Facility will be invoiced and become liable for the unpaid Chargebacks allocable to its purchases from supplier.

**8. Product and Equipment Recommendations.** McKesson Medical-Surgical may make available to Customer certain recommendations concerning Products and Equipment that are comparable, functionally equivalent, clinically equivalent, or equivalent to other products and equipment used or identified by Customer ("Equivalency Recommendation(s)"). Customer agrees and stipulates that, in making any Equivalency Recommendation, McKesson Medical-Surgical is relying solely on the independent skill, knowledge and judgment of its suppliers or others in the industry and is not independently providing medical product or equipment information upon which Customer can rely in order to make its Product or Equipment selection decision. Customer agrees and stipulates that, in making Product and Equipment decisions, Customer is relying on its independent professional judgment. Customer hereby agrees to waive, release, indemnify and hold McKesson Medical-Surgical and its affiliates harmless from any claim arising from an Equivalency Recommendation. Customer agrees and stipulates that it is a sophisticated user of medical products and equipment and it agrees and stipulates that it is a learned intermediary between McKesson Medical-Surgical and the end user/patient.

THESE EQUIVALENCY RECOMMENDATIONS MAY BE MADE VERBALLY, IN WRITING OR VIA DATABASE. THE EQUIVALENCY RECOMMENDATIONS ARE RECOMMENDATIONS ONLY AND ARE NOT REPRESENTATIONS OR WARRANTIES CONCERNING ANY PRODUCT OR EQUIPMENT PERFORMANCE OR EQUIVALENCY AND ANY SUCH REPRESENTATIONS OF WARRANTY ARE HEREBY DISCLAIMED.

**9. Assignment.** Customer shall not assign or transfer any interest under any order accepted by McKesson Medical-Surgical or delegate any obligation hereunder without the prior written consent of McKesson Medical-Surgical. McKesson Medical-Surgical may subcontract any of its obligations under this Agreement and may perform those obligations through personnel employed by or under contract with McKesson Medical-Surgical.

**10. Disclaimer.** MCKESSON MEDICAL-SURGICAL MAKES NO EXPRESS REPRESENTATION OR WARRANTY OF ANY KIND WITH REGARD TO ANY PRODUCTS OR EQUIPMENT. EQUIPMENT SERVICES SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE." MCKESSON MEDICAL-SURGICAL HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, DURABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, PERFORMANCE, OR USAGE OF TRADE WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CUSTOMER AND EACH FACILITY WILL LOOK TO THE MANUFACTURER OF PRODUCTS AND EQUIPMENT, INCLUDING THOSE MANUFACTURERS THAT ARE SUBJECT TO THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (50 U.S.C. APP. 2061 ET SEQ.), AND THE PROVIDER OF SERVICES (IF OTHER THAN MCKESSON MEDICAL-SURGICAL) FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF MCKESSON MEDICAL-SURGICAL HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, CONDITION, REPRESENTATION, OR WARRANTY CONCERNING PRODUCTS, EQUIPMENT, OR EQUIPMENT SERVICES NOT SET FORTH IN THIS AGREEMENT.

NEITHER CUSTOMER NOR A FACILITY WILL HOLD MCKESSON MEDICAL-SURGICAL LIABLE FOR ANY DEFECT IN PRODUCTS, EQUIPMENT, OR EQUIPMENT SERVICES (EXCEPT AS PROVIDED IN SECTION 5.3 ABOVE (TITLE AND RISK OF LOSS)), REGARDLESS OF KIND. CUSTOMER AND EACH FACILITY AGREE TO FILE SOLELY WITH MANUFACTURER OF THE PRODUCTS AND EQUIPMENT, INCLUDING THOSE MANUFACTURERS THAT ARE SUBJECT TO THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (50 U.S.C. APP. 2061 ET SEQ.), OR PROVIDER OF SERVICES (IF OTHER THAN MCKESSON MEDICAL-SURGICAL) ANY CLAIM OR LAWSUIT ALLEGING LOSS, INJURY, DAMAGE, OR DEATH ARISING OUT OF OR CAUSED BY THE USE, SALE, DISTRIBUTION, OR POSSESSION OF PRODUCTS AND EQUIPMENT OR THE PERFORMANCE OF EQUIPMENT SERVICES.

