



Unless otherwise agreed to in writing signed by Tenacore LLC (“Tenacore” or “Seller”), the following terms and conditions shall be in effect between the buyer (“Customer”) and Tenacore, and to each order for and purchase of any products (“Products”) and services (“Services”).

All sales, corrective maintenance (herein referred to as “repair”), or preventative maintenance (herein referred to as “PM”) services shall be provided by Tenacore LLC under the terms and conditions set forth below and incorporated herein by reference.

**1. Request for Service.**

Customer may submit a request(s) for services by contacting a Tenacore representative and setting up an incoming service order. Other options for creating service orders may be taken through Tenacore’s online portal or other means. Information required from customer: serial number, issue(s) experienced, contact information. Other agreements, such as customers with contracts in place, may exist and may provide different options for requesting service. Purchase order, which must clearly establish the identification of devices, such as the serial number of the asset to be serviced, corrected, or PM and the agreed rate(s) must be submitted before any product will be shipped back to customer. Any agreement to pricing will be made in writing and will be acceptance of offered pricing by Tenacore.

**2. Payment Terms.**

Subject to continuing approval of open account credit, payment is due and payable in full thirty (30) days after shipment date. Where open account credit is not established or approved, payment is due by one of the following methods: (a) prepayment in advance of shipment (by wire transfer or other means that will provide available funds prior to shipment); or (b) C.O.D. with payment in certified funds; or (c) by irrevocable letter of credit payable thirty (30) days after shipment by a bank acceptable to Seller (with all bank fees and charges to be paid by applicant). Seller reserves a security interest in the goods sold hereunder and proceeds thereof to secure the purchase price of such goods. Service charges of the lesser of one and one half (1½) percent a month or the maximum permitted under applicable law may be charged on past due amounts. Credit requests for discrepancies in pricing must be made within ninety (90) days from the date of invoice in order to be considered by Seller. Credit requests for discrepancies freight, taxes, rebates, and other monetary amounts must be made within ninety (90) days from the date of invoice in order to be considered by Seller. Seller reserves the right to modify its payment terms upon giving Customer not less than ninety (90) days prior written notice; provided that the payment time period for credit purchases shall not be less than net thirty (30) days.

**3. Terms of Repair Service.**

Repair services are performed on a time and material (T&M) or a flat rate basis. A repair estimate may be provided for customer approval as needed. An evaluation fee may apply to any repair estimates that are denied by the customer. In most cases, repairs will not begin until the purchase order is received. Flat rate contracted repair rates may be void if Tenacore deems the unit to be a collection of defective parts combined into one complete unit. Flat rates assume the item has a standard malfunction and/or “normal or reasonable wear and tear” while in operation per OEM standards and guidelines. Items that have multiple failure points or appear to be tampered with may require pricing changes.

**4. Discontinued Equipment.**

Equipment that is obsolete or no longer supported by the Original Equipment Manufacturer (OEM) is subject to a non-refundable test and inspection fee if the product is deemed unserviceable. The test and inspection fee includes



up to one hour of labor and minimal part(s) as applicable. An estimate will be provided for additional repair costs as required or a determination of repair feasibility. Repair of discontinued equipment is offered on a “Best Effort” basis. Warranty of discontinued equipment may not apply. Any warranty offered on discontinued equipment will be specifically outlined in Tenacore service documentation.

