

EARLENS CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS

TERMS AND CONDITIONS

The following Earlens Purchase Order Terms and Conditions (“Terms”) only apply to transactions that do not have a written agreement, duly executed by both parties. If there is such an agreement, then those terms shall be the terms that govern the transaction and relationship of the parties. In the absence of such a written agreement, duly executed by both parties, then these Terms provide you (“Seller”) with the guidelines and legal stipulations of the purchase order issued to you (“Order”) by the Earlens Corporation (“Purchaser”) for the goods and/or services that are described on the face of the Order.

1. **Price.** Prices for Products shall be as indicated on the face of the applicable purchase order. If no price is indicated, Seller warrants that the prices charged for the Products do not exceed the price last paid Seller by Purchaser for comparable products unless Purchaser has consented in writing in advance to such price increases. Seller further represents to the best of its knowledge, information, and belief that the prices charged for items covered by this purchase order are not in excess of or less than prices permitted by applicable state, federal and local law or regulation. Seller agrees to refund any amounts paid by Purchaser in excess of lawful amounts.
2. **Changes - Purchase Order.** No changes in or additions to the terms of this purchase order shall be binding upon Purchaser unless approved by Purchaser in writing.
3. **Delivery and Shipping Instructions.** Seller shall pack Products in accordance with good commercial practice, acceptable to common carriers for shipment at the lowest rates for the particular goods. All goods shall be shipped F.O.B. the destination indicated on the face hereof (“Delivery Point”). No extra charge shall be made for packaging materials unless expressly authorized in this purchase order. All freight, insurance and other shipping expenses to the Delivery Point will be borne by Seller. Time is and shall remain of the essence in this purchase order. No partial or complete delivery will be made prior to the delivery date(s) indicated on the face hereof without Purchaser's prior written consent. Purchaser reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Purchaser's purchase orders or in advance of delivery dates specified, or to defer payment of advanced deliveries until scheduled delivery dates. Seller shall notify Purchaser immediately of any anticipated delay in Seller's performance under this purchase order.
4. **Risk of Loss.** Title and risk of loss to each Product shall remain with Seller until such Product is delivered to the Delivery Point.
5. **Payment.** Payment terms shall be net thirty (30) days from the date of an undisputed invoice if not otherwise specified on the face of this purchase order.
6. **Invoices.** Invoices shall accompany each delivery and shall: (a) be in duplicate with a bill of lading attached; (b) be postmarked on the date appearing on the invoice; (c) cover no more than one purchase order; and (d) display the purchase order number.
7. **Discounts.** Time in connection with any discount offered by Seller will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received. For the purposes of earning the discount, payment will be deemed to have been made on the date of dispatch of Purchaser's payment.
8. **Overshipments.** Purchaser will pay only for maximum quantities ordered. Overshipments will be held by Purchaser at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense.

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9. **Inspection and Acceptance.** Notwithstanding any prior inspection or payments, all Products will be subject to final inspection and acceptance within a reasonable period of time after receipt. Purchaser will have the right to reject, require correction, or accept with adjustment to price any Product that fails to conform to the warranty set forth in Section 13 below, or that is otherwise not in conformity with the requirements set forth in this purchase order. Purchaser may return rejected Products to Seller or hold rejected Products at Seller's risk and expense.

10. **Patents.** Seller warrants that to the best of its knowledge, the Products sold hereunder and the use of such Products do not infringe any United States or foreign patents, copyright, trademarks or trade secrets. Seller further agrees to indemnify and hold Purchaser harmless from and against any and all liability for patent infringement claims, suits or proceedings, including damages, costs and expenses arising from any suit against Purchaser alleging such infringement, provided Purchaser gives Seller prompt notice in writing of the institution of any such suit, reasonable assistance, and sole control of the defense and/or settlement thereof. Notwithstanding the foregoing, Seller will have no indemnity obligation under this Section 10 to the extent any Products sold hereunder are allegedly infringing as a result of Seller's compliance with specific written instructions of Purchaser.

11. **Trademarks.** Purchaser retains all right, title, and interest in and to any trademarks, trade names, names, or other identifying marks ("Trademarks") that Purchaser requires Seller to affix to the Products and Purchaser grants Seller the right to use the Trademarks solely for that purpose. Seller may not use such Trademarks on any products produced for itself or anyone other than Purchaser.

