STANDARD TERMS AND CONDITIONS

BY ACCEPTING THE PURCHASE ORDER, OR PERFORMING THEREUNDER, SELLER AGREES TO COMPLY FULLY WITH THESE STANDARD TERMS AND CONDITIONS. ACCEPTANCE OF GOODS OR SERVICES BY STOWERS INSTITUTE FOR MEDICAL RESEARCH ("BUYER") IS EXPRESSLY LIMITED TO THE TERMS OF THE PURCHASE ORDER, THESE STANDARD TERMS AND CONDITIONS, AND ANY ADDITIONAL TERMS AND CONDITIONS REFERENCED THEREIN, AND NONE OF SELLER’S TERMS AND CONDITIONS WILL APPLY IN ACKNOWLEDGING OR ACCEPTING THE PURCHASE ORDER. ACCEPTANCE BY BUYER OF GOODS OR SERVICES WILL NOT CONSTITUTE AGREEMENT TO SELLER’S TERMS OR CONDITIONS.

1. AGREEMENT. Seller agrees to provide the goods ("Goods") or perform the services ("Services") described in the purchase order ("Purchase Order") in accordance with the Purchase Order, these Standard Terms and Conditions, and any Additional Terms and Conditions referenced therein (collectively, "Agreement"). These Standard Terms and Conditions and those Additional Terms and Conditions, if any, will control over any inconsistent term or condition contained in the Purchase Order.

2. GOODS. In the event Goods are to be delivered to Buyer, the following terms and conditions will apply:

(a) DELIVERY. Deliveries of the Goods are to be made pursuant to and to the place specified in the Purchase Order. In the event Seller fails to deliver the Goods within the time specified, Buyer, without limiting its other rights or remedies, may either direct expedited routing or charge the excess costs incurred thereby to Seller or terminate all or part of this Agreement. Goods which are delivered in advance of schedule are delivered at the risk of Seller. Final acceptance by Buyer, at Buyer’s option, be returned to Seller at Seller’s expense for proper delivery or have payment withheld by Buyer until the date that the Goods are actually scheduled for delivery. Seller will package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Buyer’s count will be accepted as final and conclusive on all shipments not accompanied by a packing list. On any discrepancy in counts where a packing list is enclosed, an equitable adjustment will be made between Buyer and Seller.

(b) INSPECTION. Buyer will have the right to inspect the Goods and to reject any or all of the Goods, at Buyer’s option and at no additional cost to Buyer, if the Goods are rejected and Goods supplied in excess of quantities called for in the Purchase Order may be returned to Seller at Seller’s expense. In addition, Buyer may charge Seller all expenses, charges and costs of unpacking, examining, repackaging and shipping those Goods. If the Goods are ordered are destroyed prior to title passing to Buyer, Buyer may at its option terminate this Agreement or require delivery of substitute Goods of equal quality and quantity. The delivery will be made as soon as commercially practicable. If loss of the Goods is partial, Buyer will have the right to require delivery of the Goods not destroyed.

(c) LICENSE. In the event the Goods provided include software programs or intellectual property that are not otherwise licensed to Buyer pursuant to a separate agreement, Seller hereby grants a perpetual, irrevocable, royalty-free, non-exclusive license to use the software programs or intellectual property set forth in the Purchase Order and any documentation provided therewith. Buyer may reproduce any documentation provided hereunder, in order to satisfy its own internal requirements provided that the reproduction will be solely for Buyer’s use and will contain appropriate proprietary and copyright notices. Under no circumstances may Buyer modify, decompile or reverse assemble any executable code contained within the software programs.

