



TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE: Seller agrees to provide the goods described in this order ("Goods") to Lumenis in accordance with these Terms and Conditions (the "Agreement"). When accepted by Seller's acknowledgment or commencement of performance, this Agreement becomes a binding contract subject to the terms and conditions on the face of the order and those contained herein. No change in modification of or revision of this Agreement shall be valid unless in writing and signed by an authorized Lumenis representative. Any term or condition proposed by Seller which is inconsistent with or in addition to the terms and conditions contained herein shall be considered objected to by Lumenis without further notice and shall not be binding on Lumenis.

2. DELIVERY, SHIPPING AND PACKING:

- (a) Time is of the essence in the performance of this order by Seller. Deliveries shall be in accordance with the schedule and quantities as specified in this order and Seller shall strictly adhere to the delivery and completion schedules specified herein. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller shall immediately notify Lumenis in writing of the probable length of any anticipated delay and the reasons for it, and shall continue to notify Lumenis of any material change in the situation. Seller shall, at its expense, make every effort to avoid or minimize any such delay to the maximum extent possible including the expenditure of premium time, and Lumenis may, in addition to all other remedies, require Seller, at Seller's expense, to ship Goods via air freight or expedited routing to avoid or minimize delay. Seller shall not ship Goods to arrive at Lumenis's plant in advance of the specified schedule unless authorized in writing by Lumenis. In the event of early delivery, Lumenis may store Goods at Seller's expense, and any such deliveries may, at Lumenis's option, be returned to Seller at Seller's expense or payment deferred to the date payment would become due according to the specified schedule. At Lumenis's option, goods furnished in excess of the quantity specified or of any allowable overage may be returned to Seller or retained by Lumenis at no additional cost, unless Seller notifies Lumenis within 45 days of shipment that it desires the return thereof. Seller will reimburse Lumenis for the cost of returning such over shipment.
- (b) In the event that Seller fails to deliver any Goods, perform any service and/or perform any other task hereunder in accordance with the delivery schedule and in full conformance with all the requirements of this Agreement, Seller shall, in addition to all of Lumenis's other rights and

remedies available under this Agreement or at law or in equity, pay to Lumenis as liquidated damages (and not as a penalty), (a) one percent (1%) of the purchase order price of such deliverable, service or task for each of the first three (3) weeks of delay and (b) two percent (2%) of the purchase order price of such deliverable, service or task for each additional week of delay. Such liquidated damages shall be immediately payable by Seller upon Lumenis's demand. Lumenis may, at its option, deduct such liquidated damages from payments due by Lumenis to Seller.

- (c) All Goods shall be shipped to Lumenis at the point designated in this order. Unless otherwise set forth in this order, DDP INCOTERMS 2000 shall be applicable to this order. On date of shipment, Seller shall send Lumenis an original bill of lading, air bill or express receipt reflecting Lumenis's purchase order number.
- (d) All Goods shall be packed in accordance with best commercial practice to prevent damage or deterioration and secure lowest transportation rates, in shipping containers (unless otherwise provided in this order) provided by Seller which are suitable for protection of Goods during shipment to and storage in Israel. No charges will be paid by Lumenis for preparation, packing, crating, reusable containers or shipment unless so stated in this order. Damage to any Goods resulting from improper packing will be charged to Seller. Each container shall be marked with Lumenis's purchase order number. Each container of a multiple container shipment shall be identified to show the number of the container and the total number of containers in the shipment and the number of the container in which the packing list has been enclosed. Lumenis shipments by Seller must include, in a conspicuous and easily accessible place on the inside of the shipping container, a packing list, containing Lumenis's purchase order number, quantity, part number/size, description of the Goods shipped and appropriate evidence of inspection, including acceptance test reports, material test certificates, certificates of conformance and/or serviceability tags. In addition, a duplicate set of the aforementioned documentation shall be in a conspicuous and easily accessible place on the outside of the shipping container.

