

## ZimVie Spine Standard Terms and Conditions

1. **Purchase and Sale of Products.** Unless otherwise provided in this Agreement, Customer agrees to purchase from Vendor and Vendor agrees to sell and supply the Products identified in orders issued by Customer pursuant to this Agreement. Customer further agrees not to resell Products to other hospitals, clinics, wholesalers, or dealers, without the prior written consent of Vendor.
2. **Pricing.** The product categories (the "Products") covered by any Agreement and corresponding prices for the Products are described on an applicable Exhibit within the contract or Pricing Agreement Form is incorporated herein by this reference. These prices reflect a discount for payment in immediately available funds, check or electronic funds transfer. Custom products cannot be discounted and will be charged to Customer at list price. Pricing under this Agreement is to be held firm for twelve (12) months. Each year thereafter, Vendor may increase the prices of the Products up to five percent (5%).
3. **New Products.** During the Term, Vendor may develop and offer additional products ("New Products") that are not listed as a Product in the applicable Exhibit. The Parties acknowledge and agree that the Exhibit list is not an exclusive list and Vendor may communicate New Products (and corresponding pricing) to Customer that are to be covered by this Agreement. In the event that Vendor determines that New Products are to be covered under an applicable Agreement, Vendor will notify Customer (by email or other writing) regarding the New Products and their prices and such New Products shall be deemed Products for purposes of the applicable Agreement. If products that are not included in the applicable Exhibit are used by Customer without prior Product and pricing approval, pricing for such items shall be the pricing for the nearest comparable (e.g., features, primary versus revision, etc.) Product for which pricing has been agreed upon by Vendor and Customer. Vendor and Customer agree that pricing, under this methodology, shall be deemed agreed-upon, and incorporated into the applicable Exhibit within thirty (30) days of Vendor's notice to Customer of the availability of a New Product.
4. **New Technology.** New or next generation technology (technology that is not in the current product catalog or has not received FDA approval as of the date of this Agreement) shall be mutually negotiated and agreed upon prior to use. If a product comes to market that will make an existing implant category obsolete, both Parties agree to discuss in good faith a new price for the obsolete implant category.
5. **Consigned Products.** Products may be placed on consignment upon the terms and conditions of a mutually agreed upon consignment agreement between Customer and Vendor.
6. **Discontinued Products.** If, during the Term, Vendor should discontinue any Product, product line or business segment, Vendor shall provide Customer with notice of such discontinuation. The decision to discontinue any Product, product line or business segment shall be in Vendor's sole discretion and shall not constitute a breach of this Agreement. In the event that Vendor's discontinuation of a Product, product line or business segment materially and adversely affects Customer's rights and obligations concerning remaining Products, product lines or business segments, the Parties shall negotiate in good faith an amendment to this Agreement with an equitable modification of those rights and obligations. In the event the Parties are unable to reach agreement on such an amendment, Customer's sole remedy shall be to terminate this Agreement on sixty (60) days' written notice to Vendor.
7. **Returns on Purchased Products.** Customer may return Products for credit within one hundred eighty (180) days of purchase, except those Products that are discontinued, damaged, or custom made, or if applicable are comprised of human or animal-derived tissue or biologically active such as bone graft substitutes, are not returnable for credit at any time. Products must be returned to Vendor's sales associate or Vendor's manufacturing site. Shipments must have a Return Goods Authorization (RGA) number clearly marked and displayed on each carton and returned on a freight-prepaid basis. Vendor recommends that the return shipment be insured for the protection of Customer. Products must always be accompanied by one of the following: (a) copy of the invoice with the reason for the return in writing; or (b) reason for the return in writing, indicating the invoice number and date of purchase. In order to receive full credit for a return, the Product must be received by Vendor within thirty (30) days of purchase and all returned Products must be in the original, unopened and undamaged shelf package. A maximum twenty percent (20%) handling and restocking charge may be charged for any Product not returned within thirty (30) days of purchase. Additional charges may be assessed for repackaging and/or re-sterilization. No credit will be given for returned sterile packaged Products unless the Product is returned in the original, unopened and undamaged shelf package. All returned Products are subject to quality assurance inspection by Vendor, which inspection will determine any credit due to Customer.
8. **Product Orders.** Each order of Products by Customer is subject to this Agreement (including, without limitation, all other exhibits attached to this Agreement by reference). If applicable, Vendor's representative will submit delivery documents for implant cases to Customer's purchasing department within twenty-four (24) hours after surgery, and Customer will submit a purchase order within forty-eight (48) hours after receipt of the delivery documents for the implant case. Each purchase order shall contain information relating to delivery, quantity and the pricing set forth in this Agreement, or as mutually agreed upon by the Parties, and any additional terms and conditions set forth in any purchase order are expressly rejected. While Vendor will make commercially reasonable effort to fill orders and meet specified delivery dates, if Vendor does not fulfill an order received from Customer or deliver Products to Customer by a specified delivery date, such act or non-act shall not constitute a breach by Vendor of this Agreement.