## 5. Warranty.

Seller warrants that the Services will be performed in a professional manner. As to each Product or service sold hereunder, Seller warrants that as of the date of shipment, and thereafter for the warranty period (if any) stated in this Agreement or published by Seller as the standard warranty period for such Product, the Product will be free of defects in materials and workmanship. For purposes of this Section, parts purchased from Seller in the course of the Services shall be considered “Products” subject to the Product warranty. Seller’s sole liability and obligation under this warranty shall be to repair, or at Seller’s option, to replace any Product that fails to meet this warranty. Customer must present any warranty claims to Seller when setting up return sales or service order(s) within warranty periods as outlined in warranty timeframe guidelines. Warranties for Products sold for single use shall not extend to any subsequent use. Repaired or replaced Products (including serviced equipment items) may contain recycled or re-certified parts, which are equivalent in performance to manufacturer’s parts. Accessories and consumables (such as batteries or filters) that are included with a Product (including serviced equipment items) may be subject to a shorter warranty period than the equipment or to a warranty at time of delivery only. This warranty does not cover: (a) damage caused by misuse (including violation of Seller’s instructions), neglect (including failure to perform preventive maintenance in accordance with Seller’s instructions and specifications), accident or causes external to the Product (including failure of or faulty electrical power); (b) any Product on which the serial number or lot code has been removed or made illegible; (c) any Product or part thereof that has been disassembled, serviced, reassembled or modified by anyone other than Seller, unless authorized by Seller in writing; (d) re-use of a Product sold for single use; (e) performance of preventive maintenance (except where Customer has expressly purchased a warranty package that includes preventive maintenance) (f) the removal or defacing of any labeling of the Product including warranty or tamper stickers. If Seller provides loaner equipment while Product is being serviced, Customer is responsible for loss or damage to such equipment while on loan, or replacement cost of loaners not returned by Customer within 20 days after receipt of repaired Equipment or notice that the requested repair is not covered by the warranty. **THIS WARRANTY, TOGETHER WITH ANY EXPRESS WRITTEN WARRANTY THAT SELLER MAY ISSUE, IS THE SOLE AND EXCLUSIVE WARRANTY AS TO SELLER’S PRODUCTS AND SERVICES, EXTENDS ONLY TO THE INITIAL PURCHASER FROM SELLER OR AN AUTHORIZED DISTRIBUTOR, IS NOT TRANSFERABLE OR ASSIGNABLE, AND IS EXPRESSLY IN LIEU OF AND SELLER EXPRESSLY DISCLAIMS TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW ANY OTHER WARRANTY, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY ORAL OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS, DAMAGE, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, INABILITY TO SELL, USE, OR LOSS OF USE OF ANY PRODUCT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER, ITS EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS SHALL INCREASE THE SCOPE OF THIS WARRANTY OR CREATE ANY NEW WARRANTIES. THE LIMITATIONS IN THIS SECTION SHALL NOT PRECLUDE ANY LIABILITY WHICH UNDER APPLICABLE PRODUCTS LIABILITY LAW CANNOT LEGALLY BE PRECLUDED BY CONTRACT.**

## 6. Warranty Timeframe Guidelines.

- 6.1. **Service and Repair.** Six-months (6) from the date of shipment against defects in material and workmanship on the specific repair performed as documented in the Tenacore service report. Any part(s) not addressed,



refurbished, or replaced during the original repair process as outlined by service reports will not be covered under warranty unless otherwise documented in writing by Tenacore.

- 6.2. **Re-certified Equipment.** Twelve-months (12) from the date of shipment against defects in material and workmanship
- 6.3. **Parts and Accessories.** Including, but not limited to, printed circuit boards, pumps, fuses, components, power cords, connectors and connecting cables, plastics, cosmetics or cosmetic kits, preventative maintenance kits, overhaul kits, assemblies, etc. shall not be covered by any warranty period and may not be returned to Tenacore LLC unless the product has a failure “out of the box” and is brought to the attention of Tenacore within seven-days of delivery by logistics partner to customer facility. Tenacore may deny the return of any product(s) that have had packaging removed, have labeling removed or tampered with, or are otherwise damaged by the customer. Patient cables shall carry a 12-month (12) warranty against defects in material or workmanship. Physical abuse or normal wear and tear shall not be covered by the warranty policy.
- 6.4. **Discontinued OEM Products.** Products that are no longer supported by the Original Equipment Manufacturer (OEM) where there is limited or no parts availability, the completed repairs are warranted for period as specified in service documentation, not to exceed six-months (6) from date of shipment, against defects in material and workmanship on the specific repair performed.

## **7. Limitation of Liability.**

Tenacore LLC shall not be responsible for any acts, omissions, or workmanship of employees for their failure to follow the advice or instructions of the Tenacore Service Representative. In no event shall Tenacore LLC be liable in contract, tort, strict liability, warranty, or otherwise, for any special, indirect, incidental, or consequential damages, such as, but not limited to, loss of anticipated profits or revenue, loss of use of the system, non-operation or increased expense of operation of other equipment, cost of capital, cost of purchased or replacement product, or claims of Customer for any costs whatsoever.

The liability of Tenacore LLC with respect to any contract, or anything done in connection therewith, or from the service technical assistance, manufacture, sale, delivery, resale, installation, calibration, repair, replacement, or use of any service or equipment covered by or furnished, whether in contract (including the indemnity provisions hereof), in tort, in warranty, in strict liability, or otherwise, shall not exceed the original purchase or service price paid.