3. PRICES AND PAYMENT:

- (a) Seller represents that prices quoted to or paid by Lumenis shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the Goods purchased by Lumenis taking into account the quantity under consideration and Seller will immediately refund any amounts paid by Lumenis in excess of such price. The prices stated in this order are firm fixed prices and are stated in U.S. Dollars, unless otherwise specified in this order.
- (b) Unless otherwise specified in this order, Seller shall pay all non-Israeli taxes and import or export or other duties of any kind, including those taxes or duties that may be imposed or assessed on any of Lumenis's furnished

property (data, information, materials, parts, components or tooling). All such taxes and duties, existing, new or increased, are included in the prices stated in this order.

- (c) For each shipment of Goods or completed item of services, Seller shall submit an original invoice marked "original" and two copies marked "copy" to Lumenis. Taxes and duties, if any are included in this order, must be separately itemized. Purchase order numbers must appear on all shipping documents, invoices, quality certifications, and packing lists. With each invoice, Seller shall deliver a copy of all appropriate evidence of inspection of the Goods, including acceptance test reports, material test certificates and certificates of conformance.
 - (d) Determination of the payment due date will be based on the latest of (i) the date Goods are received or services are completed; (ii) the date Goods are scheduled to be shipped/received or services are scheduled for completion under this order, (iii) the date an accurate invoice is received or (iv) the date that all applicable documentation that is to be attached to Goods is received. Lumenis shall be entitled at all times to set-off any amount owing at any time from Seller to Lumenis or any of its affiliated companies against any amount payable at any time to Seller by Lumenis or any of its affiliated companies.
 - (e) Lumenis retains the rights to withhold payment for Goods received, without liability of any nature, if (i) such Goods have epidemic failures; or (ii) more than 70% of Goods delivered do not fully comply with the required specifications. Lumenis retains the rights to set off, against amounts payable under any invoice issued by Seller, all present and future indebtedness of Seller to Lumenis arising from this Agreement or any other agreement.
 - (f) Mere payment under this Agreement for Goods or services does not constitute acceptance thereof.
- 4. CHANGES:** Lumenis shall have the right to make changes to any order submitted further to this Terms and Conditions but no additional charge will be allowed unless authorized in writing by Lumenis. Should any change cause an increase or decrease in the cost of, or the time required for performance of the order, an equitable adjustment shall be made with respect to the order and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this article must be asserted in writing to Lumenis not later than ten (10) days after the date of receipt by Seller of the written change authorization. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, Seller will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of a change is included in Seller's claim for adjustment, Lumenis shall have the right to direct the manner of disposition of such property. Seller shall proceed with the work as changed without interruption and without delay. Notwithstanding the foregoing, Lumenis shall have the right to postpone receipt of deliveries, or

any part thereof, for up to three months from the scheduled delivery date at no cost to Lumenis.

5. PATENT, TRADEMARK, COPYRIGHT AND TRADE SECRET INDEMNITY:

To the extent that the Goods purchased under this order have not originated with Lumenis, Seller agrees to indemnify Lumenis and its successors, assigns, customers and agents against any expense, loss or liability (including attorney's fees) for any actual or alleged infringement of any patent, trademark, copyright, or trade secret arising from or related to the use, sale, manufacture or disposal of the Goods. Upon receipt of notice of any claim or suit alleging such infringement, Seller agrees to defend Lumenis and its successors, assigns, customers and agents at Seller's expense. During the pendency of any such claim or suit, and (where necessary) upon settlement thereof, Seller shall, at Seller's expense, either (i) substitute fully equivalent, noninfringing Goods, or (ii) modify the Goods so that same no longer infringe but remain equivalent, or (iii) obtain for Lumenis and its customers the right to continue use of the Goods in accordance with the terms of the order.

6. SELLER'S INFORMATION: Any knowledge, information or drawings which Seller shall have disclosed or may hereafter disclose to Lumenis incident to the placing and filling of this order shall not, unless otherwise specifically agreed upon in writing by Lumenis, be deemed to be confidential or proprietary information and accordingly shall be acquired free from any restrictions, other than restrictions which may result from a claim for patent infringement.