12. **Publicity.** Seller shall not disclose to third parties (including denial or confirmation thereof) the existence or terms of this purchase order without Purchaser's prior written consent. Seller further agrees not to advertise Products bearing Purchaser's name or the Trademarks, or demonstrate or display such Products at trade shows, to other Seller customers, or otherwise, without the prior written consent of Purchaser.

13. **Warranty.** Seller warrants that the Products (i) will be free from defects in materials, workmanship and fabrication, (ii) will be manufactured strictly in accordance with the specifications, designs, and drawings, if any, which are hereby incorporated by reference ("Specifications") and with any samples furnished by Seller and approved by Purchaser, (iii) will be suitable for the purpose(s) communicated to Seller by Purchaser, and (iv) All personnel involved in producing and shipping the purchased items shall be trained on all specifications for the Products provide by Purchaser ("Specifications"), and (v) Seller shall maintain and follow documented procedures that ensure Products meet all Specifications. The specifications will provide information regarding acceptance criteria, any applicable procedures, processes or equipment requirements. These warranties shall survive acceptance and payment, and shall run to Purchaser, its successors, assigns, customers, and the users of Purchaser's products. Seller shall replace or correct, at Purchaser's option and at Seller's cost, defects of any goods not conforming to these warranties. If Seller fails to correct defects in or replace nonconforming goods within ten (10) days from the date the Purchaser notifies Seller of the defect or defects, Purchaser may, on ten (10) days prior written notice to Seller, either (i) make such corrections or replace such goods and charge Seller for all costs incurred by Purchaser, or (ii) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's cost, for the return of the goods to Seller. All warranties of Seller herein or that are implied by law shall survive any inspection, delivery, acceptance, or payment by Purchaser. Any attempt by Seller to limit, disclaim, or restrict these warranties or any remedies of Purchaser, by acknowledgment or otherwise, in accepting or performing the Order, will be null, void, and ineffective without Purchaser's written consent.

14. **Out-of-Warranty Repairs.** Seller will repair out-of-warranty Products for Purchaser at Seller's standard rates then in effect for such services.

15. **Changes - Specifications.** Purchaser shall have the right by written order to make changes from time to time in the work to be performed or the Products to be furnished by Seller hereunder, provided that Purchaser

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requests such changes prior to the scheduled delivery date for the Products. If such changes materially increase or decrease Seller's obligations hereunder, the parties will negotiate in good faith an equitable adjustment to the purchase price. Any claim for adjustment must be asserted in writing by Seller within thirty (30) days from the date the change is ordered. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of its obligations hereunder as changed. In no event shall there be any changes to design, process, equipment, raw materials, or location without written approval from Purchaser. **Per Regulatory Requirements, Suppliers, Contractors and consultants AGREE to NOTIFY Earlens Corporation of any changes in the product or service provided so that Earlens Corporation may determine whether the changes may affect the quality of a finished device. Notwithstanding the foregoing, in no event shall Seller make any CHANGES to the products or services provided under this purchase order without prior notification to Earlens and Earlens' prior approval.**

16. **Cancellation.**

(a) **Cancellation for Cause.** Purchaser may cancel this purchase order, in whole or in part, without liability to Purchaser if, in Purchaser's good-faith opinion, Seller (i) has failed to make delivery of the items or to perform the services within the time specified herein, or any extension thereof by written change order or amendment; or (ii) has failed to replace or correct defective items in accordance with the provisions of Sections 9 and 13 above; or (iii) has failed to perform any of the other provisions of this purchase order as to endanger performance in accordance with its terms. If the purchase order is canceled for cause, Purchaser may procure, upon such terms and in such manner as Purchaser may deem appropriate, goods or services similar or substantially similar to those canceled. Seller will then be liable to Purchaser for any excess costs occasioned thereby. If all or a portion of this purchase order is canceled for cause, Purchaser may require Seller to transfer title and to deliver to Purchaser, in the manner and to the extent directed by Purchaser, (i) all completed items not yet delivered and (ii) any partially completed items and materials that Seller has produced or acquired for the performance of the terminated portion. Seller will, upon direction of Purchaser, protect and preserve the property listed in this Paragraph 16(a) that is in the possession of the Seller. Payment for completed items delivered to and accepted by Purchaser under this Paragraph 16(a) will be in an amount (not to exceed the contract price) agreed upon by Seller and Purchaser; however, Seller's obligation to carry out Purchaser's direction as to the delivery, protection, and preservation of such property will not be contingent upon prior agreement as to such amount.

