

PURCHASE ORDER TERMS AND CONDITIONS

This Purchase Order ("PO") and any attachments are the sole agreement between Viant Medical, LLC and/or its subsidiaries ("Viant") and the Seller identified on the face of this PO ("Seller") regarding the goods or services specified in this PO.

1. **ACCEPTANCE OF TERMS.** This PO is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. Viant expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller's quotation, proposal, acknowledgment or other document, whether or not such additions, deletions or differences materially alter this PO. This PO may be issued in addition to other duly signed Viant agreements, exhibits and schedules incorporated therein ("Agreement") made with respect to the subject matter of this PO. In the event of an inconsistency or conflict between the provisions of any Agreement and this PO, the inconsistency or conflict shall be resolved by giving precedence in the following order: (a) the Agreement (if applicable); (b) the provisions appearing on the front and reverse side of this PO and (c) other provisions when attached and agreed to in writing by Viant.
2. **PERFORMANCE.** Time is of the essence in the performance of this PO. If Seller does not confirm acceptance or notify Viant of any changes within five (5) days of receipt, all terms contained herein are deemed accepted. If the goods are not delivered or the services not provided in the manner and at the times specified, Viant reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions: (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller, and/or (b) purchase substitute goods and charge Seller with any loss or additional costs Viant incurs. Seller shall promptly advise Viant of any delay in performance, including notice with regard to any goods placed under backorder. Seller's performance is not deemed completed until the goods or services have been accepted by Viant. All goods shipped under this PO shall be shipped CIF Viant's facilities, and shall include all necessary documentation. In the event that documentation is not completed properly or is not included in the delivery, Seller shall be fully responsible for any and all costs associated with completing the required documentation as well as any fees incurred by Viant as a result of any delay.
3. **PRICE.** Seller warrants that the pricing set forth herein is the lowest price now given by Seller to any other customer for like materials and quantity and agrees that if, during the term of this PO, lower prices are quoted to another customer for similar or like materials, the same lower price shall be offered to Viant and shall become the actual price thereafter. Additionally, if during the term of this PO Viant is able to purchase goods or services of the quality and in the quantities herein specified and upon like terms and conditions at a price lower than the price stated herein from a different Seller, Seller shall, upon receipt of satisfactory written evidence of the lower pricing, shall, at its option, meet such lower price or permit Viant to purchase the balance of the undelivered portion of the PO hereunder at such lower price, in which case Viant shall have no further obligation to purchase the balance of the PO. In the event that Seller implements price increases, Seller shall provide Viant at least 30 days advanced written notice of, together with written justification for, said price increase.
4. **INSPECTION.** All goods and services purchased hereunder shall be subject to inspection by Viant at all reasonable times and places notwithstanding the terms of payment, and in any event, prior to final acceptance. No inspection made prior to final acceptance shall relieve Seller from responsibility for failure to meet the requirements of this PO. In the event the goods or services do not meet the applicable specifications and instructions, Seller will promptly re-perform the nonconforming services or provide replacement goods satisfactory to Viant at Seller's sole expense. If Seller is unable to accomplish the foregoing, Viant may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith.
5. **PAYMENT.** Invoices shall contain the following information: PO number, part numbers, description of services, prices, extended totals and attach all supporting documentation, if any. To the extent applicable, all invoices shall include any tax amounts and shall be listed separately. Invoices submitted hereunder will be paid Net 60 days after receipt of a correct invoice or acceptance of goods or services by Viant, whichever occurs later. Any adjustments in Seller's invoices due to late performance, rejections or other failure to comply with the requirements of this PO may be made by Viant before payment. Payment shall not constitute final acceptance. Viant may offset against any payment hereunder any amount owed to Viant by Seller or its affiliates.
6. **CHANGES.** (By Viant) Viant may, by written notice to Seller make changes to any one or more of the following: (a) specifications for services or goods, (b) quantity, and (c) place and/or time of performance. For any reason, Viant may also direct Seller to suspend in whole or in part the provision of goods or the performance of services hereunder permanently or for such period of time as may be determined by Viant to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost or time required for the performance of services or provision of goods hereunder, an adjustment may be made in the price or delivery schedule, or both, and the PO shall be modified in accordance with Section 22. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of change. (By Seller). Seller shall not make any changes to any of the following: (a) specifications for services or goods in form, fit or function, (b) process change(s); (c) place and time of performance. In the event Seller is required to make a change other than as identified above, Seller must provide at least ninety (90) days advanced written notice to Viant, and shall not implement any change without receiving prior written approval from Viant.
7. **WARRANTY.** Seller expressly warrants that the goods or services provided under this PO shall be performed in accordance with Viant's specifications and instructions. Seller further warrants that the goods and services will be merchantable, non-infringing, free from defects and fit and sufficient for the purpose intended. Further, the services will be performed with the highest degree of skill and judgment exercised by recognized professionals performing the same or similar services. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the goods or services shall not constitute a waiver of any breach of foregoing warranties. Seller further guarantees that no article delivered hereunder is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law in which the definitions of adulteration and misbranding are substantially the same as those contained in the Federal Food, Drug and Cosmetic Act, as said Act and such laws are constituted and effective at the time of such shipment or delivery, or is an article which may not, under the provisions of Section 404 or 505 of said Act, be introduced into interstate commerce. Seller also guarantees that no article delivered hereunder is a misbranded hazardous substance or a banned hazardous substance within the meaning of the Federal Hazardous Substances Act. In the event of any breach of the foregoing warranty, Seller shall at its own expense and at Viant's option either: (a) provide replacement goods satisfactory to Viant, (b) re-perform the nonconforming services to the satisfaction of Viant, or (c) refund to Viant the total amount paid for such goods or services. Seller shall extend all warranties it receives from its Sellers to Viant and to Viant's customers. **Epidemic Failure:** Should goods shipped in any 90-day period to Viant, or should all goods cumulatively received by Viant experience a failure rate of more than 3% from the same defect or more than 5% from cumulative defects, Seller shall prepare a plan for diagnosing and addressing the problem and will be responsible for all costs incurred by Viant and its customers in rectifying such failures, including, without limitation, for engineering charges, testing and field recovery costs, as well as for all damages.
8. **CONFIDENTIAL INFORMATION.** Viant and Seller acknowledge that in their course of dealings, Seller may acquire from Viant confidential and proprietary information about Viant, its business activities and operations, its employees, trade secrets or any other information which by its sense or nature should reasonably be considered confidential (the "Confidential Information"). The confidential information of Viant shall only be disclosed to Seller's employees, agents or consultants with a need to know and who are under a written obligation to keep the information confidential. Seller shall not disclose the Confidential Information to any third parties. Seller shall use the same degree of care but no less than a reasonable degree of care that it uses with regard to its own confidential information to prevent the disclosure of Viant Confidential Information.
9. **TERMINATION FOR CONVENIENCE.** Viant may terminate this PO in whole or in part at any time and without cause. Upon notice of termination, Seller shall inform Viant of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to Viant any goods or Work Product, as defined in Section 11, which then exists. Viant will pay Seller for goods or services accepted and performed through the effective date of termination provided that Viant will not be obligated to pay more than the payment that would have been due had Seller completed or provided the goods or services. Viant will have no further payment obligation in connection with any termination.
10. **INDEMNIFICATION.** Seller shall indemnify, defend and hold Viant, its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses, liabilities, costs, claims, damages and expenses (including attorneys' fees and costs) arising out of or related to this PO including but not limited to the provision of goods or services under this PO or Seller's breach of any term or provision of this PO, including any claims that any such goods or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party.