**11. Limitation of Liability.** IN NO EVENT WILL MCKESSON MEDICAL-SURGICAL BE LIABLE IN CONNECTION WITH OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, MISREPRESENTATION, OR ANY OTHER CAUSE OF ACTION (INCLUDING LOST PROFITS) FROM ANY CAUSE INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM ANY UNAVAILABILITY OF OR DEFECT IN PRODUCTS, EQUIPMENT OR EQUIPMENT SERVICES OR MISSHIPMENT OF EQUIPMENT (EXCEPT AS PROVIDED IN SECTION 5.3 ABOVE (TITLE AND RISK OF LOSS)), AND WHETHER OR NOT MCKESSON MEDICAL-SURGICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR THE PROVISION OF EQUIPMENT SERVICES. THIS PROVISION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

IN NO EVENT SHALL MCKESSON MEDICAL-SURGICAL'S TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ANY AND ALL DAMAGES TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE EQUIPMENT SERVICES PERFORMED PURSUANT THERETO EXCEED THE PRICE OF THE PARTICULAR EQUIPMENT SERVICES GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY APPLIES TO ALL AND ALL CAUSES OF ACTION INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR MISREPRESENTATION. IN NO EVENT SHALL MCKESSON MEDICAL-SURGICAL HAVE ANY LIABILITY FOR LOSS OR DAMAGE TO EQUIPMENT. THIS PROVISION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**12. Government Contracts.** Unless specifically notified and agreed to in writing by McKesson Medical-Surgical, McKesson Medical-Surgical will not be bound by the terms and conditions of any government contracts to which Customer may be a party.

**13. No Violations.** Customer represents and warrants that its execution, delivery and performance of this Agreement does not and will not constitute (i) a violation of any judgment, order, or decree binding on such Party; (ii) a breach under any contract by which such Party is bound; (iii) an event that would, with notice or lapse of time, or both, constitute such a breach; or; (iv) require any consent under any agreement between Customer and any other party. Customer will defend, indemnify and hold harmless McKesson Medical-Surgical from and against any and all losses arising out of or resulting from its breach of any representation or warranty in this section. This provision will survive termination or expiration of this Agreement.

**14. Confidential Information.** The Parties and their employees or representatives (collectively, the "Receiving Party") agree that the existence of this Agreement and all proprietary and confidential information ("Confidential Information") disclosed by the other ("Disclosing Party") will be maintained in confidence and not disclosed to any third party except as may be required by law, or with the Disclosing Party's express written consent. Pricing and terms of this Agreement are Confidential Information of McKesson Medical-Surgical. Confidential Information does not include information that (i) is now in the public domain or subsequently enters the public domain through no fault of the Receiving Party; (ii) the Receiving Party can establish is presently known or becomes known to the Receiving Party from its own independent sources; (iii) is received from any third party not under any obligation to keep such information confidential; or (iv) the Receiving Party can establish was not Confidential Information disclosed by the other party under this Agreement. Violation of this provision may give rise to equitable and legal liability including, but not limited to, injunctive relief. This confidentiality provision will survive five (5) years from the termination or expiration of this Agreement. Notwithstanding the foregoing, McKesson Medical-Surgical may provide data pursuant to this Agreement to its affiliates, and vendors. This provision will survive termination or expiration of this Agreement.

**15. Patient Health Information.** McKesson Medical-Surgical understands the important role our employees play in ensuring our Customer's HIPAA compliance. As McKesson Medical-Surgical performs Preventative Maintenance Services or Equipment Repairs, McKesson Medical-Surgical may inadvertently come into contact with, access, receive or view Customer's patient Protected Health Information (PHI). This is considered an "incidental" disclosure and is permitted under the HIPAA Privacy Rule. McKesson Medical-Surgical will protect the confidentiality of Customer's patient PHI and return or destroy any PHI that McKesson Medical-Surgical inadvertently receives.

**16. Data Rights.** McKesson Medical-Surgical may use, repurpose, copy, modify, distribute, display and publish Customer data for McKesson Medical-Surgical's own use and for commercial purposes. Customer acknowledges that McKesson Medical-Surgical may provide information and reports to group purchasing organizations, Suppliers, and other third parties relating to Customer's purchases from McKesson Medical-Surgical. Customer hereby waives any rights of confidentiality with respect to such information to the extent necessary to allow McKesson Medical-Surgical to provide such information to group purchasing organizations, suppliers, and other third parties.

**17. Compliance.** This provision will survive termination or expiration of this Agreement.

**17.1. General.** Customer represents and warrants that it will fully comply with all Federal, state and local laws and regulations relating to its obligations under this Agreement or otherwise applicable to the purchase of and the reimbursement for the Equipment Services. Customer will defend, indemnify and hold McKesson Medical-Surgical harmless from any and all liability arising out of or due to non-adherence with such legal or regulatory requirements or the foregoing representation and warranty. This provision will survive termination or expiration of this Agreement.