(d) WARRANTY SERVICE. In addition to its warranty service with respect to the Goods, Seller agrees to provide warranty service with respect to the Goods in accordance with this section. The warranty service will include parts, labor and travel for on-site visits. Seller will commence all on-site repair within three (3) business days of notification by Buyer. Seller agrees to extend the longer of Seller’s warranty and the warranty provided hereunder by one calendar quarter for every ten (10) days the Goods are inoperable, in Buyer’s sole determination, during the warranty period. Buyer will provide documentation to Seller of inoperability if requested by Seller in writing. If Seller makes three (3) service trips for the same covered warranty repair during any ninety (90) day period, Buyer may request a replacement of any parts or components of the Goods to which the defect is or may be attributable. Seller will provide complete warranty documentation prior to acceptance for any part not covered by Seller’s warranty and Seller agrees to provide assistance, without additional cost to Buyer, to obtain any technical or warranty relief for any parts not manufactured by Seller.

3. SERVICES. In the event Services are performed by Seller, the following terms and conditions will apply:

(a) REIMBURSEMENT OF EXPENSES. Unless otherwise stated in the Purchase Order, Buyer will not be obligated to reimburse Seller for any expense, charge or cost incurred by Seller in furtherance of its performance of the Services.

(b) INVOICES. Seller will submit to Buyer invoices for the Services rendered on a periodic basis as set forth in the Purchase Order. If the Purchase Order does not provide for a schedule for the submission of invoices by Seller, invoices will be submitted monthly. The invoices will describe the Services rendered and will list all reimbursable expenses, charges and costs. Approving documentation or supporting thereof will be attached with those invoices. Buyer will pay all invoices within thirty (30) days of its receipt of properly completed and undisputed invoices.

(c) INSURANCE. Upon request of Buyer, Seller will furnish an Insurance Carrier’s Certificate of Insurance providing the following coverage: General Liability and Automobile Public Liability insurance coverage with limits satisfactory to Buyer.

(d) INDEPENDENT CONTRACTOR. Seller is an independent contractor under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between Seller and Buyer. Neither party will have the authority to enter into agreements of any kind on behalf of the other party and will have no power or authority to bind or obligate the other party in any manner to any third party.

4. EQUIPMENT. In addition to the terms and conditions set forth in Section 2, the following terms and conditions apply to any and all non-expendable, tangible Goods having a useful life of more than one (1) year, including any machinery, scientific instruments or other apparatus that may be used repeatedly without material impairment of its condition ("Equipment").

(a) ACCEPTANCE. After delivery to Buyer and upon completion and installation of the Equipment, operational data will be taken, documented and presented to Buyer by Seller prior to acceptance and first utilization. At Buyer’s option, acceptance testing may be performed to verify the specifications and operation of the Equipment. If the Equipment does not pass acceptance testing, Seller has the right to review the method of testing and may take exception to any test methodology in dispute. Final resolution of compliance with specifications and operation must be made before final acceptance by Buyer. Payment will not be made until acceptance by Buyer.

(b) OPERATIONAL AND TECHNICAL SERVICE MANUALS. Seller will deliver two complete sets of operators manuals and two complete sets of technical service manuals with the Equipment at no additional charge to Buyer. The manuals must include components and repair parts listings and current list prices, associated catalog numbers, electrical schematics drawings for all Equipment supplied, including accessories. The schematic drawings will indicate completely and accurately the "as installed conditions." Manuals, listings and schematics will be kept current by Seller throughout the life of the Equipment.

(c) COMPONENT AVAILABILITY AND PRICING GUARANTEE. All Equipment components will be offered to Buyer at a fifteen (15%) discount from the then-current list price for the Equipment to be provided by Seller. All components are guaranteed to be available to Buyer from Seller for a period of ten (10) years from the date of purchase. In the event components are unavailable to Buyer during that ten year period and Seller is unable to replace the component to complete the Equipment to specifications, Buyer will either purchase the Equipment at a discount of forty percent (40%) off of Seller’s list price.

(d) INSTALLATION SCHEDULE. In the event Seller is to install the Equipment as set forth in the Purchase Order and upon completion of site preparation and delivery of the Equipment, installation will be performed by Seller according to the schedule set forth in the Purchase Order. Failure to meet the installation date, through no fault of Buyer, will result in a deduction of one percent (1%) of the purchase price for each period of five (5) business days until completion and acceptance. In the event that blueprints are required as a part of the installation, two final copies of the system blueprints will be provided. Any change or modification to the original plans will be highlighted and signed by parties authorized to perform such changes. If Buyer is responsible for providing blueprints, then a comparable piece of Equipment at a discount of forty percent (40%) off of Seller’s list price.