7. WARRANTY: Seller warrants that all Goods will conform to applicable specifications, drawings, descriptions and samples and will be merchantable, of good workmanship and material fit for the particular purpose or purposes for which intended, and free from defect, claim, and encumbrance of lien. All Goods will: (i) be new and unused at the time of delivery to Lumenis, (ii) be free from any liens, claims, security interests and other encumbrances of every type and description, (iii) not infringe upon or violate any patent, copyright, trademark, trade name, trade secret, know-how or other intellectual property right of any third party, and (iv) upon delivery, comply with all applicable laws, ordinances, statutes, rules and regulations of any applicable jurisdiction. Unless manufactured pursuant to detailed design furnished by Lumenis, Seller assumes design responsibility and warrants the Goods to be free from design defect and suitable for the purposes intended by Lumenis. Seller's warranties together with its service guarantees shall run to Lumenis and its customers or users of the Goods and shall not be deemed to be exclusive Lumenis's inspection approval, acceptance, use of or payment for all or any part of the Goods shall in no way affect its warranty rights whether or not a breach of warranty had become evident at the time. The aforesaid warranties shall be in addition to any standard warranty or any warranties otherwise created by operation of law or contract.

8. COMPLIANCE WITH LAWS AND EXPORT APPROVALS: In the performance of this order, Seller shall comply with all applicable statutes,

rules, regulations and orders of Seller's country, state and local authority. Seller shall indemnify and defend Lumenis from and against all losses, costs, fees and damages arising, directly or indirectly, from any actual or alleged failure by Seller to comply with any such statutes, rules, regulations and orders. Seller shall be responsible for and shall obtain all permits and authorizations required for the export of the Goods from Seller's country to Israel.

9. QUALITY CONTROL: Seller shall provide and maintain a quality control system, which shall be in accordance with the then current state of the art and shall meet the highest quality control standards in the respective industry. Seller shall permit Lumenis to review its procedures, practices, processes and other documents related to its quality control system.

10. NON-ASSIGNMENT: Assignment of this order or any interest therein or any payment due or to become due thereunder without the written consent of Lumenis shall be void. Lumenis shall have the right, at its sole discretion and without additional payments, to pass the title of the Goods or assign software license acquired under this Agreement, to any party and all other License terms shall continue to be in effect.

11. DEFAULT AND EXCUSABLE DELAYS: Lumenis may cancel this order in the event of a default by Seller of any of the terms and conditions of this order, and Seller shall reimburse Lumenis for any additional cost incurred by Lumenis if Lumenis shall purchase elsewhere in case of cancellation. Seller however shall not be in default by reason of any delay in delivery hereunder if such delay arises solely out of causes beyond the control and without the fault or negligence of Seller.

12. LUMENIS INTELLECTUAL PROPERTY: All intellectual property rights related to the development performed under this Agreement shall be, and remain at all times the property of Lumenis only. Seller shall not at any time during the performance of this order or thereafter, use (other than in the performance of this order), reproduce, publish, or communicate to persons other than Lumenis, intellectual property and/or any drawings, specifications, data or papers or any information contained therein or derived therefrom furnished by Lumenis in connection herewith, without Lumenis's prior written consent. Upon completion or termination of this order, Seller shall promptly return to Lumenis all such drawings, specifications and other data or papers and any copies thereof.

