

Appendix I
Direct Purchases
Terms and Conditions of Sale
Optimizer® System



1. SCOPE

These Terms and Conditions of Sale shall apply to all contractual relations between IMPULSE DYNAMICS (USA) INC. ("Impulse") and its Customer. This Terms and Conditions of Sale shall be integrated with a completed signed Purchase Order and collectively referenced as the "Agreement." The term "Agreement" contemplates and assumes Impulse's performance by shipping, or providing for purchase at the time of patient surgery, the ordered Products. Despite the term "Agreement," there shall not be an agreement to any Customer Order until Impulse ships, or provides for purchase of the Products.

By purchasing Impulse's Optimizer® System (the "Products") for implantable use in a Customer's Patient, Customer automatically agrees to be bound by these Terms and Conditions of Sale. The terms herein shall apply unless both parties specifically agree otherwise. Acceptance of the Customer's offer is further described in Section 3 below.

2. DEFINITIONS

- a. Agreement means these Terms and Conditions of Sale and any applicable Purchase Order.
- b. Customer means a Hospital or alternative provider located within the 50 United States and District of Columbia and to which Impulse has approval to sell Products pursuant to this Agreement. Customer shall not mean or apply to a Patient who has been implanted with the Optimizer® System.
- c. Order means a valid Purchase Order generated by Customer.
- d. Product means the unused Optimizer® System or any unused components of the Optimizer® System.

3. OFFER AND ACCEPTANCE

Impulse will be under no obligation until it has accepted the written Purchase Order. Customer's placement of an Order represents Customer's binding purchase offer. Impulse has the right to accept the Order within 5 days after receipt of the Order by shipping the Product identified in the Order to the Customer. Though Impulse has not accepted Customer's offer until the Product is shipped, Impulse agrees to notify the Customer as soon as reasonably possible if Impulse is not able or unwilling to accept the Order.

For purposes of tracking the Product, Impulse shall only accept written Orders and shall not accept oral offers from a potential Customer.

The written form requirement within the meaning of this Section 3 is satisfied by using electronic mail; any other form of telecommunication is not sufficient.

4. DELIVERY AND SHIPMENT

Deliveries will be made FOB Origin. Impulse delivery dates are nonbinding commercially reasonable estimates of actual delivery to the carrier and not to the actual delivery to the Customer's identified facility. Products shall be shipped and

delivered to Customer per Order requirement. Freight and handling charges will be prepaid by Impulse on behalf of Customer and may be subsequently invoiced in the Order.

In the event that Impulse is unable to supply the full quantity of Products identified in the Order, Impulse shall notify the Customer as soon as commercially reasonable. The Parties may work together to make arrangements to modify the quantity of Products ordered and whether Customer agrees to accept the remaining Products at a later time. Customer also retains the right to cancel the Order in full. Customer shall not incur any additional and unexpected shipping costs by accepting to take the remaining quantity of Products identified in the Order in a separate shipment.

Title and risk of loss passes to Customer upon Impulse's delivery of the Products to carrier.

Customer shall be responsible for maintaining the Products in a safe environment and in ambient temperatures.

5. TERMS OF PAYMENT

- a. Pricing. The prices as stated in the Purchase Order do not include the tax, if any. Customer shall be responsible for payment of all applicable state and local sales tax, use, and/or gross receipt tax resulting from transactions with Impulse regardless of legal liability for the tax. Customer shall also be responsible for maintaining current tax exemption documentation when applicable. Tax exemption certificates must be submitted to Impulse prior to placement of orders.
- b. Invoice. Products are invoiced after they have shipped or been provided for purchase according to the Products' respective Order. Payment must be remitted via bank transfer or check unless otherwise agreed upon by the parties.
- c. Payments. Payment terms are net 30 days from date of invoice ("Due Date"). Impulse must receive payment at the "Remit To" address listed on the invoice on or before the Due Date to be considered as received on time. Customer shall pay Impulse a service charge of 1% per month (12% per year) or the highest amount allowed by law, if lower, on all past due amounts. Additionally, Impulse reserves the right to require payment in advance of shipment.
- d. Disputes Regarding Invoices. All disputes regarding invoices, must be submitted in writing to Impulse within 30 days after the date of invoice. All disputes or rights are waived unless Customer's complaint has been filed within such time period. Only amounts that are disputed may be withheld from payment pending resolution. Any portion of an invoice not in dispute must be remitted by the Due Date unless otherwise agreed upon by the parties. Customer must dispute the charges in good faith. Failure to dispute the charges in good faith may result in Impulse adding service charges as specified in Section 5(c).