## **8. Taxes.**

All prices provided are exclusive of any applicable Federal, State, Host Country, or other sales or use taxes, duties, tariffs, and levies, with respect to any product or service covered hereby, and such amount of tax shall be paid by the Customer in addition to the prices herein provided. Any tax exemptions the customer may be entitled to are solely the responsibility of the Customer. Current tax exemption documentation must be provided to Tenacore LLC.

## **9. Testing and Usage.**

The Customer shall verify and test all products according to any Original Equipment Manufacturer guidelines. The customer is responsible for all performance, safety, validation, compliance, or other testing criteria required by the Customer entity or the Original Manufacturer.

## **10. Cancellation, Return, and Loaners.**



Cancellation of orders before shipment to Customer but after production has commenced by Tenacore LLC may incur fees up to full purchase price of the order as necessary. Any set-up or other production costs already incurred by Tenacore LLC will be charged to the Customer. Return of product(s) already received by Customer will incur up to 25% of the order total toward re-stocking. Incorrect orders, part numbers being purchased, or quantities will be subject to re-stocking fees. Custom orders will be built as outlined in Tenacore LLC quote documentation. Any alterations, missing add-ons, options, software, or other parts and accessories will incur additional expense to the Customer. Loaner products may be offered to Customers based on availability and particular inventory. Loaners not returned to Tenacore LLC by Customer within timeframes outlined in loaner order documentation will be subject to fees and repossession. Tenacore LLC may require a purchase order to be issued for the full price of the product(s) before the loaner is shipped.

#### **11. Rental and Lease Equipment.**

Tenacore may provide rental/lease of equipment to Customer as available. Executed "Equipment Rental Agreement" (see separate policy) must be on file with Tenacore LLC before any release of equipment to Customer.

#### **12. Shipping and Receiving.**

Tenacore will ship via its preferred carrier unless otherwise notified on the purchase order. For LTL freight orders to ship via the customer's preferred carrier, the customer must arrange all pickups and complete all Bill of Ladings. Tenacore takes no responsibility if the carrier does not show up on pick-ups arranged by the customer. Any shipping fees will be billed to the customer unless otherwise stated in the quote or purchase order. Damages identified upon equipment arrival must be communicated to Tenacore personnel within 3 days of the date of arrival. All merchandise is packed to comply with standard shipping practices and requirements. All packaging has been tested to freight and industry standards. Tenacore will take further steps to safeguard against damages that can occur in shipping which includes but is not limited to using specialized foam packaging material, using air-filled cushions, and creating specific molds and packaging material for products. Tenacore is not responsible for damage to goods that occurs in transit. The purchaser's responsible for examining goods upon receipt and filing any claim necessary with the carrier. Tenacore does not decontaminate or dispose of biohazard equipment. Contaminated equipment will be returned to the customer at their expense. Upon arrival of the product, if improper packaging is identified which results in damage, the customer will be notified and is held liable for any costs.

#### **13. Pricing; Freight; Taxes.**

Risk of loss shall transfer to Customer upon receipt by the carrier at the Seller's facility. Standard orders will ship as follows:

- 13.1. Products will be shipped to Customer with freight charged to the customer shipping account number on record or added to the invoice.
- 13.2. Expedited orders, at the request of the Customer, will be shipped on the customer account or prepaid by Seller and added to the invoice. Prices do not include customs, duties or sales, use, excise, or other similar taxes. All such taxes and any personal property taxes or other similar taxes assessable on the products after delivery to the carrier shall be paid by the Customer.

#### **14. Depot Service Fees.**



Tenacore reserves the right to charge fees for evaluation, test, and inspection when devices are denied service by customers for any reason. The fee structure is subject to changes made by Tenacore and is not to exceed the following:

14.1. Evaluation fee: \$150.00

14.2. Test and inspection fee: \$295.00

**15. Product Markings.**

Customer shall not remove or alter any warranty tags, labels, or identifying markings of any kind placed on any Products by Seller unless authorized by Seller in writing.

**16. Product Transfer and Use.**

Customer shall purchase all Products directly from the seller for its own use and not for further distribution. Customer agrees to limit Product's use in accordance with its labeling and indications for use.

**17. Adverse Event Reporting; Recalls.**

Customer shall promptly provide notice to Seller of any adverse events related to the Services or use of the Products. Buyer acknowledges that Seller has the authority and responsibility to initiate and conduct recalls, market withdrawals and field corrections of the Products in accordance with applicable law. Customer will cooperate with Seller in connection with any such corrective actions.