(b) **Cancellation for Convenience.** Purchaser may cancel or reschedule this purchase order free of charge and in whole or in part, at any time for its convenience, by written notice to Seller prior to the scheduled delivery date. Seller shall submit, it being understood that Seller may submit cancellation claims with respect to Seller's non-cancelable third-party commitments as set forth in this paragraph below, within sixty (60) days after the effective date of the cancellation, and such claims shall be subject to equitable adjustment based on negotiation. Seller's failure to submit such claim within sixty (60) days will constitute waiver of all claims and a release of all Purchaser's liabilities. Purchaser shall have the right to reasonably audit all elements of any cancellation claim and Seller shall make available to Purchaser on request all books, records, and papers relating thereto for one (1) year from the date of cancellation.

(c) **Effect of Cancellation.** Any cancellation by Purchaser, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Purchaser against Seller. On receipt by Seller of Purchaser's notice of cancellation, Seller shall and to the extent specified in such notice, stop work hereunder and the placement of subcontracts, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Purchaser has or may acquire an interest. Upon cancellation of this purchase order, all rights and licenses granted hereunder shall terminate and Seller shall return Purchaser's Confidential Information as defined in

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Section 17 below. Nothing in this Section 16 is intended to excuse Seller from proceeding with any uncanceled portion of this purchase order.

(d) **Survival of Provisions.** The rights and obligations of the parties pursuant to Sections 12, 17, 19(c), 21, 23, and 26 shall survive the cancellation, termination or expiration of this purchase order for any reason.

17. **Confidentiality.** "Confidential Information" as used herein means (a) all information, drawings, sketches, processes trade secrets and written or oral descriptions relating to the manufacture of medical devices, (b) drawings, sketches and other material documents developed by Purchaser and Seller as a result of information provided by Purchaser, (c) market information and financial information, (d) material specifications in connection with product development and (e) all other information and documents concerning research, development, production and marketing of medical devices and equipment. Confidential Information shall also include all information supplied to Seller by Purchaser and marked "Confidential" or "Proprietary". Seller agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such Confidential Information revealed to it by Purchaser. Upon request by Seller, Purchaser shall advise whether or not it considers any particular information or materials to be confidential. Seller shall not publish any technical description of the Products beyond the description published by Purchaser. In the event of cancellation of this purchase order, there shall be no use or disclosure by Seller of any Confidential Information of Purchaser, and Seller shall not manufacture or have manufactured any devices, components or assemblies using any of Purchaser's Confidential Information.

18. **Proprietary Rights.** Purchaser shall retain all right, title, and interest in and to the designs, drawings, blueprints, patterns, dies, models, molds, tools, and other similar materials and all patents, copyrights and other proprietary rights thereto either (i) furnished to Seller by Purchaser or (ii) paid for by Purchaser in connection with this purchase order and specific to the Specifications and all right, title and interest in and to the Specifications (collectively, the "Manufacturing Materials"). To the extent that Seller would otherwise have any ownership interest in or to the Manufacturing Materials, Seller hereby assigns to Purchaser all right, title, and interest, including all patents, copyrights, and other proprietary rights, in and to the Manufacturing Materials. Seller agrees to execute such documents and take such other actions as Purchaser may reasonably request to evidence and perfect the foregoing assignments. Purchaser shall have the unrestricted right to exploit the Manufacturing Materials and all parts thereof.

19. **Tools and Materials.**

(a) Seller shall maintain a written record identifying Manufacturing Materials as the property of Purchaser. Seller shall hold Manufacturing Materials at Seller's risk and shall replace Manufacturing Materials if they are lost, damaged or destroyed. Seller shall maintain these materials in good condition at Seller's expense and insure Manufacturing Materials against loss, theft, and damage under a policy naming Purchaser as an additional insured.