9. **Payment Terms and Invoicing.** Vendor shall provide to Customer an invoice for each order placed and shipped/delivered to Customer pursuant to this Agreement. Customer shall remit full payment to Vendor within thirty (**Net 30**) days from the invoice date. If any amount of an invoice is disputed by Customer in good faith, Customer shall pay the undisputed invoice amount when due along with a written explanation specifying the amount in dispute. Upon resolution of the amount in dispute, any disputed amount that is determined to be due and owing to Vendor by Customer shall be paid by Customer to Vendor immediately upon such resolution. Customer must notify Vendor in writing of any dispute of an invoice; any such dispute is waived by Customer if such notice is not received by Vendor within thirty (30) days of the invoice date. We reserve the right to charge interest on late payments at the rate of one-and-one-half percent (1.5%) per month or the highest rate permitted by law, with such interest beginning to accrue on the date the payment was due. You agree to pay all reasonable attorney fees and expenses that we may incur in connection with enforcing our right to obtain payment.

10. **Delivery and Freight.** Unless otherwise agreed in writing by the Parties, Products will be delivered F.O.B. destination. Standard ground freight charges to be paid by Vendor. Express delivery charges, when delivery is requested within seventy-two (72) hours of shipment, will be prepaid by Vendor and added to the invoice as a charge to be paid by Customer. Title will be transferred upon shipment, unless the product is shipped as a consigned product. Risk of loss for Products shall transfer to Customer upon delivery. All stated delivery times under this Agreement are approximate. Vendor shall endeavor to use its commercially reasonable efforts to make deliveries in accordance with any stated delivery date. If Vendor anticipates that it will not be able to deliver any particular Product ordered by the stated delivery date, Vendor will promptly notify Customer and work with Customer to resolve the supply issue to the Parties' mutual satisfaction. If for any reason any delivery is not made by the stated delivery date, Vendor shall not be liable for any loss, damage or expense resulting from any failure or delay in delivery or cancellation thereof, including, without limitation, loss of use, loss of profits, loss of business, expenses or costs arising from business interruption, attorneys' fees and any consequential, contingent, incidental or special damages caused or alleged to be caused from any such failure or delay in delivery or cancellation thereof loss, damage or expense.

11. **Shipment of Human Tissue Product.** Upon shipment of any human tissue product to Customer, Customer is responsible for the receipt, control, storage, handling and use (collectively all defined as "**Control**") of the tissue at the time of delivery and Vendor fully disclaims any liability whatsoever relating to such Control. Additionally, Customer shall indemnify and hold Vendor, its agents, officers, trustees, employees and representatives harmless from and against all actions, claims, demands, damages, expenses, costs, fines, charges, liabilities, suits, fees (including attorneys' fees) and judgments whatsoever rising out of the Control of the tissue.

12. **Cancelled Cases.** In the event a surgery is cancelled for which Customer ordered a Product from Vendor pursuant to this Agreement, Customer shall provide Vendor notice of such cancellation within twenty-four (24) hours of the scheduled surgery to avoid delivery of the Product, and if Customer fails to provide such notice, Customer shall bear responsibility for all shipping costs for such Product and the return policy provided in Section 3 shall apply.

