

Online Material
FORM FOR REFERENCE

Purchase and Sale Agreement

This purchase and sale agreement is entered into at _____ on this the _____ day of Two Thousand and _____ (dd/mm/yyyy),

BETWEEN:

Dr. _____
Age _____
Father's name _____
Address _____

hereinafter referred to as the "BUYER"

AND:

M/s. _____ (Name of Company)
a company incorporated under the Companies Act, 1956
having its registered office at:
a registered partnership firm having its registered office at:
address _____
represented by its director/partner Mr. _____
(hereinafter referred to as the "COMPANY/FIRM"),

WHEREAS, Company is in the business of selling and servicing _____ equipment and the company has offered to sell to the buyer _____ under quotation dated _____, bearing number _____.

WHEREAS, the buyer relying on the representations of the company and the aforesaid quotation has agreed to purchase

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the parties to this Agreement, under seal, as follows:

1. **Sale of Equipment.** Company hereby sells to Buyer and Buyer hereby purchases from Company the equipment described in **Exhibit A** attached hereto and incorporated herein, and licenses the software contained therein (hereinafter "EQUIPMENT"). Such Equipment shall be shipped FOB Installation Site (as hereinafter defined in Paragraph 6), freight pre-paid and absorbed by Company.
2. **Purchase Price.** Buyer shall pay to Company for the Equipment and for all obligations specified herein, as full and complete consideration thereof, the sum of _____ (Rs _____) (hereinafter "PURCHASE PRICE").
3. **Payment.** Payment of the Purchase Price shall be made by Buyer to Company in accordance with the following schedule:
 - 3.1. _____ Percent (%) of the Purchase Price upon execution of this Agreement;
 - 3.2. _____ Percent (%) of the Purchase Price within _____ days after Delivery and installation of the Equipment (as defined in Paragraph 7 of the Agreement); and

All invoices submitted to Buyer by Company shall list the items of Equipment purchased thereunder in the same sequence used in Buyer's Purchase Order for such Equipment. Buyer's Purchase Order Number shall appear on all invoices submitted to Buyer hereunder.

4. **Taxes.** Any applicable statutory taxes and import custom duty has been included in the aforesaid quotation.
5. **Site Evaluation.** At no cost or expense to Buyer, Company shall inspect the site at which the equipment is to be installed and additionally furnish to the Buyer with site preparation report, which shall include, but not be limited to, power, air conditioning, and operational considerations with respect to the Equipment. Company's personnel shall coordinate their activities with and avoid interference with Buyer's employees and construction contractors working to prepare the Installation Site (as hereinafter defined) for receipt of the Equipment. A pre-installation instruction manual will be provided to Buyer by Company upon request (optional).
6. **Site Preparation.** Buyer shall be responsible for preparing the site suitable for the installation and operation of the Equipment (hereinafter "Installation Site").

7. **Delivery.** Delivery of the Equipment to Buyer by Company, at Company's sole cost and expense, shall be made within _____ after receipt of a purchase order from the Buyer. (hereinafter "Delivery Date"). The Equipment shall be packaged appropriately and all cartons shall be clearly stamped with Buyer's Purchase Order Number. Buyer must be able to identify easily all items of the Equipment contained within each carton. Delivery of the Equipment in an undamaged condition to Buyer's Installation Site shall constitute "Delivery" to Buyer. Risk of loss during transit shall remain with Company.

A packing slip indicating each item and item quantity shipped shall accompany every shipment. The packing list shall be attached to the exterior of one of the containers in each shipment in a conspicuous manner.

The purchase order number must also appear on all packing slips, invoices and correspondence.

All items "not found" shall be noted and the anticipated availability of the items shall be indicated clearly on the packing list. No substitutions shall be made without prior authorization by Buyer's Corporate Purchasing.

8. **Installation.** Company shall install the Equipment at the Installation Site in accordance with the installation schedule set forth in Exhibit B attached hereto and incorporated herein (the "Installation Schedule"), and connect the same to the safety switches or electrical outlets to be provided and installed by Buyer. Company shall be responsible for all costs associated with delivery and installation of the Equipment. Time is of the essence to this Agreement.
9. **Testing and Certification.** Upon completion of installation of the Equipment, Company shall perform prescribed tests to determine that the Equipment is operating in conformance with Company's published performance specifications for the Equipment and any other requirements agreed to by the parties (hereinafter "Specifications"), a copy of which are attached hereto and incorporated herein as Exhibit C. When Company is satisfied that the Equipment is operating in conformance with the Specifications, Company shall produce, document and present to Buyer operational verification data (hereinafter "Equipment Turnover").
10. **Acceptance.** "Acceptance" of the Equipment shall be deemed to occur on the date when, in the reasonable opinion of Buyer, the Equipment conforms to the Specifications, and has been installed at the installation Site and has been tested and certified as above.