**17.2. FRAUD AND ABUSE LAWS.** CUSTOMER MAY RECEIVE DISCOUNTS OR OTHER REDUCTIONS IN PRICE IN CONNECTION WITH ITS PURCHASES OF EQUIPMENT SERVICES UNDER THIS AGREEMENT, AND SUCH PURCHASES MAY ALSO QUALIFY CUSTOMER FOR DISCOUNTS OR OTHER REDUCTIONS IN PRICE ON CERTAIN PURCHASES MADE PURSUANT TO A SUPPLY AGREEMENT BETWEEN CUSTOMER AND MCKESSON CORPORATION OR ITS SUBSIDIARY SUBJECT TO TERMS AND CONDITIONS THEREOF. CUSTOMER WILL BE RESPONSIBLE FOR REPORTING ALL PRICES, DISCOUNTS, AND REBATES PURSUANT TO THIS AGREEMENT AND PURSUANT TO ANY SUPPLY AGREEMENT BETWEEN CUSTOMER AND MCKESSON CORPORATION, TO REIMBURSING AGENCIES TO THE EXTENT REQUIRED BY LAW OR REGULATION, INCLUDING MEDICARE AND MEDICAID, AND OTHER ENTITIES, MAINTAINING RECORDS THEREOF, AND PROVIDING INFORMATION TO REIMBURSING AGENCIES, IN ACCORDANCE WITH ALL APPLICABLE LAWS. ANY PRICE REDUCTION OR DISCOUNT PROGRAM DESCRIBED IN THIS AGREEMENT OR ANY SUPPLY AGREEMENT BETWEEN CUSTOMER AND MCKESSON CORPORATION IS INTENDED TO BE A DISCOUNT WITHIN THE MEANING OF APPLICABLE FEDERAL AND STATE ANTI-KICKBACK LAWS, INCLUDING, 42 U.S.C. §1320A-7(B) AND THE DISCOUNT SAFE HARBOR PROMULGATED THEREUNDER AND CURRENTLY FOUND AT 42 C.F.R. §1001.952(H). CUSTOMER UNDERSTANDS THAT THIS AGREEMENT AND ANY SUPPLY AGREEMENT BETWEEN CUSTOMER AND MCKESSON CORPORATION MAY NOT REFLECT THE NET COST OF A PRODUCT DUE TO A REBATE OR OTHER DISCOUNT PROGRAM.

CUSTOMER REPRESENTS AND WARRANTS THAT IT WILL SATISFY ANY AND ALL REQUIREMENTS IMPOSED ON BUYERS, INCLUDING WHEN REQUIRED BY LAW, THE REQUIREMENT TO ACCURATELY REPORT, OR MAKE AVAILABLE UPON REQUEST BY A FEDERAL OR STATE HEALTH CARE PROGRAM, THE NET COST ACTUALLY PAID BY CUSTOMER FOR THE EQUIPMENT SERVICES COVERED BY THIS AGREEMENT AND ANY SUPPLY AGREEMENT BETWEEN CUSTOMER AND MCKESSON CORPORATION. FOR PURPOSES OF COST REPORTING REQUIREMENTS UNDER A FEDERAL OR STATE PROGRAM WHICH PROVIDES COST BASED REIMBURSEMENT, CUSTOMER UNDERSTANDS THAT ANY SUCH DISCOUNTS, INCLUDING REBATES, SHOULD BE PROPERLY ALLOCATED ON A UNIT BASIS SO AS TO REPORT A NET SALE PRICE THAT ACCURATELY REFLECTS THE TOTAL AMOUNT OF THE DISCOUNT RECEIVED. IN THE EVENT EITHER PARTY DETERMINES THAT THIS AGREEMENT MAY NOT COMPLY WITH SUCH STATUTES, THE PARTIES AGREE TO WORK TOGETHER TO ESTABLISH A DISCOUNT OR REBATE STRUCTURE THAT MEETS THE REQUIREMENTS OF SUCH STATUTES.