13. INSPECTION, TESTING AND EXPEDITING: All materials and workmanship entering into the performance of this order may be inspected, tested and expedited at all times and places either before, during or after manufacture by representatives designated by Lumenis. The exercise of this right to inspect, test and expedite however shall in no way relieve Seller of its obligation to furnish all Goods or materials in strict accordance with the specifications and all the terms and conditions of this order. If inspection, testing and expediting are made on the premises of Seller or its supplier, Seller shall furnish without additional charges all reasonable facilities and assistance

for the safety and convenience of Lumenis's representatives in the performance of their duties. The right of final inspection and acceptance or rejection of the Goods at Lumenis's plant or at such other place of receipt as may be specified in the order is reserved to Lumenis. In case any of the Goods are found to be defective in material or workmanship, or otherwise not in conformity with the specifications and requirements of this order, Lumenis shall have the right to reject the same or require that such Goods be credited to Lumenis's account, be corrected or replaced promptly with satisfactory materials or workmanship at Seller's expense (including transportation charges to and from Lumenis's plant or such other place of receipt as may be specified in the order) or pursue such other remedies as may be provided by law.

14. TOOLS AND MATERIALS: Title to and the right of immediate possession of all tooling equipment or materials furnished or paid for by Lumenis directly or indirectly for use hereunder shall be and remain in Lumenis. Lumenis does not guarantee or warrant the accuracy of any tooling furnished by it. Seller shall (a) be responsible for all loss or damage to such tooling equipment or materials while in its possession and insure its risk in this respect with adequate fire and extended coverage insurance (b) clearly mark the same as belonging to Lumenis, keep it segregated in Seller's plant and treat it confidentially (c) keep the same in good operating condition and (d) use the same exclusively for the performance of work for Lumenis and not for production of larger quantities than specified or in advance of normal production schedules except with Lumenis's written consent. All taxes, assessments and similar charges levied with respect to or upon any such items owned by Lumenis while in Seller's possession or control and for which no exemption is available shall be borne by Seller. Upon completion of this order all such items shall be returned to Lumenis or disposed of as otherwise directed by Lumenis.

15. NON-DISCLOSURE: Seller shall not disclose to any third party or otherwise use any information concerning this order or Lumenis's drawings, specifications, samples and other material furnished hereunder without first obtaining the written consent of Lumenis. Lumenis shall retain title at all times to such drawings, specifications, samples and other material, all of which including copies thereof upon request or upon completion of this order shall be promptly returned to Lumenis. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Lumenis in connection with the purchase of the Article shall not unless otherwise specifically agreed upon in writing by Lumenis be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for this purchase order.

16. GRATUITIES: Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to any of Lumenis's employees, agents or representatives. If it is found that Seller or any of its employees, agents or representatives has offered or given any gratuities to Lumenis's employees, agents or representatives, at Lumenis's opinion, in a view toward securing purchase orders or contracts from Lumenis or securing

favorable treatment with respect thereto, Lumenis may by written notice to Seller, cancel this purchase order for default under Section 11 hereof.

17. TERMINATION:

- (a) Lumenis may terminate work under this order in whole or in part at any time by written notice to Seller specifying the effective date and the extent of such termination. Lumenis shall have such right of termination even though Seller shall not be liable under the portions of paragraph 11 hereof relating to default and excusable delays.
- (b) After receipt of such notice of termination and except as otherwise directed by Lumenis, Seller shall immediately:
 - (1) Stop work under this purchase order on the date and to the extent specified in such notice of termination.
 - (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the order as may not be terminated.
 - (3) Terminate orders and subcontracts relating to the performance of any work terminated by such notice of termination.
 - (4) Settle all claims arising out of such termination orders and subcontracts, subject to the approval or ratification of Lumenis.
 - (5) Transfer title and deliver on Lumenis's instruction all fabricated and unfabricated parts, work in process and completed work supplies and other materials produced as a part of or acquired in respect of the performance of the work terminated; and
 - (6) Take any necessary action to protect property in Seller's possession in which Lumenis has or may acquire an interest.
- (c) If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for such termination, Lumenis will pay to Seller without duplication the following amounts:
 - (1) The contract price for articles which have been completed.
 - (2) The actual costs incurred by Seller which are properly allocable under recognized commercial accounting practices to the terminated portion of this order
 - (3) Such allowance for profit on the work performed as may be reasonable under the circumstances.