Two (2) copies of operator and service instruction manuals are to be provided to Buyer by Company.

11. **Training.** Prior to Acceptance of the Equipment or at such other time as the parties may mutually agree, Company shall provide, at no cost or expense to Buyer, training in operation of the Equipment for employees designated by Buyer. Such training is described on **Exhibit D** attached hereto and incorporated herein.
12. **Software.** Company hereby grants to Buyer a LIMITED, NONEXCLUSIVE LICENSE and/or SUBLICENSE (hereinafter "License") to use the software identified in **Exhibit A** hereof (hereinafter "Software") in connection with the sale of Equipment.

12.1 **License Fee.** Any charge for the License is included in the Purchase Price set forth in this Agreement.

12.2 **Updates.** During the Warranty Period, or for as long as Buyer purchases any maintenance support services from Company, Company shall provide to Buyer, without additional charge, any and all routine Software changes and updates intended to provide general improvements to the performance of the Equipment that are announced by Company or that are required to comply with applicable federal statutes and regulations.

12.3. **Term.** This License shall commence upon delivery of the Equipment to the Buyer and shall continue for as long as Buyer retains full legal right and title to operate the Equipment.

13. **Equipment Warranty.** The warranty provided to Buyer by Company with respect to the Equipment is set forth in Exhibit E attached hereto and incorporated herein. The warranty period shall commence upon Acceptance of the Equipment.

14. **Patents and Copyrights.** Company warrants that it owns the Equipment, Software, and Documentation and that it has the rights in the Equipment, Software and Documentation granted hereby. Company further warrants that the Equipment, Software and Documentation shall be delivered free of any rightful claim of any third party for infringement of any patent, copyright, trade secret, or other intellectual property right. Company shall indemnify and hold harmless Buyer and its subsidiaries or affiliates under its control, and their trustees, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including legal fees and expenses) arising out of or related to any claim that Buyer's use or possession of the Equipment, Software or Documentation pursuant to and for the purposes set forth in this Agreement, or the license granted hereunder, infringes or violates any patent, copyright, trade secret, or other proprietary right of any third party. Company shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Buyer gives Company notice of any such claim of which it learns. No such settlement which prevents Buyer from continuing to use the Equipment and Software as provided herein shall be made without the Buyer's prior written consent. In all events, Buyer shall, at its own cost and expense, have the right to participate

in the defense of any such suit or proceeding through counsel of its own choosing. In case the Equipment, Software or Documentation, or any part thereof, are held to constitute such an infringement and the use for the purpose intended of said Equipment or Software is enjoined, then Company shall, at Buyer's option, and at Company's expense, either procure for Buyer the right to continue using same, or replace same with a non-infringing Equipment, or modify same so it becomes non-infringing, or remove the Equipment and refund the total purchase price for the Equipment.

15. Indemnification.

15.1. Company shall indemnify and hold Buyer its trustees, officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against Buyer that the Equipment has caused damage to property or bodily injury (including death); or (ii) the acts or omissions of the Company, its agents or employees in connection with this Agreement; or (iii) any defects in any Equipment supplied by the Company; or (iv) any breach or default in the performance of the obligations of Company hereunder including any breach of warranty. Company's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the negligence or misconduct of Buyer.

15.2. The invalidity, in whole or in part, of any of the foregoing paragraph will not affect the remainder of such paragraph.

16. Default by Company. Upon the occurrence of any of the following events, and except as is otherwise provided for in this Agreement, Company shall be deemed to be in default under this Agreement if:

16.1. The scheduled performance dates, including the Delivery Date and Installation Schedule, shall be exceeded by more than thirty (30) days; or

16.2. Company fails or defaults in the performance of any material obligation or covenant under this Agreement and does not correct or substantially cure such failure, default, or breach within thirty (30) days from and after Company's receipt of written notice from Buyer of such default or breach; or

16.3. Any material representation or warranty made by Company hereunder is breached and remains uncured from and after thirty (30) days following Company's receipt of written notice from Buyer of such breach.