13. **Warranty.** Unless otherwise specified in Vendor written materials pertaining to a particular Product, Vendor warrants to Customer that Products purchased under this Agreement conform to Vendor's published specifications ("**Specifications**") and are free from defects in workmanship and material at the time of shipment. If, upon inspection within a reasonable time after delivery and before implantation or use, Customer discovers a failure of a Product to conform to Specifications or a defect in material and workmanship, it must promptly notify Vendor in writing. Within a reasonable time after such notification, Vendor will correct any failure of the Product to conform to the warranty by providing, at its option, repair of the Product, a replacement unit, or a refund of the purchase price, if applicable. The aforementioned remedies are Customer's exclusive remedies for breach of warranty under this Agreement.

The foregoing warranties, unless otherwise agreed by the Parties in a written addendum to this Agreement or expressly provided in the Specifications, shall extend for a period of one (1) year commencing on the date of shipment of the Product to Customer.

This warranty does not extend to or cover (a) any product, components, or parts not manufactured or sold by Vendor, (b) damage caused by Customer's use of any Product for purposes other than those for which it was designed as set forth in the Specifications, (c) damage caused by unauthorized attachments or modification, (d) any other abuse or misuse of Product by Customer, its employees, representatives, contractors and agents, or (e) any Vendor Product where the Customer receives the Product from a person or entity that is not affiliated with or authorized by Vendor.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THIS AGREEMENT OR THE PRODUCTS OR MATERIALS TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

14. **Limitation of Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THE LIABILITY OF VENDOR TO CUSTOMER FOR A GIVEN YEAR DURING THE TERM, ON ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE OR BREACH OF THIS AGREEMENT, EXCEED THE TOTAL PRICE OF PRODUCTS ORDERED BY CUSTOMER FOR SUCH YEAR AT THE TIME OF A CLAIM. FURTHERMORE, TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO CASE SHALL VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES.

15. **Mutual Indemnification.** Each Party (the “**Indemnifying Party**”) shall indemnify and hold harmless the other Party (the “**Indemnified Party**”) and its affiliates and their respective shareholders, directors, officers, employees, agents, and affiliates from and against any and all liabilities, damages, losses, penalties, fines, costs and expenses, including reasonable attorneys’ fees, paid or incurred by them in connection with any third party action, suit, claim or proceeding (a “**Claim**”) brought against the Indemnified Party based upon or arising from any negligent or more culpable act or omission of the Indemnifying Party or its affiliates or subcontractors or any of their respective employees or agents, including, for example, surgeons or sales representatives performing services at Customer, relating to the activities, Products, and equipment subject to or sold pursuant to this Agreement. To the extent that Vendor and Customer have indemnification obligations to one another in connection with a single Claim, Vendor and Customer shall contribute to the aggregate damages arising from such Claim in such proportion as is appropriate to reflect their relative responsibilities for such damages, as well as any other relevant equitable considerations. The amount paid or payable by Vendor or Customer for purposes of apportioning the aggregate damages shall be deemed to include all reasonable legal fees and expenses incurred by such Party in connection with investigating, preparing for or defending against such Claim.

16. **Force Majeure.** The obligations of either Party to perform under this Agreement shall be excused if a Party’s failure to perform or delay in performance of its obligations or responsibilities under this Agreement is caused by matters beyond the claiming Party’s control, which shall include, but not be limited to, acts of God, strikes or lockouts, embargo, national emergency, fire, flood, natural disaster, civil commotion, riots, wars, revolution, acts of terrorism, blockade or acts of government preventing performance (a “**Force Majeure Event**”). Upon a Force Majeure Event, the claiming Party shall notify the other Party in writing of the delay. Upon the occurrence of such an event, the duties and obligations of the Parties shall be suspended without liability for the duration of the Force Majeure Event; provided, however, that if such suspension shall continue in excess of ninety (90) days, the Parties shall attempt to arrive at a mutually acceptable compromise. If the Parties are unable to reach a compromise, then this Agreement may be immediately terminated upon written notice by the non-affected Party.

17. **Default and Termination.** A Party may terminate this Agreement in accordance with the following events: (a) due to a breach of this Agreement by the other Party, if the breaching Party does not cure such breach within thirty (30) days after receipt of notice specifying the nature of the breach; (b) due to a Force Majeure Event as provided in Section 8 of these Standard Terms and Conditions; (c) with or without cause upon at least sixty (60) days’ prior written notice to the other Party; (d) the other Party becomes insolvent or bankrupt, or becomes the subject of any proceedings under state, federal or foreign law for the relief of debtors, or makes any assignment for the benefit of creditors; or (e) by Customer, due to discontinuation of Products as provided in Section 2 of these Standard Terms and Conditions. Termination of this Agreement shall not relieve any Party of any obligations that are expressly indicated to survive termination and shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination.