The total sum to be paid to Seller under items (1), (2) and (3) of the paragraph (c), shall not exceed the total contract price specified in this order as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Seller will transfer title and deliver on Lumenis's instructions any property the cost of which is reimbursed under item (2) in this sub-paragraph (c), or with

Lumenis's approval may retain same at an agreed price or sell at any price approved by Lumenis and credit the amount so agreed or received as Lumenis directs. Nothing contained in this paragraph 17 shall impair the right of Lumenis to cancel this order pursuant to paragraph 11 above. Lumenis may audit all elements of any termination claim.

18. INSURANCE: Without limiting or derogating from Seller's liabilities, obligations or indemnities otherwise assumed by Seller under the Agreement or any applicable law, Seller shall insure prior to the signature of this Agreement, at its own cost and expense, with insurers acceptable to Lumenis, the following insurance policies (worldwide) and obtain a confirmation from its insurers evidencing the below insurance coverage:

(a) "Property all Risks" insurance covering the Goods, stocks of raw materials, work in process and completed Goods connected with this Agreement; The insurance policy shall include the following:

(1) The Goods in the course of transit, installation, testing and certification until final acceptance by Lumenis;

(2) Workman's compensation or similar insurance where required by law (with statutory limits) and employers liability insurance policy with a limit of not less than USD 5,000,000 per occurrence and in the aggregate for the period of insurance; and

(3) Third party legal liability (bodily injury and property damage) with a limit of not less than USD 1,000,000 per occurrence and in the aggregate; and

(b) Product liability insurance policy, with a limit of not less than USD 5,000,000 per occurrence and in the aggregate.

(c) Seller shall also ensure that in all the above insurance policies Lumenis shall be listed as an additional assured and sole loss payee and such insurance policies shall provide that:

(1) All insurance coverage shall be primary to any insurance carried by Lumenis, and that insurers waive all right to demand or claim participation of Lumenis's insurance policies, and any insurance coverage that Lumenis may carry to cover the same risks shall be regarded as excess insurance and not contributory;

(2) Insurers hold harmless and waive all of their rights of subrogation against Lumenis, its directors, officers and employees and anyone operating on its behalf, provided that such waiver will not be valid toward a person who caused malicious damage;

(1) The insurance policies mentioned in sections 18(a)(3) and 18(b) above shall include a cross liability clause;

(2) The insurance policies shall not be canceled or be amended in any way that may adversely affect Lumenis's rights and interests without giving Lumenis thirty (30) days prior written notice.

- (d) If Seller is providing any professional service to Lumenis, Seller shall maintain Professional Liability Insurance (including errors and omissions) with limits of liability of not less than \$1,000,000 (one million US Dollars) per any one occurrence and in the aggregate. The policy will not exclude loss of use or delay, loss of documents, libel and slander nor dishonesty of the Seller's employees. The policy will indemnify Lumenis for its liability for any act or omission of Seller or anyone on its behalf and will include a Cross Liability Clause, provided however that the policy will not cover the professional liability of Lumenis towards Seller. The policy will provide extended discovery period of not less than 12 months. The policy will have a retroactive date from the commencing of operations by Seller according to the Agreement, even if the operations began prior to the signing of the Agreement
- (e) Upon Lumenis's demand, Seller shall submit to Lumenis certificates of insurance evidencing the above insurance coverages within seven (7) days of Lumenis's demand, and subsequently all renewals of such.

19. INDEMNITY: Notwithstanding any other provision contained herein, the Seller agrees to indemnify and hold Lumenis harmless against any and all damages or claims (whether in contract, tort, negligence or otherwise) which arise out of Seller's performance of this Agreement or are in any way connected with the Goods and services delivered hereunder.

20. GOVERNING LAW AND JURISDICTION: This Agreement shall be governed by and construed in accordance with the laws of the State of Israel, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions of this Agreement. The parties hereto irrevocably consent to the exclusive jurisdiction and venue of any competent court located in Tel Aviv-Jaffa, Israel, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein. The parties further agree that process may be served upon them in any manner authorized by the laws of the State of Israel for such persons and waive and covenant not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.