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The parties agree to work together in good faith to resolve the dispute. If the parties are unable to resolve the dispute, they shall choose a mutually agreed upon mediator located in the State of New York to attempt to resolve the dispute. The fees associated with mediation shall be split among the parties. If the parties cannot resolve the dispute with a mediator, then one of the parties may bring the dispute in a New York court of competent jurisdiction.

6. PRODUCT INSPECTION

The delivered Products shall be inspected immediately upon delivery to the Customer.

The Products are deemed accepted unless Impulse receives a complaint in writing, relating to nonconforming Products that would be recognized in an immediate, thorough inspection within 3 working days after delivery of the goods; or otherwise within 3 working days after discovery of the nonconformity or from the time in which such nonconformity could be recognized by the Customer in normal usage without closer inspection. If Customer timely notifies Impulse of any nonconforming Products, Impulse shall replace the nonconforming Product with conforming Product. The same will be at Impulse's cost and expenses, provided Impulse has found the Product to be nonconforming.

7. WARRANTY:

Impulse warrants that all Products will be free from defects in materials and workmanship and conform, in all material respects, with their specifications. Impulse warrants that all Products will be sold and delivered free from any security interest, lien or encumbrances, or claim of title hostile to the rights of Customer. Impulse warrants that Customer's purchase of the Products shall not constitute an act of infringement of a patent, copyright, or other intellectual property claim of any third party. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IMPULSE MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO THE CUSTOMER, INCLUDING WITHOUT LIMITATION ANY WARRANTY THAT A PRODUCT OR SERVICE IS MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE.]

8. IMPULSE RETURN POLICY

Products are returnable to Impulse that are discovered to be nonconforming after Customer's inspection as described in Section 6; withdrawn from market; recalled; or discontinued.

Upon receipt of a written request, returned Products will be accepted only with prior written authorization from Impulse and in accordance with such authorization. Items must be returned freight prepaid and accompanied by Impulse's Returned Materials Authorization form. Contact Impulse Customer Service for return material authorization form.

If Impulse discovers that it is infringing a third-party's Intellectual Property or upon a credible accusation of infringement, Impulse may request in writing that Customer return all Products for a full refund and all shipping expenses shall be paid by Impulse.

9. CONFIDENTIALITY

All non-public, confidential or proprietary information of either Party, including, but not limited to, product pricing, discounts or rebates, disclosed by either Party, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Impulse in writing. Upon the disclosing Party's request, the receiving Party shall promptly return all documents and other materials received. The disclosing Party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure without obligation of confidentiality; or (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL IMPULSE BE LIABLE TO CUSTOMER OR TO ANY OTHER THIRD PERSON OR ENTITY (a) FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY OR GOODWILL, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING DAMAGES, ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR (b) FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT IMPULSE'S PRIOR WRITTEN CONSENT, EVEN THOUGH IMPULSE HAS BEEN FOUND TO BE NEGLIGENT OR STRICTLY LIABLE, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY WITH THE EXCEPTION OF WILLFUL OR GROSSLY NEGLIGENT ACTS. IN NO EVENT SHALL IMPULSE'S LIABILITY UNDER ANY CLAIM MADE BY CUSTOMER OR ANY OTHER THIRD PARTY EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

11. DISCOUNTS

Customer and Impulse intend that these Terms and Conditions of Sale shall be administered in accordance with the provisions of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) ("AKS") and the Physician Self-Referral Law, 42 U.S.C § 1395nn and applicable state laws. In contemplation of such federal and state laws, Impulse shall not be providing any discounts or rebates to Customer associates with Impulse's Products without additional due diligence to assess whether a discount or rebate is in contravention of the aforementioned laws and then a written mutual agreement between the parties that is accompanied by a legal counsel opinion.