If any event of default occurs and is not cured within any applicable period specified above, Buyer, at its sole option, may employ any remedy then available to it, whether at law or in equity, including, but not limited to, the following:

i. Proceed by appropriate court action to enforce performance by Company of the applicable covenants and obligations of this Agreement and to recover damages for the breach thereof, and/or to enforce the indemnification set forth in Paragraph 15 hereof; or

ii. Terminate this Agreement as to all or any part as Buyer in its sole discretion may determine; or

iii. Pursue any other rights or remedies available to Buyer under the laws of the state.

17. Default by Buyer. Default by Buyer in payment (except in the case of a bona fide dispute) or performance of any material duty or obligation under this Agreement, shall, at the sole option of Company, if the default is not cured within thirty (30) days from and after Buyer's receipt of written notice from Company of the default, constitute a default of this Agreement. In such an event, Company, at its sole option, may employ any remedy then available to it, whether at law or in equity, including, but not limited, to the following:

17.1. Withhold performance or further performance hereunder until all such defaults have been cured, provided, however, that Company shall continue to perform hereunder in the event of a bona fide payment dispute, which has been communicated to Company; or

17.2 Pursue any other rights and remedies available to Company under the laws of India.

18. General.

18.1. Compliance with Laws. Company shall perform this Agreement in compliance with all applicable statutes and local laws, rules, regulations, and ordinances, and represents that it shall have obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under this Agreement. Company hereby represents and warrants that all Equipment to be provided to Buyer hereunder has received clearance and/or approval, and that copies of the clearance/approval documentation issued to Company, if any, will be provided to Buyer upon Buyer's request.

18.2 Confidentiality. The parties shall hold in strictest confidence any information and material which is related to either Buyer's or Company's business or is designated by either Buyer or Company as proprietary and confidential, herein or otherwise. It is understood that this confidentiality clause does not include information which: (i) is now or

hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding, which the parties in all cases will attempt to obtain. Buyer and Company hereby covenant that each shall not disclose such information to any third party without prior written authorisation of the other. Company further covenants not to disclose or otherwise make known to any party nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement in which the name of Buyer or any of its affiliates is mentioned or used, directly or indirectly, unless prior written consent is granted by Buyer.

To the extent that Company receives confidential patient information from Buyer, Company covenants that it will protect such information.

18.3. Notices. All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by registered post acknowledgement due. All notices or communications between Buyer and Company pertaining to this Agreement shall be addressed as follows:

If to Buyer: _____
Attention: _____ (Name of doctor and address)

If to Company: _____
Attention: _____

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein.

18.4. Waiver. Any waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

18.5. Modifications. No revision or modification of this Agreement shall be effective unless in writing and executed by authorised representative of both parties.

18.6. Assignment. The prior written approval of Buyer shall be required to allow a delegation or assignment of duty to perform any obligation owed to Buyer by Company, its agents, employees, contractors or affiliates.

18.7. Severability. If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

18.8. Construction and Jurisdiction. This Agreement shall be governed by the laws of India. Each of the parties to this Agreement hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of _____ for any proceeding arising in connection with this Agreement and each such party agrees not to commence any such proceeding except in such courts, and

18.9. Headings. The paragraph titles of this Agreement are for conveniences only and shall not define or limit any of the provisions hereof.

18.10. Entire Agreement. This Agreement, the documents referenced herein and all Exhibits hereto (Exhibits A through F) are intended as the complete and exclusive statement of the agreement between Buyer and Company with respect to the subject matter hereof, and supersede all prior agreements and negotiations related thereto.

18.11. Binding Effect. The provisions hereof shall be binding upon and shall inure to the benefit of Buyer and Company, their respective successors, and permitted assigns.

18.12. Recall of Equipment. If recall or modification of any of the Equipment listed on Exhibit A is required by the regulatory authorities or voluntarily recommended or required by the Company, Company shall, at its sole cost and expense, immediately notify Buyer in writing of such recall or modification; remove, package, and ship to Company's plant the affected Equipment; and at no additional charge to Buyer replace such Equipment with Company Equipment which have been evaluated and accepted by Buyer as clinically comparable.

- 18.13. **Survival.** The representations and warranties contained in Paragraphs 14, 15 and 18 shall survive termination of this Agreement.
- 18.14. **Counterparts.** Provided that all parties hereto execute a copy of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.
- 18.15. **Catalog and Detailing Requirements.** Company shall furnish up-to-date catalogs and/or Equipment information of current items and prices to be kept on file by Buyer's Corporate Purchasing Department.

