InterVene, Inc.
Terms and Conditions of Sale

1. **Entire Agreement**. These Terms and Conditions of Sale, together with any other document(s) that InterVene, Inc. ("InterVene") has attached hereto or executed that specifically reference these Terms and Conditions of Sale (e.g., purchase order confirmation, quote) (collectively, the "Agreement") constitute the entire binding agreement between InterVene and the purchaser ("Buyer") regarding the purchase and use of products from InterVene ("Products"), unless InterVene and Buyer have entered into a separate written agreement governing purchases of the Products by Buyer from InterVene. If any term, condition or other provision contained in any purchase order, schedule, exhibit, or other document provided by the Buyer is in any way inconsistent with or creates an ambiguity concerning the terms of the Agreement, the terms of the Agreement shall control. No addition to, or waiver, alteration, or modification of the Agreement shall be valid unless made in writing signed by an authorized representative of each party specifically referring to the Agreement. Any issuance of a purchase order or any other definite and timely act or expression of acceptance on the part of Buyer shall constitute acceptance of the terms of the Agreement.
2. **Confidentiality**. Each party will treat the pricing of this Agreement and the other party's written, proprietary business, or technical information as confidential. Buyer will treat such information as confidential whether or not marked as such. Neither party will use nor disclose to any third parties any such confidential information except as specifically permitted in this Agreement or as required by law (with reasonable prior notice to InterVene). The receiving party will have no obligations with respect to any information which (i) is or becomes within the public domain through no act of the receiving party in breach of this Agreement, (ii) was in the possession of the receiving party prior to its disclosure as evidenced by contemporaneous records, (iii) is independently developed by the receiving party as evidenced by contemporaneous records, or (iv) is received from another source without any restriction on use or disclosure. The receiving party will return or destroy the other party's confidential information upon the disclosing party's written request.
3. **Product Changes and Discontinuations**. InterVene reserves the right to change the design of any of the Products, to modify any of the Products or to discontinue the manufacture thereof at any time.
4. **Non-Warranty Returns**. No product may be returned to InterVene without prior written authorization of InterVene. Unless otherwise authorized by InterVene in writing, returned Products must have all manufacturer's seals intact, outer packaging must have no markings and/or stickers, and no damage. When returning Products, Buyer will comply with all packaging and labeling instructions provided by InterVene. Unless otherwise agreed to by InterVene in writing, shipping charges on all authorized returns are the sole obligation of Buyer.
5. **No Resale**. Buyer represents and warrants that it is purchasing Products for its own use and not for resale.
6. **Payment Terms**. Payments are due net thirty (30) days from the date of invoice. Payment disputes must be raised by Buyer before the payment due date. InterVene reserves the right to: (i) refuse to fulfill additional orders from Buyer; (ii) charge interest at a rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is less, on such unpaid amounts; and (iii) offset any unpaid amounts against any amounts InterVene owes Buyer.
7. **Taxes**. All prices exclude applicable United States federal, state, and local taxes as well as any applicable tariffs or foreign taxes, which will be the responsibility of Buyer, unless Buyer is a tax-

exempt entity, and InterVene has received proper documentation therefor. All applicable taxes will be added to the price of the Products or billed separately to Buyer.