**18. Assignment.**

Customer shall not assign this Agreement in whole or in part, or subcontract its obligations hereunder, without the prior written consent of the Seller. All terms, agreements, covenants and rights contained herein shall inure to the benefit of and be binding on any permitted assignee.

**19. Excusable Delays.**

If the performance of any obligation, except payment of moneys due, is prevented, delayed, restricted, or interfered with in any way by reason of any Act of God, act of terrorism (whether actual or threatened), fire, flood, explosion, failure of machinery, strikes, lockouts, or labor trouble, supply of fuel, power, materials, containers or transportation, or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the party to whom the performance is due, shall be excused from such performance to the extent of such interference. Each party shall use reasonable efforts to remove or resolve such interference with performance as promptly as reasonably possible.

**20. Severability.**

In the event that any portion of this Agreement should, for any reason, be held by a court of competent jurisdiction to be illegal, invalid, unenforceable, or contrary to public policy, then the remainder of this Agreement shall remain in full force and effect.

**21. Compliance with Law.**

Customer shall comply with all laws, regulations, and orders applicable to this Agreement and the Products purchased hereunder including, but not limited to, any laws relating to import, export, health, safety, security and



environmental laws, anti-bribery, and anti-corruption, and shall maintain internal policies and procedures to ensure such compliance.

**22. Trade Controls.**

Customer agrees to fully comply with all applicable export control and economic sanction laws and will not divert Products contrary to U.S. law. Customer warrants that it is not set forth on, nor owned or controlled by any person set forth on, a restricted party list maintained by the U.S. or other governments.

**23. General.**

No representation, promise, waiver, amendment, or modification of these terms and conditions shall be binding unless in writing signed by an authorized representative of Seller. This Agreement shall be governed by the laws of the State of Delaware (excluding those addressing choice of law), and the parties hereby expressly disclaim application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Seller hereby objects to and will not be bound by any other terms or conditions, express or implied. Acceptance by Customer of the Products shall constitute acceptance of all the terms and conditions contained herein. Any information of Seller, not otherwise publicly available, that is revealed to Customer by operation of this Agreement (including the terms of this Agreement), and information arising out of or related to any claim or dispute involving Products, is deemed confidential, and may not be disclosed to third parties except with the prior written consent of Seller. Products sold and delivered within the United States are for domestic use only. Any resale or distribution of Products is prohibited except with express written authorization by Seller. The captions herein are for convenience only and do not modify or explain any of the terms of this Agreement. The parties agree that any disputes arising out of or related to this Agreement, including, but not limited to, claims of fraud in the inducement or the validity of this arbitration clause, shall be exclusively resolved by binding arbitration. The arbitration shall take place via video conference for any claim of \$500,000 or less and otherwise in person in Costa Mesa, California, and shall be conducted in English. Arbitration shall be initiated by mailing or use of an equivalent commercial service a demand for arbitration to the other parties' address in the notice provision contained in this Agreement. The demand for arbitration shall lay out the factual and legal basis for a party's requested relief in a manner that allows for specific denial of the factual allegations and the elements of the party's causes of action. The responding party shall file a response to the demand for arbitration within 20 days after receiving the demand that responds to the specific factual and legal allegations and contains any affirmative defenses. In the event the responding party files a counterclaim as part of the response, the same procedures applicable to the initial demand for arbitration outlined in this paragraph shall apply to the counterclaim. The arbitration shall be conducted by a single arbitrator mutually agreed to by the parties. If the parties cannot agree to an arbitrator within 30 days after the responding party's answer to the demand or a party does not respond to a demand for arbitration within 45 days, a party may apply to any federal or state court located in Orange County, California for the appointment of an arbitrator. The parties shall have the right to serve up to twenty-five document requests and conduct up to 4 depositions. The arbitrator may issue subpoenas for the production of records or other evidence that specify a production date prior to the hearing. Any expert witness who is called at trial must disclose the substance of their testimony at least 45 days prior to the hearing. The responding party shall file any responsive reports 15 days prior to the hearing. At least 14 days prior to the arbitration hearing, the parties shall exchange witness and exhibit lists. The arbitrator shall issue the arbitration award within 30 days of the hearing being completed. The award shall provide a reasoned basis for the arbitrator's decision.