



Your Vision, Our Future

SPIRATION, INC., db/a OLYMPUS RESPIRATORY AMERICA  
PURCHASE ORDER TERMS AND CONDITION

### 1. Agreement

This Purchase Order ("PO") is an offer to purchase by Spiration, Inc., or its direct or indirect subsidiary identified on the front of this PO ("Buyer"), to Seller and becomes a binding contract subject to the terms hereof when accepted by acknowledgment or commencement of performance by Seller. This PO is subject to withdrawal at any time prior to the communication of acceptance to Buyer by Seller. Acceptance of this PO is limited to acceptance of Buyer's terms and conditions set forth in this PO and such terms and conditions shall constitute the entire agreement related to the purchase of the goods or services ordered on the face hereof. Buyer rejects any terms inconsistent herewith and to any additional terms proposed by Seller in accepting or acknowledging this PO and such terms shall not become a part of this PO, unless accepted in writing by Buyer. Neither Buyer's subsequent lack of objection to any such terms, nor the acceptance of goods or services ordered hereunder, shall constitute or be deemed to be acceptance by Buyer to such terms. Seller may not assign this PO without Buyer's written consent.

### 2. Modification; Cancellation

If this PO is for non-customized goods, Buyer may change or cancel this PO prior to delivery without charge or penalty, upon written notice to Seller. If this PO is for customized goods, Buyer may not change or cancel this PO, without cause, unless Buyer agrees to pay the reasonable, unrecoverable charges incurred by Seller to perform this PO prior to cancellation. Any claim by Seller for such charges must be made within fifteen (15) calendar days from the date of receipt by Seller of such change and is subject to negotiation with Buyer. In the event of any such cancellation, Seller shall stop work on and terminate all subcontracts under this PO. The amount of such costs which may be recovered from Buyer shall be established by negotiations between Buyer and Seller, conducted by each of the respective parties in good faith and shall include only Seller's actual costs incurred up to the date of termination. The foregoing notwithstanding, in no event shall Buyer's liability to Seller hereunder exceed the purchase price set forth in the PO. Seller shall make available to Buyer for inspection all inventory included in the claim and all books and records related to the claimed costs. Upon satisfaction of any claim, Seller shall deliver to Buyer any and all articles, works-in-process, data, software or other goods included in Seller's claim. If this is a blanket PO release, and Buyer cancels without cause, Buyer shall only be responsible for purchasing the amount of goods set forth in the Blanket Purchase Order Agreement between Buyer and Seller.

The remedies provided herein with respect to any cancellation for convenience are exclusive and in lieu of any other remedies available at law or equity.

No change, modification or revision to this PO shall be valid and binding unless in writing and signed by the authorized representative of Buyer.

### 3. Communications

All communications related to this PO must be addressed to Buyer's Purchasing Department, which issued the PO.

### 4. Pricing and Packing; Pricing Warranty

Unless otherwise specified on this PO, the prices stated include all applicable charges for packing, hauling, storage, insurance and transportation. If no price is stated on this order, the price shall be the lower of: (i) the price last quoted; (ii) the prevailing market price; or (iii) the lowest price at which comparable products and quantities are offered or sold by Seller. Sales and use taxes not subject to exemption shall be stated separately in Seller's invoice. No additional or extra charges are allowed unless authorized in writing by Buyer. Risk of loss and damage to the goods shall remain with Seller until the goods are delivered to and accepted by Buyer.

Seller warrants that the prices for the goods or services furnished to Buyer hereunder are not less favorable than those currently extended to any other buyer for the same or similar goods or services in similar quantities. In the event Seller reduces its price for such goods or services during the term of this PO, Seller agrees to reduce the prices hereof correspondingly.