No Company Equipment may be delivered to Buyer for evaluation without approval of Buyer's Corporate Purchasing Department, and all such Equipment may be delivered only after receipt of an appropriate purchase order.
- 18.16. **New Equipment.** Company shall advise Buyer, through its Corporate Purchasing Department of any new Equipment that is similar to the Equipment covered by this Agreement that Company develops and/or receives appropriate regulatory approval to market during the term of this Agreement. This Agreement may be amended in accordance with Paragraph 18F hereof to include any new equipment Buyer desires to purchase from Company.
- 18.17. **Parts.** For a _____ period from the date hereof, Company agrees to make available and sell to Buyer such parts as to maintain the Equipment in good working order and to offer a maintenance program.
- 18.18. **Specification Conflicts.** In the event of any ambiguity or conflict among the provisions of this Agreement and Exhibits hereto, requests for proposals issued by the Buyer relating to the purchase of the Equipment, Purchase Orders issued by the Buyer, the Company's proposals, quotes or order acknowledgments, manufacturers' product specifications, and other documents relating to the Company's sale of the Equipment to the Buyer, the Company shall be required to comply with the most stringent requirement which provides the highest quality and greatest benefit to the Buyer, unless otherwise specifically directed by the Buyer in writing. The terms and conditions of this Agreement are intended to govern the purchase and sale of the Equipment, and any conflicting terms and conditions, or additional terms and conditions, in any vendor prepared document shall not apply.

IN WITNESS WHEREOF, _____ and _____ have signed this agreement as of the day and year first written above, and the person executing this agreement on behalf of each party represents and warrants that this agreement has been authorised by all necessary parties, is validly executed by an authorised officer or agent, and is binding upon and enforceable against the company in accordance with its terms.

WITNESS: _____
 By: _____
 Name: _____
 Title: _____

WITNESS: _____ [company name]
 By: _____
 Name: _____
 Title: _____

Annexure A

Description of Equipment

QUANTITY	ITEM NO	DESCRIPTION	PRICE
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[or use the following]

See Attached Quotation # _____ **dated** _____

In the event of any inconsistency between the terms in main body of the Agreement and the terms in Exhibit A attached hereto, the terms in main body of the Agreement will control.

Annexure B

Installation Schedule

Company shall be responsible to install the Equipment only when Buyer has properly prepared the site at Buyer's sole expense. Buyer shall be responsible for having the site fully ready to receive the Equipment on the estimated delivery date.

Annexure C

Specifications

See Attached Equipment Specifications

Annexure D

Training

If applicable and necessary, training on the use and operation of the Equipment and related disposables will be provided at a mutually agreeable time at the request of Buyer. Training will be conducted at Buyer's location, and the training, as well as any written materials distributed by Company, shall be provided to Buyer at no additional cost.

Annexure E

Equipment Warranty

For a one (1) year period from date of Acceptance (the "Warranty Period"), Company warrants that the Equipment provided to Buyer pursuant to this Agreement shall be free from defects in material, manufacturing workmanship, and title, and that the Equipment will operate in conformance with the Specifications set forth in **Annexure C** and will operate as described in all marketing and advertising materials provided to Buyer (the "Warranty"). The Warranty also shall apply to any replacement part or to any Enhancement. Further, Company warrants that all service repairs shall be free from defects in materials and workmanship for the greater of (i) the balance of the Warranty Period or (ii) ninety (90) days after the date the repair is completed. To enable Company to properly administer the Warranty, Buyer shall (i) promptly notify Company of any claim hereunder, and (ii) provide Company with the opportunity to inspect and test parts claimed by Buyer to be defective.

Defective Equipment will be shipped by Buyer to Company's Technical Service Center under Company's Loaner program. Under this program Buyer will inform Company of defective Equipment in order to have a "Loaner" piece of equipment shipped to Buyer within twenty-four (24) hours of such notification. Buyer will have full use of the Loaner equipment until defective Equipment has been repaired or replaced and received by Buyer.

If during the Warranty Period and after trouble-shooting assistance from Company, it is Buyer's opinion that on-site service is required, warranty service will be available from Company, free of charge, on an appointment basis, Monday through Friday, 10:00 a.m. to 5:00 p.m.

During the Warranty Period, Company shall provide to Buyer, without additional charge, 24-hour a day, 365-day a year access to a toll-free health care professional hotline for questions and trouble-shooting assistance.