8. **Shipping**. InterVene will ship all Products to a carrier FOB InterVene's facility for transport to Buyer's place of business or to such other destination as directed in writing. All shipping and transportation costs shall be borne by Buyer. Buyer shall bear all risk of loss with respect to the Products from the moment the Products are delivered to the carrier. In all cases of damage and/or loss to Products in transit, Buyer will be responsible for making claim(s) against the carrier; provided, however, InterVene will provide reasonable assistance with such claims. Loss or damage will not relieve Buyer of any obligations for payment or obligations in this Agreement. Delivery dates provided by InterVene are estimates only.
9. **Inspection and Acceptance**. Buyer must inspect delivered Products and report claims for defects, damages, shortages or receipt of wrong products which are discoverable on a visual inspection within seven (7) days of delivery or the Products will be deemed irrevocably accepted and such claims will be deemed waived. However, shipping damage claims must be made by Buyer directly with the shipping company in accordance with the shipping company's policies.
10. **Warranties**. InterVene represents and warrants that at the time of shipment, the Products materially conform to InterVene's written specifications of the Products, are free from defects in materials and workmanship. InterVene further represents and warrants that the Products are manufactured, sold, and shipped materially in accordance with all applicable laws and regulations. ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS AND CONDITIONS (STATUTORY, EXPRESS, IMPLIED OR OTHERWISE) AS TO QUALITY, CONDITION, DESCRIPTION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.
11. **Limitation of Liability**. TO THE EXTENT PERMITTED BY LAW, INTERVENE'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE AGREEMENT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED, AT INTERVENE'S SOLE DISCRETION, TO EITHER (i) THE REPLACEMENT OF THE NONCONFORMING PRODUCT, OR (ii) PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE PAID FOR THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED. IN NO EVENT WILL INTERVENE BE LIABLE FOR ANY OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES, SUCH AS, WITHOUT LIMITATION, LOST BUSINESS, REVENUE OR PROFITS, INTERRUPTION OF BUSINESS, LOSS OF USE OR LOST PRODUCTIVITY, OR DAMAGES TO REPUTATION OR GOODWILL, EVEN IF INTERVENE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
12. **Indemnification**. Buyer will indemnify, defend, and hold harmless InterVene, including InterVene's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors, and assigns (collectively, InterVene's "Indemnitees"), from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Losses") that relates to: (i) Buyer's modification of or addition to any Product; (ii) Buyer's use of Products that does not comply with InterVene's written instructions for storage, handling, or use or Product labeling; (ii) Buyer's breach of this Agreement; (iii) Buyer's negligence or willful misconduct. InterVene will indemnify, defend, and hold harmless Buyer and Buyer's Indemnitees from Losses arising out of a third party claim (i) for bodily injury to or property damage to the extent caused by a defect in a Product; (ii) to the extent caused by InterVene's

breach of this Agreement; or (iii) to the extent caused by InterVene's gross negligence or willful misconduct. InterVene is not required to indemnify Buyer to the extent that any claim arises out of Buyer's actions for which Buyer has indemnification obligations.

13. **Compliance with Laws**. InterVene and Buyer agree to comply with all applicable laws and regulations including, but not limited to, the Federal Anti-Kickback Statute, Federal False Claims Act, Stark Law, Foreign Corrupt Practices Act, and U.S. export control laws.
14. **Adverse Events and Recalls**. Buyer will comply with all requirements of applicable laws and regulations that relate to maintaining records for product tracing and the reporting and investigation of adverse events. Within seventy-two (72) hours, Buyer will notify InterVene of any complaint, including any quality and safety issues, performance related complaints, and all correspondence with regulatory authorities regarding safety issues. Buyer will notify InterVene of any other issue which could be relevant to InterVene's medical device monitoring of the Products. In the event of a recall of a Product, InterVene will notify Buyer within the time period required by applicable law. Buyer will cooperate, at InterVene's expense, with the recall.
15. **Federal Programs**. Both parties represent and warrants that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last 5 years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last 5 years in federal healthcare programs. Each party will notify the other of any change in the status of the representations and warranties set forth above.
16. **Force Majeure**. Neither party is liable for delays or failures in performance (other than payment obligations) under this Agreement due to a cause beyond its reasonable control. In the event of such delay, the time for performance will be extended as reasonably necessary to enable performance.
17. **Miscellaneous**. This Agreement will be construed in accordance with the laws of the State of California, and without regard to the conflict of laws provisions thereof. All disputes arising from or relating to the Agreement will be heard exclusively by the courts of San Mateo County, California. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of San Mateo County, California and waives any claim that the action has been brought in an inconvenient forum. The failure of a party to require full or strict performance of any term set forth herein shall not affect the right to require full and strict performance of any term at any time thereafter. Any waiver must be in a writing signed by the waiving party. If any one or more of the provisions of the Agreement is held to be invalid, illegal, or unenforceable, the other provisions shall not be affected and the Agreement will be construed as if such provision had not been contained herein. Nothing in the Agreement shall be construed as creating any direct or beneficial right in or on behalf of any third party. In the event any party institutes legal proceedings to enforce its respective rights arising out of the Agreement, the prevailing party shall be entitled to the award of attorneys' fees and court costs, plus cost of executing, enforcing and/or collecting any judgment.