#### 5. Setoff

All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

#### 6. Deliveries

Time of performance is of the essence and deliveries hereunder shall be made by Seller at such times and places and of such items and quantities as specified by Buyer. Any unauthorized quantity either in excess or less than the quantity ordered is subject to rejection and return at Seller's expense. If delivery is not completed by the time specified by Buyer, Buyer reserves the right without liability to Seller, in addition to other rights and remedies, to terminate this PO by notice effective upon receipt as to stated goods not yet shipped or services not yet rendered and to purchase substitute goods elsewhere. Buyer must approve any changes in delivery schedules in writing or this PO may be considered invalid.

#### 7. Shipping

All goods shall be packed and shipped in accordance with Buyer's instructions, if provided, and/or good commercial practice so as to ensure that no damage shall result from weather or transportation and so as to secure the lowest transportation rates. No charge will be allowed for packing, crating, drayage or storage without Buyer's written acceptance of such charges. Seller shall be liable for any difference in freight charges or damage to the materials by its failure to comply therewith. Seller shall mark all packages, packing lists, certificates, shipping documents, labels, correspondence, etc., with Buyer's PO Number and Part Number. Every packing slip for each individual shipment must reference the Seller's Production Lot Number, when applicable, and whenever processes such as Heat Treat, Plating, Anodizing, etc. are included in the manufacture of goods by Seller, different Lot Numbers must be assigned to each batch of goods so processed. Partial shipments must be identified as such on shipping memoranda and invoices and must be marked PARTIAL for the preliminary consignments and FINAL for the completing shipment. Buyer may require Seller to send Buyer a written or electronic Notice of Shipment giving the number of the order, kind and amount of materials, and route at or prior to time of shipment. Invoices must be submitted to Buyer's Accounts Payable department as referenced in the PO, itemized, showing payment terms, discounts, date of shipment and Buyer's PO Number and Part Number.

#### 8. Inspection of Goods

Receipt of or payment for the goods or services under this PO shall not constitute acceptance thereof. All goods and services shall be received subject to Buyer's inspection and right to reject. Defective goods, non-conforming goods or goods not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's risk and expense. If instructions are not received within fifteen (15) calendar days after notice of rejection, the goods may be returned to Seller's original shipping point at Seller's expense. No goods returned as defective shall be replaced without Buyer's written instruction to do so. Returned goods shall be deducted from total shipments.

#### 9. Source Inspection

Buyer shall have the right to perform source inspections and/or conduct quality assurance surveys and/or Food and Drug Administration QSR Audits at the Seller's facilities or the facilities of Seller's subcontractors. Buyer and/or Buyer's representatives shall have the right to perform inspections, surveys and audits at the Seller's facilities to verify that the goods conform to specified requirements. Such inspections, surveys or audits shall not constitute acceptance nor relieve Seller of its responsibility to furnish acceptable goods.

#### 10. Warranty

Seller warrants that all goods furnished hereunder shall be merchantable, free from all defects of material and workmanship and shall conform to drawings and specifications. Where design, drawing and specifications are Seller's, Seller warrants that all goods furnished shall be fit and sufficient for the purposes intended, or if Buyer purchases such goods from samples

provided to Buyer by Seller, Seller warrants that such goods will also conform to such samples. Said warranties shall remain in effect as to each good assembled, furnished, serviced or repaired hereunder for a period of one (1) year after it is accepted at its destination. Seller warrants that it has clear title to the goods and that the goods shall be delivered free and clear of liens and encumbrances. Acceptance or payment, or both, shall not affect Seller's obligation under this warranty.

In addition to any warranties expressly made by Seller, Seller makes all warranties contained in the Uniform Commercial Code. Further, Seller warrants that the goods delivered or services performed:

- a) Shall, to the extent applicable, not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act and are not an good which may not, under the applicable provisions of said Act, be introduced into interstate commerce; and
- b) Do not infringe on any United States or foreign patent, trademark, copyright or other right of any third party.

All these warranties and other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns, and customers and to users of the goods.

#### 11. Limitation of Liability; Statute of Limitations

In no event shall Buyer be liable for anticipated profits of or incidental, special, indirect or consequential damages to Seller. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this PO, or from the performance or breach hereof, shall in no case exceed the price of the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services furnished hereunder must be commenced within one (1) year after the cause of action has accrued.