(b) Manufacturing Materials shall be used exclusively in the production of Products for Purchaser and shall not be used for production of larger quantities than those specified herein, or in the production, manufacture or design of any products for any other entity without prior written consent of Purchaser.

(c) Manufacturing Materials shall be subject to disposition of Purchaser at any and all times. Upon Purchaser's request and at Purchaser's sole option, Seller shall return to Purchaser Manufacturing Materials and/or any unused material furnished by Purchaser and all spoiled or defective materials or products which contain any Confidential Information of Purchaser or shall destroy such Manufacturing Materials and other materials and certify their destruction in writing to Purchaser.

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(d) Nothing in this Section 19 shall be construed as imposing any obligation on Purchaser to furnish any Manufacturing Materials to Seller.

(e) Tangible or intangible property of any nature furnished to Seller by Purchaser or specifically paid for in whole or in part by Purchaser, and any replacements or attachments, are the property of Purchaser and, unless otherwise agreed in writing by Purchaser, will be used by Seller solely to render services or provide goods to Purchaser. Seller will not substitute any property or take any action inconsistent with Purchaser's ownership of such property. While in Seller's custody or control such property will be held at Seller's risk, will be kept insured by Seller at its expense for its replacement cost with loss payable to Purchaser, and will be subject to removal at Purchaser's written request, in which event Seller will prepare such property for shipment and redelivery to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.

20. **Compliance with Laws.** Seller shall manufacture and label Products in strict accordance with all applicable federal, state, local and other governmental laws, rules, orders, and regulations, including any and all health and safety laws and regulations ("Laws"). Seller shall be responsible for current and ongoing familiarity and compliance with all Laws applicable to the manufacture, sale, operation, and use of the Products. In addition, Seller shall monitor the appropriate information sources closely for changes in such Laws.

21. **Damages.** Purchaser's liability for breach of this purchase order shall not exceed the purchase price of the Products giving rise to the liability. IN NO EVENT SHALL PURCHASER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR PRODUCT LIABILITY, REGARDLESS OF WHETHER PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Indemnity.** Seller shall defend, indemnify, and hold harmless Purchaser, its officers, agents, employees, customers and users of the Products (collectively, the "Indemnitees"), from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any claims, suits, or proceedings alleging:

(a) any personal injury, death, or property damage under any theory of product liability (including, but not limited to, actions in tort (including negligence), contract, and strict liability) concerning any product, process or service made, used or sold by Seller or its subcontractors hereunder unless such claim, suit, or proceeding results directly from a design defect in Specifications furnished by Purchaser to Seller;

(b) the failure of Seller to timely deliver the Products;

(c) actions and proceedings brought by the federal government or any state or local government, or any agency or instrumentality thereof by reason of any claim or findings by said public authority that any Product is not as herein guaranteed and warranted.

23. **Insurance.**

(a) Seller shall procure and maintain comprehensive general liability insurance in amounts not less than \$1,000,000 per incident and \$2,000,000 annual aggregate and naming Indemnitees as

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additional insureds. Such comprehensive general liability insurance shall provide (a) product liability coverage and (b) broad form contractual liability coverage for Seller's indemnification under Section 22.

(b) Upon request, Seller shall provide Purchaser with a certificate of insurance certifying the existence of insurance coverage. Seller shall notify Purchaser at least fifteen (15) days prior to the cancellation, nonrenewal or material change in such insurance.

(c) Notwithstanding any provision of terms and conditions contained herein, if Seller does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, Purchaser shall have the right to cancel all pending purchase orders delivered to Seller hereunder immediately upon notice without incurring any liability to Purchaser whatsoever.

(d) Seller shall maintain such comprehensive general liability insurance during (i) the period that any Component (as defined below) is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Seller and (ii) a reasonable period after the period referred to in (i) above which in no event shall be less than three (3) years.

24. **Components.** The provisions of this Section 24 shall apply only to purchase orders for Components. For purposes of this purchase order, "Component" means any raw material, substance, piece, part, software, firmware, packaging, labeling, or assembly used during device manufacture or to be included as part of Purchaser's finished, packaged and labeled device.

24.1 **Good Manufacturing Practices.** Seller shall manufacture Components in accordance with Good Manufacturing Practices as defined in 21 C.F.R. Part 820 ("GMPs").