18. **Disclosure of Discounts.** Vendor will provide Customer with invoices or other documents that fully and accurately disclose the discounted price of all Products purchased under this Agreement. If Customer is an institution required to file Medicare/Medicaid cost reports with federal or state agencies for payment, Customer acknowledges that Customer has an obligation under federal law to fully and accurately report all discounts received in its cost reports. (Public Law 100-93, the “Medicare and Medicaid Patient and Program Protection Act of 1987”; 42 CFR part 1001).

19. **Compliance with Applicable Laws.** The Parties agree that each of them shall abide by all applicable state and federal laws relating to the activities, Products, and equipment subject to or sold pursuant to this Agreement, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations (45 C.F.R. Parts 160-164), as may be modified or amended from time to time, for the protection of Protected Health Information (as defined in 45 C.F.R. §160.103) if used or disclosed in connection with the Products provided under this Agreement.

20. **Corporate Compliance.** The Parties hereby certify that this Agreement is not intended to violate the Anti-Kickback Statute, 42 U.S.C. 1320(a)-7b(b). Vendor has referenced and made available to Customer a copy of its Code of Business Conduct and a summary of Vendor’s Anti-Kickback Statute policies and procedures on Vendor’s website ([www.ZimmerBiomet.com](http://www.ZimmerBiomet.com)). Each Party represents and warrants that neither it nor any of its affiliates, officers, directors, subcontractors, agents, employees or representatives have ever been debarred, excluded, or suspended by the Office of Inspector General of the Department of Health and Human Services; otherwise deemed ineligible to participate in federal healthcare or procurement programs, or to the extent applicable, state healthcare or procurement programs; or convicted of a criminal offense with respect to health care reimbursement.

21. **Confidentiality.** The Parties shall keep confidential and secret any and all Confidential Information disclosed to it by the other Party. “**Confidential Information**” shall include, but not be limited to, the terms of and pricing under this Agreement, trade secrets, know-how, proprietary information, formulae, processes, techniques, product design and marketing activities that may be disclosed, whether orally or in writing, to a Party and/or a Party’s parent, subsidiary or affiliate companies, or that may be otherwise received or accessed by a Party in the course of performing this Agreement. The Parties expressly agree that each Party shall (a) use such Confidential Information solely and exclusively in connection with the discharge of its obligations under this Agreement and (b) not disclose such Confidential Information to any other person without the disclosing Party’s prior written consent. Notwithstanding the foregoing, Vendor acknowledges that Customer may belong to a buying group that aggregates and compares pricing information, e-commerce, data cleansing, and audit services pursuant to a written agreement and that Customer may share pricing information with such buying group and Customer’s attorneys, auditors, accountants, and consultants solely for purposes relating to this Agreement and provided that such buying group, attorneys, auditors, accountants and consultants are subject to a valid, binding confidentiality agreement with Customer that prohibits (1) disclosing the information in any way identifiable with respect to Vendor; (2) disclosing the information other than on a national aggregate basis, and (3) publishing the information in the public domain for any reason. The Parties’ obligation not to disclose Confidential Information to third parties and otherwise not to use Confidential

Information shall survive the termination of this Agreement. The Parties acknowledge that, in the event of a breach of the provisions of this Section IV, the non-breaching party shall suffer damages that are not easily determinable, and the non-breaching Party shall be entitled to seek equitable relief, including, without limitation, an injunction or an order for specific performance, in addition to all other remedies available to the Parties at law or in equity.

22. **EEO Affirmation.** Unless this Agreement is exempt from compliance with applicable law, Vendor shall comply with the EEO Clause in Section 202 of Executive Order 11246, as amended, 41 CFR 60-250 and 41 CFR 60-741, as amended, which are incorporated herein by specific reference.