#### 12. Proprietary Information; Advertising

Seller shall not use, reproduce, appropriate for or disclose to anyone other than Buyer, any goods, software, invention, tooling, dies, data, drawings, designs, processes or other property or information furnished by Buyer or generated or developed in the course of or under this PO ("Material"), nor shall Seller use the same to manufacture goods or provide services other than as required hereunder without Buyer's prior written approval. Title to all such Material shall remain with Buyer at all times, and where practicable, Material shall be clearly marked or tagged to indicate Buyer's ownership. The Material shall be subject to recovery by Buyer at any time and shall be promptly returned to Buyer upon termination or completion of the PO unless otherwise directed by Buyer, in good repair, normal wear and tear excepted. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. Seller acknowledges and agrees that Buyer retains sole and complete ownership in, to and of any intellectual property, material or other works associated with and/or related to the Material. Seller shall make no reference, advertisement, or promotion regarding Buyer or Buyer's placement of this PO without Buyer's prior written consent.

#### 13. Software License

If software is included in the goods or services being provided under this PO, for purposes of fully utilizing the goods or services, Buyer and the users of the goods or services shall have a worldwide, perpetual, royalty-free license to such software and such software will not contain any unauthorized routines.

#### 14. Intellectual Property

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers or other vendors for alleged infringement of any intellectual property rights, including, without limitation, patents, copyrights and trade secrets, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, or from the Materials, and Seller further agrees to indemnify and hold harmless Buyer, its agents, customers and other vendors against any and all expenses, losses, royalties, profits and damages, including court costs and attorneys' fees, resulting from any such suit or proceeding, including any settlement, unless and to the extent the goods are manufactured in accordance with Buyer's designs or specifications.

## 15. Indemnity and Insurance

Seller shall be liable for the loss of, damage to or destruction of Buyer's property or any other property furnished to Seller by Buyer for work to be performed under this PO while such property is in Seller's possession or under its control. Seller agrees to indemnify, defend and hold Buyer harmless from any and all judgments, orders, awards, costs, claims, liabilities and expenses, including attorney's fees and also claims on account of damage to property or bodily injury (including death) which may be sustained by Seller, Seller's employees, Buyer, Buyer's employees or third persons, arising out of or in connection with: (i) a defect in the goods, including, without limitation defects relating to manufacturing, improper testing, or design, or any breach of the Seller's warranty regarding the goods, (ii) any personal injury, death, or other harm that occurs or results from the use of the goods, if such personal injury, death or other harm is directly attributable to the acts or omissions (whether alleged or actual) of Seller and is not in any way occasioned by improper installation, use or maintenance of the Product or any act or omission by the Buyer, (iii) a breach of the obligations of Seller set forth herein, and (iv) any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain such comprehensive general liability, property damage, and worker's compensation insurance that will be adequate to protect Buyer from said risks and claims. Buyer may establish the limits of such insurance and, upon Buyer's request, Seller shall furnish to Buyer a certificate of such insurance.

## 16. Publicity

Without first obtaining the express prior written consent of Buyer and subject to this Section, Seller shall not (i) disclose to any third party information concerning the goods or services purchased hereunder, Spiration use or sale of the goods, or other business information, nor use such information for Seller's own benefit or the benefit of any third party; or (iii) use the Spiration name or any Spiration trade name, trademarks, copyrights, colors and/or logos in connection with Seller's sales promotions or publicity, either orally or in writing.

## 17. Applicable Laws

Provisions of the United States of America Fair Labor Standards Act of 1938, as amended, and any other applicable federal, state and local laws, rules and regulations, applicable provisions of Executive Order 11246 and 11375, The Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by The Veterans Employment Opportunities Act of 1998, the Equal Employment Opportunity Clauses relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Contract Compliance Programs, including the "Employee Notice" provisions of 29 CFR 470.2(a)(1) through (a)(4) are incorporated by reference. Sellers of goods or services used in government contracts shall comply with all provisions of Executive Order 13201, 29 CFR 470.