24.2 **Quality Assurance.**

(a) Seller agrees that Purchaser or a duly appointed representative of Purchaser shall, upon reasonable notice, have the right to visit Seller's manufacturing facility during normal business hours, and to conduct an audit of Seller's manufacturing records, incoming inspection records, quality assurance procedures, and the like to the same extent that a GMP audit is conducted by the FDA for the purpose of verifying that Seller is in compliance with the GMPs. Seller shall maintain a lot numbering system for all products supplied to Purchaser, which permits tracking of manufacturing periods, internal quality control records, and raw materials.

(b) Seller acknowledges that certain Product(s) may be incorporated into products which will be purchased by an agency or branch of the federal government. In the event the federal government requests an inspection by the FDA of the manufacturing facilities and records relative to the materials purchased hereunder, Seller hereby agrees that said inspection shall be permitted.

24.3 **Changes.** For purposes of this Section 24, "Change" means any change to a Component which would require a change to the Specifications (as defined in Section 13 above) for such Component or which may degrade quality or reliability.

24.4 **Notification and Approval.** Seller shall provide Purchaser with written notification of any proposed Change to a Component sixty (60) days prior to the date that Seller intends to implement such Change. Such notification shall be made in sufficient detail to allow Purchaser to determine the impact of such Change, if any, upon completed medical devices into which Purchaser intends to incorporate the Component. Seller agrees not to make any proposed Change to Components to be provided to Purchaser without the prior written approval of Purchaser.

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24.5 Seller's Suppliers. Upon Purchaser's request, Seller will secure a written agreement from Seller's suppliers of Components and providers of services provided in connection with Components which are incorporated or used by Seller in the Components sold to Purchaser. Such written agreement shall bind Seller's suppliers to Sections 20, 21, 22, 23 and 24 of this purchase order.

25. **Hazardous Materials.** If materials in this order are covered under provision of the OSHA Hazard Communication Standard (29 CFR 1901.1200), a Material Safety Data Sheet (MSDS) must be provided to Purchaser prior to shipment of the materials. Failure to comply could result in Purchaser being unable to accept delivery of materials.

26. **Miscellaneous Provisions.**

26.1 Governing Law and Jurisdiction. This purchase order shall be governed by and interpreted in accordance with the laws of the State of California without reference to conflicts of law principles. Any dispute arising out of this purchase order shall be brought in, and the parties consent to personal and exclusive jurisdiction of and venue in, the state and federal courts within San Mateo County, California.

26.2 Severability. In the event that any provision or provisions of this purchase order shall be held to be unenforceable, the parties shall renegotiate those provisions in good faith to be valid, enforceable substitute provisions which provisions shall reflect as closely as possible the intent of the original provisions of this purchase order. If the parties fail to negotiate a substitute provision, this purchase order will continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties.

26.3 Independent Contractors. The relationship of Purchaser and Seller hereunder is that of independent contractors and nothing contained herein will be construed (i) to give a party the power to direct or control the day-to-day activities of the other or (ii) to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common enterprise.

26.4 Force Majeure. Neither party shall be liable for damages for any delay arising out of Acts of God, flood, labor disputes, riots, wars or other causes beyond their reasonable control.

26.5 Assignment. Neither party may assign or delegate this purchase order or any of its licenses, rights or duties under this purchase order without the prior written consent of the other party, provided that Purchaser may assign this purchase order to a person or entity at any time if such assignment is considered necessary by Purchaser in connection with a sale of Purchaser's assets or a transfer of its obligations.

26.6 Waiver. The failure of either party to enforce at any time the provisions of this purchase order shall in no way be constituted to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

26.7 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, by messenger or by telecommunication, addressed to the other party at the addresses set forth on this purchase order or at such other address furnished with a notice in the manner set forth herein.

26.8 Entire Agreement. This purchase order, including the Specifications, constitutes the entire agreement between the parties and supersedes all previous agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof. This purchase order may be modified or amended only in a writing signed by the duly authorized representatives of both parties.

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26.9 Anti-Bribery. Seller shall not act in any fashion or take any action that will render Purchaser liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010), which prohibits the offering, giving, or promising to offer or give or receiving, directly or indirectly, money or anything of value to any third party to assist it, them or Purchaser in retaining or obtaining business or in procuring the goods or services.