(e) SITE AND UTILITY MODIFICATIONS. Seller must provide Buyer advance written notice of any site or utility modifications necessary for the installation of any Equipment prior to execution of the Purchase Order. Seller will provide detailed mechanical, electrical, environmental and other engineering or infrastructure improvements necessary for the installation of the Equipment. When identified by Seller, any modification will be performed by Buyer or a contractor of Buyer’s choice prior to delivery. Modifications required by Seller and not specified before the Equipment order is placed will entitle Buyer to either cancel the Purchase Order or delay or adjust the payment for Equipment, at no cost, until Buyer can effect any necessary modification. If a site visit is necessary to determine if modifications are necessary, all those expenses will be the responsibility of Seller.

(f) TRAINING. Seller will provide comprehensive training for a minimum of two (2) users within two (2) weeks of installation of the Equipment. Seller will provide that training at no charge to Buyer, and whenever possible, at the site where the Equipment is installed. Seller will cover all expenses of travel and will be solely responsible for any training or certification required by federal, state or local regulations. Seller will provide manuals and other necessary training materials for trainees at no cost to Buyer. Upon installation of enhancements or upgrades at any time during the life of the Equipment, Seller will provide training to Buyer as outlined above.

(g) NEW MODELS OR ENHANCEMENTS PRIOR TO DELIVERY. It is the intent of Buyer to procure "state of the art" equipment. Introduction of new models of Equipment and accessories may occur after acceptance of the Purchase Order. Seller may, in its discretion, choose to modify any Purchase Order prior to shipment in order to obtain the latest model or accessories in production by Seller or Seller’s manufacturer. Seller agrees to submit new Equipment, accessory and modification arrangements immediately upon release for Buyer’s evaluation. Any additions, modifications, releases and upgrades developed or available for use after the date of the Purchase Order and prior to shipment will be provided to Buyer, at Buyer’s option and at no additional cost to Buyer.

5. EQUIPMENT SUPPORT. In addition to the terms and conditions set forth in Section 3, the following terms and conditions will apply to the maintenance and warranty arrangement set forth in the Purchase Order in connection with the provision of Equipment by Seller ("Equipment Support Obligation")

(a) SCHEDULED MAINTENANCE. Seller will provide regularly scheduled preventive maintenance services in accordance with the Equipment Support Obligation.

(b) REPAIR SERVICE. Seller will provide repair services to maintain the Equipment in accordance with the manufacturer’s specifications as requested by Buyer. Seller may reasonably refuse to repair parts or conduct testing, but Seller agrees this does not relieve Seller of any contractual duty or requirement. If the Equipment cannot be returned to manufacturer’s specifications within one (1) calendar week of Buyer’s first service call, then a comparable piece of replacement Equipment, acceptable to Buyer, will be provided by Seller free of charge until
appropriate repairs to the original Equipment can be made. In the event the replacement Equipment cannot be provided, the duration of the Equipment Support Obligation will automatically be extended, at no cost to Buyer, by one (1) calendar month.

(d) DOCUMENTATION. Seller will provide Buyer with complete, accurate and up-to-date preventative maintenance records and all repair records as specified in the Purchase Order or otherwise reasonably requested by Buyer.

12. GENERAL PROVISIONS.

(a) BINDING NATURE OF AGREEMENT. All the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors, permitted assigns, heirs and personal representatives. It is not the intention of the parties to confer third party beneficiary rights upon any other third party.

(b) NO EXCLUSIVE AGREEMENT. Buyer is free to purchase from others goods and services the same or similar to those of Goods and Services.

(c) ASSIGNMENT. Seller may not assign, delegate or transfer to any third party any of its rights or obligations hereunder without the prior written consent of Buyer.