## 18. Compliance with Laws

Seller represents that its operations comply with, and the goods and services furnished will be manufactured, priced and supplied in compliance with, all applicable laws, codes, regulations, rules and orders.

## 19. Controlling Law

This PO and the performance of the parties hereunder shall be controlled and governed by the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflict of laws or to the United Nations Convention on Contracts for the International Sale of Goods. Buyer and Seller agree that the federal and state courts sitting in the Commonwealth of Pennsylvania shall have jurisdiction over any dispute that is litigated.

## 20. Notice of Labor Disputes

Whenever any actual or potential labor dispute delays or threatens to delay the performance of this PO, Seller shall promptly give notice thereof to Buyer. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Seller agrees to include this paragraph in all subcontracts issued under this PO.

## 21. Waiver

The failure of Buyer in any one or more instances to enforce one or more of the terms or conditions of this PO or to exercise any right or privilege in this PO or the waiver by Buyer of any breach of the terms or conditions of this PO shall not be construed as a waiver of such term, condition, right, or privilege or thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

## 22. Severability

If any provision or part thereof of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions or parts thereof of this Agreement shall continue in full force without being impaired or invalidated in any way, to the maximum extent possible consistent with the intent of the parties in entering into this Agreement.

## 23. Suspension of Work

Buyer may order Seller in writing to suspend, delay or interrupt all or any part of the work hereunder for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any increase in the cost of performance of this PO (excluding profit) necessarily caused thereby. An adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected thereby. However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause including the fault or negligence of Seller. Also, no adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this PO. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing within fifteen (15) days after the termination of such suspension, delay or interruption.

## 24. U.S. Government Export Authorization

Seller shall be responsible for obtaining any required export and import licenses. Seller acknowledges that export from the United States, or re-exports from another country, of Buyer's property furnished under this PO may be subject to the prior approval of the U.S. Department of Commerce. Before making any transfer, export or re-export of such goods or data, either in their original form or after being incorporated through an intermediate process into other end goods to a third party, Seller agrees to obtain the prior approval of such transaction from the proper U.S. government agency in accordance with applicable U.S. laws or regulations.

## 25. Force Majeure

Each Party hereto shall be excused from the performance of its obligations hereunder in the event such performance is prevented by force majeure, and such excuse shall continue for so long as the condition constituting such force majeure and any consequences resulting from such condition continues. For the purposes of this Agreement, force majeure shall mean causes beyond either Party's reasonable control including acts of God; war, riot or civil commotion; terrorist activities; damage to or destruction of production facilities or materials by fire, earthquake, storm or other disaster; strikes or other labor disturbances; epidemic; pandemic, failure or default of public utilities; and other similar acts.

## 26. Independent Contractor

In the event that Seller requires or contemplates performance of services by Seller's employees, or persons under contract to Seller, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer for any purpose whatsoever.

## 27. Termination

Buyer may terminate this PO in whole or in part at any time by written notice to Seller in the event that Seller: (i) fails to comply with any provision(s) of this PO; (ii) becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of Seller's assets and such condition(s) is not cured within thirty (30) days; (iii) merges with or is acquired by a third party, or (iv) attempts to assign or delegate any of its rights or obligations under this PO. Late deliveries, deliveries of goods or performance of services which are defective or which do not conform to this PO, and any failure to provide Buyer upon request with reasonable assurances of future performance shall, without limitation, all be causes allowing Buyer to terminate this PO for cause. Buyer shall have no liability to Seller beyond payment for goods and services delivered to and accepted by Buyer prior by Seller's receipt of notice or termination and for such additional goods and services specifically requested by and delivered to Buyer. In an action by Buyer against the Seller for any default hereunder the prevailing party shall be entitled to reimbursement of its attorney's fees.

Any cancellation or termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims or damages or other rights of Buyer against Seller.