**17.3. Controlled Substances and Other Regulations.** If performance of this Agreement would cause McKesson Medical-Surgical to be noncompliant with or in jeopardy of being noncompliant with any federal, state or local law, rule, regulation or ordinance or any governmental requirement, guideline or pronouncement involving either controlled pharmaceutical drugs ("Controlled Substances") or any other regulated products or activities including, but not limited to, the Drug Enforcement Administration's regulatory requirements for verifying its customers and reporting suspicious or excessive orders, McKesson Medical-Surgical may, in its sole and absolute discretion and, notwithstanding anything in this Agreement to the contrary, without any penalty or liability, do any of the following: (a) limit or deny any order for Controlled Substances or other regulated products as warranted by any established diversion monitoring program of McKesson Medical-Surgical; and (b) immediately terminate this Agreement, in whole or in part, without liability if: (i) continued performance of any part of this Agreement would violate any federal, state or local law, rule or regulation, or put McKesson Medical-Surgical in jeopardy of violating any federal, state or local law, rule or regulation regarding either Controlled Substances or any other regulated products or activities; or (ii) McKesson Medical-Surgical receives a complaint, notice, warning letter or other communication from a governmental agency alleging noncompliance with any laws, rules or regulations in relation to McKesson Medical-Surgical's distribution of any Products (including without limitation Controlled Substances) under this Agreement or to McKesson Medical-Surgical's actions or omissions with respect to either Controlled Substances or any other regulated products or activities.

**17.4. Own Use.** Unless agreed to otherwise by the Parties, all purchases under this Agreement by Customer will be for Customer's "own use" as that term is defined in judicial or legislative interpretation, and Customer will comply with applicable manufacturers' pricing criteria and policies.

**17.5. Excluded Provider.** Neither Customer nor any of its affiliates, employees or contractors: (a) have been convicted of a criminal offense related to healthcare; (b) are listed on the Office of Inspector General's List of Excluded Individuals/Entities, or are otherwise currently excluded, suspended or debarred from participating in any federal healthcare program; (c) are under investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency; or (d) are currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs.

**18. Indemnification.** Customer agrees to indemnify, hold harmless and defend McKesson Medical-Surgical from and against all losses, claims, suits, damages, actions, causes of action, proceedings, demands, assessments, settlements, judgments, costs, expenses, and any other liabilities of any kind or nature, including reasonable attorneys' fees, imposed on or arising out of, or relating to Customer's negligence or willful acts or omissions. McKesson Medical-Surgical shall not be required to take any action or make any claim against a third person as a precondition to seeking indemnification hereunder. McKesson Medical-Surgical shall timely notify Customer of any intended claim for indemnification.

**19. Force Majeure.** Except for the obligation to pay money, a Party will not be liable to the other Party for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this Agreement. "Force Majeure Event" means any cause beyond the reasonable control of a Party including but not limited to natural disasters or acts of God; destruction of production facilities; acts of war; terrorism; riots; Embargoes; acts of civil or military authorities; voluntary or involuntary compliance with any regulation, law or order of any government; labor disputes or stoppages; denial of or delays in processing of export license applications; transportation delays; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; unavailability of materials, energy or machinery; or internet system encountering hacker's invasion.

**20. Publicity and Use of Name.** The Parties will not make any public announcement or press release regarding this Agreement, or any activities performed under this Agreement without the prior written consent of the other Party. Except where expressly granted otherwise in this Agreement, neither Party may use any trade name or service mark of the other party or any material protected by patents, trademarks or copyrights without the express written permission of the other Party.

**21. Governing Law.** This Agreement will be governed by and construed in accordance with the Commonwealth of Virginia. Notwithstanding the foregoing, if any terms that are unique to federal government contracting are subject to interpretation, such terms shall be construed and interpreted according to the federal law of government contracts as enacted and applied by federal statutes, regulations, federal judicial bodies, boards of contract appeals, and other judicial and quasi-judicial agencies of the government.

**22. Time for Bringing Action.** Any action of any kind arising out of or in any way connected with this Agreement, other than collection of outstanding payment obligations), must be commenced within one (1) year upon which the cause of action accrued.

**23. Relationship of the Parties.** The Parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create an agency, employment, partnership, fiduciary or joint venture between the Parties. No Party hereto (nor any agent or employee of that Party) shall make any representations or warranties or incur any liability on behalf of the other.

**24. Joint and Several Liability.** All obligations of Customer and any Customer accounts, regardless of affiliation, will be joint and several. To the fullest extent permitted by law, Customer waives any and all suretyship defenses, which Customer might otherwise have with regard to obligations to any party for Equipment Services purchased by any Customer facility. Without limiting the foregoing, such waiver includes a waiver of the defense that the original obligations were altered in any respect or the remedies or rights of McKesson Medical-Surgical with respect to the original obligations were in any way impaired or suspended.

**25. Waiver of Jury Trial.** THE PARTIES HERETO WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT, OR THE TRANSACTION CONTEMPLATED HEREBY.