(d) GOVERNING LAW; VENUE. This Agreement will be governed by and will be construed, interpreted, and enforced by the laws of the State of California, without reference to principles of conflicts of law. All disputes arising out of or relating to this Agreement, or the breach or default of this Agreement, will be determined solely by a state or federal trial court located in Jackson County, Missouri, and the parties hereby consent to the jurisdiction of those courts.

(e) SURVIVAL. Upon any termination of this Agreement, any and all rights and obligations of the parties under this Agreement will terminate; provided, however that Sections 2(d), 2(e), 2(f), 7, 8, 9, and 10, all rights, obligations or liabilities accrued under this Agreement prior to termination of this Agreement, and any other right, obligation or liability which by its nature or expresion is intended to extend beyond the termination of this Agreement and which continue in effect indefinitely or for that express duration. The provisions of this Agreement which do not survive termination of this Agreement will nonetheless be controlling on, and will be used in construing and interpreting the rights and obligations of the parties under this Agreement, in any dispute, controversy or claim which may arise out of, in connection with, or relating to this Agreement. Upon termination of this Agreement for any reason, Buyer will be entitled to a pro-rata refund of any pre-paid fees, costs or expenses.

(f) NOTICES. All notices, demands, or other communications given under this Agreement will be in writing and will be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by fax or email, to Seller at the address and to the attention of the contact person furnished by Buyer, or to Purchasing Dept. ___/__. Seller will provide recall alert monitoring and agrees to notify Buyer in writing a recall alert. If the recall alert represents a safety issue and the Equipment is required to be removed for automation, Buyer will automatically be extended, at no cost to Buyer, by one (1) calendar quarter for every calendar quarter.

(g) ENTIRE AGREEMENT. All the terms and provisions of this Agreement including relating to the performance or breach hereof, even if a party has been advised of the possibility thereof.

10. CONFIDENTIALITY. The parties may acquire knowledge of Confidential Information (as defined below) in the performance of this Agreement. Each party agrees to maintain all Confidential Information, which in no event will be less than safeguards a reasonably prudent business would exercise in similar circumstances, and further agrees to take all reasonable precautions to prevent such disclosure, including in connection with this Agreement, any breach or non-disclosure of, or any unauthorized use. Confidential Information will remain the sole property of the disclosing party. "Confidential Information" means any information regarding research, development, trade secrets, business methods, processes and plans, financial information, personnel information, information relating to or dealing with a party's business, operations or activities. Upon termination or expiration of this Agreement, each party will, without delay, return and/or destroy, at no cost to the disclosing party, all Confidential Information. No party will use the name or any other Confidential Information in any publicity release, advertising or promotional activity without the prior written consent of the other party.

11. PROHIBITED PAYMENTS. (a) Seller acknowledges and understands that directors, officers, scientists, staff members, and other persons associated with Buyer (e.g., fellows, interns, visiting scientists) who will receive payments from the Purchasing Dept. in excess of $500 per year for any one occasion, will be required to fill out a conflict of interest form which requires that each of those persons adhere to the laws, rules, regulations and policies of applicable governmental and institutional authorities and avoid any direct or indirect interest, financial or otherwise, that is in conflict with Buyer's policies and procedures. Buyer's policy prohibits any employee or any other person from printing, saving or otherwise storing electronic records sent or otherwise made available to the person by electronic means, including the confidentiality of electronic, of electronic, internet and electronic signatures, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or electronic records are to be in writing or another form, and to be bound by that form. Each of the parties agrees that any expense in connection with business electronically, and will undertake all steps necessary, including software, hardware and other equipment upgrades and purchases, in order to be able to conduct business electronically.
(n) CONSTRUCTION. The terms "include," "including" and similar terms will be construed as if followed by the phrase "without being limited to." The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement. Unless otherwise expressly stated, the term "party" means a party hereto and "parties" means, collectively, all parties hereto, and all references herein to sections will be construed to refer to sections of these Standard Terms and Conditions. The headings of this Agreement are for purposes of reference only and will not limit or otherwise affect the meaning hereof.