11. LIMITATION ON LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL VIANT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PO EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE BY VIANT TO SELLER FOR THE APPLICABLE GOODS OR SERVICES PROVIDED UNDER THIS PO NOR SHALL VIANT OR ITS RELATED LEGAL ENTITIES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

12. PATENTS AND DATA. All records, software, files, data, reports, information, work product, notes, plans, strategies, intellectual property and other information provided by Viant or prepared or developed by or for Viant pursuant to this PO ("Work Product") shall be the property of Viant and shall constitute works made for hire under applicable law. Seller assigns all intellectual property rights in the Work Product to Viant and agrees to complete any documents requested by Viant to perfect its ownership in the Work Product. Seller waives all moral rights related to the Work Product. Seller grants to Viant an unlimited, nonexclusive license to use, copy, modify or create derivative works of any materials delivered to Viant which are developed prior to or outside of this PO. All materials, equipment and other information supplied to Seller by Viant shall remain the property of Viant and shall be returned to Viant when no longer needed by Seller in the provision of services or goods and in any event upon the expiration or earlier termination of this PO.

13. RELATIONSHIP OF THE PARTIES. Seller is an independent contractor and nothing contained in this PO shall be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of Seller and customer. Seller shall be solely responsible for payment of all compensation owed to its employees as well as employment related taxes. Any agreements or commitments entered into by Seller shall not be binding on Viant and further Viant assumes no liability with respect to any agreements or commitments entered into by Seller with its employees, agents, Sellers and the like.

14. SUBCONTRACTS AND ASSIGNMENTS. Seller agrees to obtain Viant's approval before subcontracting this PO or any portion thereof. This PO shall not be assigned or delegated by Seller without the prior written consent of Viant.

15. COMPLIANCE WITH LAWS. Seller shall comply with the applicable provisions of all federal, state or local laws or ordinances and all orders, rules and regulations issued thereunder.

16. INSURANCE. Seller shall secure and maintain insurance providing sufficient coverage to comply with its obligations and duty to indemnify as required under this PO. Within five (5) days of receipt of a request from Viant, Seller agrees to provide Viant with a certificate of insurance evidencing Seller's insurance coverages.

17. NON-WAIVER OF RIGHTS. The failure of Viant to insist upon strict performance of any of the terms and conditions in this PO or to exercise any rights or remedies hereunder shall not be construed as a waiver of its rights to assert any of the same or any other terms and conditions under this PO.

18. REMEDIES. Any rights and remedies specified under this PO shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or in equity.

19. SEVERABILITY. If any term contained in this PO is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term shall be severed from this PO, and the remaining terms contained herein shall continue in full force and effect.

20. INTERPRETATION. The captions and headings used in this PO are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this PO. Each party has read and agreed to the specific language of this PO; no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

21. GOVERNING LAW. This PO shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its conflict of law provisions.

22. ENTIRE AGREEMENT. This PO, including all documents incorporated herein by reference, constitutes the entire agreement and understanding between the parties and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof. Except as specified in Section 1 or 5 above, no change, modification or revision of this PO shall be valid unless agreed to in writing by Viant.

23. SURVIVAL. Both parties agree that any term or condition of this PO which by its sense or nature should be deemed to survive the expiration or termination of this PO shall so survive.

24. SUPPLIER CODE OF CONDUCT – Supplier will adhere to Supplier Code of Conduct.

http://www.Viantmedical.com/documents/VEN_SocialResponsibilityPolicy_0416.pdf