23. **Regulatory Matters.** Customer shall immediately forward to Vendor information concerning all actual or threatened charges, complaints or claims of any nature, which relate in any way to the Products and which come to Customer's attention. Customer shall cooperate with Vendor, its representatives, its legal counsel, its insurance carriers and their legal counsel in investigating and defending any such charges, complaints or claims. Customer and its employees shall, at Vendor's request, provide Vendor with reasonable assistance in gathering information concerning such charges, complaints or claims and in giving oral or written testimony as to all facts in their possession concerning such charges, complaints or claims.

24. **Vendor Product Recall Policy.** Vendor is committed to providing products that are defect-free and conform to our Specifications. Providing quality products to our customers is our obligation and top priority. Should we discover any situation with distributed product whose continued use or exposure could result in a risk to health for the patient or the health care professional, we adhere to the requirements set forth by 21 CFR Part 806, Medical Devices; Reports or Corrections and Removals.

25. **Assignment.** Neither Party may assign its rights and obligations under this Agreement to any third party without the express prior written consent of the other Party. Notwithstanding the foregoing, Vendor may assign, in its sole discretion, (i) any or all of its rights and interests hereunder (but not its obligations) to any direct or indirect wholly-owned subsidiary of Vendor so long as such direct or indirect wholly-owned subsidiary has agreed to perform those obligations of Vendor under this Agreement that pertain or are related to the rights and interests so assigned; and (ii) all of its rights, interests and obligations hereunder to any affiliate or other company that is the successor to Vendor's spine and dental businesses in connection with the spinoff or separation of such businesses, in which case, upon the assumption by such affiliate or other successor company of such obligations, Vendor shall be released and discharged in full from such obligations. Subject to the foregoing, all terms, conditions, covenants and agreements contained herein shall inure to the benefit of, and be binding upon, any successor and any permitted assigns of the respective Parties hereto. It is further understood and agreed that consent of either Party to such assignment in one instance shall not constitute consent by the Party to any other assignment.

26. **Miscellaneous.** Should conflicts arise between the third party credentialing documents and this Agreement, this Agreement supersedes all third party terms and conditions. This Agreement and its attachments constitute the entire agreement between the Parties with respect to the Products and supersede all previous negotiations, agreements, and commitments with respect thereto. If there is any inconsistency between the terms of this Agreement and the terms of any order or other documentation from Customer, the terms of this Agreement shall prevail. The Parties to this Agreement are independent contractors and nothing contained in this Agreement shall be construed to place the Parties in the relationship of employer and employee, partners, principal and agent, or joint venturers. Neither Party shall have the power to bind or obligate the other Party nor shall either Party hold itself out as having such authority. This Agreement and any rights hereunder shall not be waived, released, abandoned, discharged, changed or modified in any manner except by an instrument in writing signed by each of the Parties. The failure of a Party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provision, nor affect the validity of this Agreement or such provision, nor limit the right of the Party thereafter to enforce this Agreement or such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. The illegality or partial illegality of any provision of this Agreement shall not affect the validity of this Agreement or any other provision of this Agreement. This Agreement may be executed in the original or by facsimile in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Each Party hereby acknowledges and agrees that each (a) has read this Agreement in its entirety prior to executing it, (b) understands the provisions and effects of this Agreement, and (c) has consulted with such advisors as it has deemed appropriate in connection with its respective execution of the Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties respective rights and obligations under the following provisions shall remain in full force and effect following expiration or termination of this Agreement and shall be enforceable following such expiration or termination: any applicable termination payment/liquidated damages obligations set forth in the Product Purchase Agreement; payment terms and obligations in Section III (Products and Pricing) of the Product Purchase Agreement; Section IV (Confidentiality) of the Product Purchase Agreement; Section 6 (Limitation of Liability) of these Standard Terms and Conditions; Section 7 (Mutual Indemnification) of these Standard Terms and Conditions; Section 11 (Compliance with Applicable Laws) of these Standard Terms and Conditions; and Section 12 (Regulatory Matters) of these Standard Terms and Conditions. This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Colorado, without regard to the choice of laws principles thereof. The Parties agree that any legal action relating to this Agreement shall be commenced and maintained exclusively before any appropriate state court of record in Westminster, Colorado, or, if necessary, the United States District Court for the Northern District of Colorado, and the Parties hereby submit to the jurisdiction of such courts and waive any right to challenge or otherwise raise questions of personal jurisdiction or venue in any action commenced or maintained in such courts.