12. EXCLUSION

Each Party hereby represents and warrants to the other Party that it and any of its employees or agents who provide services under this Agreement: (a) are not currently excluded,

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debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal health care programs"), (b) are not convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs, and (c) are not under investigation or otherwise aware of any circumstances which may result in the party or any of its employees or agents providing services under this Agreement being excluded from participation in the Federal health care programs. The representations and warranties in this Section shall be ongoing during the Term of this Agreement and each Party shall immediately notify the other party of any change in the status of the representation and warranty set forth in this Section.

13. FORCE MAJEURE

Impulse shall not be liable for any delay (whether material or not) in or failure of shipment or delivery or other duties hereunder due to any event of force majeure, including, without limitation, acts of God, any governmental body (de jure or de facto) or public enemy, riots, embargoes, strikes or other concerted acts of workmen (whether of Impulse or others), casualties or accidents, deliveries or transportation and shortages of cars, fuel, power, labor or materials, or any other causes beyond Impulse's control, which prevent or hinder the design, manufacture or delivery of Products (without regard to the availability of the Products in the market) or the performance by Impulse of any of its obligations hereunder. Impulse may allocate its available supply among itself and its Customers in a manner determined by Impulse in its sole discretion.

14. INDEMNIFICATION

Customer agrees to hold Impulse and its employees, officers, directors, agents, successors and assigns harmless from and against any and all losses, claims and damages (including reasonable fees and expenses of counsel), as they are incurred, which arise out of or are related to any claim by a third party due to personal injury or other loss to the third party caused by Customer's negligence or that of its employees, agents, or assigns. This provision shall survive expiration or termination of this Agreement.

15. GOVERNING LAW AND JURISDICTION

This Agreement, and the rights and obligations of the Parties under this Agreement, will be governed by and interpreted in accordance with the laws of the State of New York. Any action arising out of or related to this Agreement shall be brought in, and have as its proper venue, the state or federal courts located in New York (without giving effect to its conflicts of laws rules).

16. SURVIVAL

All terms of this Terms and Conditions of Sale which either expressly or by their nature shall survive for 5 years after the parties' business relationship ends with the exception of Section 9 (Confidentiality) and terms addressing trade secrets. Section 9 (Confidentiality) shall survive for 10 years after the

parties business relationship ends. All terms addressing trade secret information shall survive in perpetuity.

17. TERMINATION

Impulse may terminate an order or a sale, and its obligations to Customer at any time immediately upon written notice to Customer if Customer fails to pay Impulse. when due any amount it owes Impulse. or otherwise breaches these Terms and Conditions. Termination or expiration of this Agreement shall not affect Customer's obligation to pay Impulse all amounts it owes Impulse (including interest and attorneys' fees) nor shall it affect any provision intended to survive expiration or termination.

18. SEVERABILITY

If for any reason any provision of these General Terms and Conditions shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it otherwise applies, the validity of the remainder of the Agreement shall not be affected and the offending provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law, and, in its modified form, the provision shall then be enforceable and enforced.

19. AMENDMENTS

Any modification or amendment to these General Terms and Conditions must be mutually agreed by Impulse and Customer in writing.

20. NOTICES

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Purchase Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or electronic mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 20.

21. AUTHORITY

The Customer representative executing this Agreement on behalf the Customer represents that he/she is duly authorized to execute and deliver this Agreement on behalf of the Customer by an appropriate resolution of its Board of Directors, its bylaws, its partners, its agreement of partnership, and/or its operating agreement, as appropriate, and this Agreement, owe it is so executed and delivered, will be binding upon and enforceable against the Customer strictly in accordance with its provisions.

22. ENTIRE AGREEMENT

These Terms and Conditions of Sale and the signed and completed Order constitute the entire and final agreement

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between Impulse and Customer with respect to its subject matter, and they cancel and supersede all prior arrangements, or understanding between Impulse and Customer with respect to the Product's lot number ordered by Customer and shipped by Impulse as part of this specific Order.

23. GENERAL

Customer is solely responsible for obtaining all required regulatory or governmental approvals for the use of the purchased Product or any part thereof, and undertakes to comply with all material provisions of any applicable laws, regulations and orders on the commodities, technical data and software to the extent such apply on the purchase by Customer of the Products from Impulse.

24. MODIFICATION AND LEGAL COMPLIANCE

Customer shall not modify or alter the products in any way without the prior written approval of Impulse.