



## Appendix I

### Direct Purchases

### Terms and Conditions of Sale

### Optimizer® System

#### 1. SCOPE

This 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 the ordered Products. Despite the term "Agreement," there shall not be an agreement to any Customer Order until Impulse ships the Product.

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 the Purchase Order.
- b. Alternative Provider is any health care provider other than a Hospital.
- c. 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.
- d. Explanted Product means part or all of the Optimizer® System that was removed from a Patient or a peripheral part that was used with an Optimizer® System that was explanted from a Patient.
- e. Hospital means any acute care hospital.
- f. Invoice Credit means a deduction in the amount owed as provided in an invoice.
- g. Order means a completed and signed Purchase Order.
- h. Patient means a third party who was implanted with the Product.
- i. Physicians. All Customer's employees involved in the implantation or explantation of the Product into a Patient.
- j. Product means the unused Optimizer® System or any unused components of the Optimizer System. Product shall not refer to Explanted Products.
- k. Refund means part or all of the amounts previously owed and paid by Customer in accordance with an invoice.

#### 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 14 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, as further identified in Section 13 of this Terms and Conditions of Sale, 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 telefax or email; however, any other form of telecommunication, is not sufficient.

#### 4. DELIVERY AND SHIPMENT

Deliveries will be made DAP (INCOTERMS 2010). 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 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.

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 it is shipped and according to the Products' respective Order. Payment must be remitted via bank transfer unless otherwise agreed upon by the parties.

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- 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).

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 relating to apparent defects or other defects that would be recognized in an immediate, thorough inspection in writing and within three (3) working days after delivery of the goods, or otherwise within three working days after discovery of the defect or from the time in which the defect could be recognized by the Customer in normal usage without closer inspection. In case of defects, Impulse shall at its own discretion, either repair the defect or replace the defective Product. The same will be at Impulse's cost and expenses, provided Impulse found the Product defective.

**7. RETENTION OF TITLE**

Until complete payment of the Products delivered by Impulse and settlement of all claims from the business relationship with Impulse, Impulse reserves title to delivered Products.

If Impulse has reasonable reasons to doubt Customer will pay in full the price for the Products, Impulse shall be entitled to request their return at the expense of the Customer.

**8. WARRANTY:**

Impulse warrants that all IPGs (including the respective firmware and software) will be free from defects in workmanship and materials for a period of 24 months after the original implantation of the IPG (the "Warranty Period"). If it appears that any IPG or part thereof appears to be defective in workmanship or materials, or fails to conform to applicable specifications, Impulse Dynamics shall either replace defective or non-conforming implantable components or repair and replace defective or non-conforming non-implantable components. The warranty period for a replaced or repaired IPG shall be the time remaining on the original warranty period or nine months from delivery of the repaired or replaced IPG, whichever is longer. In the event of complete failure of an IPG within 72 hours after implantation, Impulse Dynamics shall replace the failed IPG with a new one. Under this warranty, Impulse Dynamics shall not be liable if tests and analyses reveal that the alleged defect or non-conformity of the IPG is not present or was caused by improper use, neglect, implantation, or follow-up, unauthorized repair attempts by the user, or due to accident, fire, lightning, or other hazards.

**9. CUSTOMER RETURN POLICY**

- a. Returnable Products-General. In addition to Sections 9(b) and 9(c), Products may be eligible to be returned to Impulse for a Refund or Invoice Credit if Products:
- are unused (i.e. not Explanted Products)
  - were purchased directly from Impulse; and
  - are accompanied with a model number, lot number, and all other identifiable information.
- b. Returnable Products-Defect. In addition to Section 9(a) but subject to Section 9(d), Products are returnable to Impulse that are discovered to be defective after Customer's inspection as described in Section 6; withdrawn from market; recalled; or discontinued.
- c. Returnable Products-Without Reason. In addition to Section 9(a) but subject to Section 9(d), Products may be returned within 30 days of receipt.
- d. Non-Returnable Products. Products may not be returned for any of the following reasons without written authorization provided by Impulse:
- Products that are not subject to Sections 9(b) or 9(e) but have been stored by Customer for longer than 30 days after Customer received the Product shipment.
  - Product that was purchased from a third-party that is not affiliated with Impulse;
  - Product not in original packing, i.e. packages/containers with labels added to, removed from, or ineligible of original Impulse's package/containers;
  - Repackaged Product;

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- Product returned by any third-party;
  - Distressed Product damaged by fire, smoke, water, or other perils or acts of God. Product damaged by improper storage, handling, or any other procedure not in compliance with the stated “proper storage requirements” as outlined on the Product’s labeling;
  - Product purchased outside of the United States of America or on the secondary or “gray” market or any other channels outside the normal course of business within the United States of America;
  - Merchandise purchased or otherwise obtained in violation of any federal, state, or local law or regulation;
  - Products returned with illegible or missing lot number and/or expiration date; or
  - Products damaged, misused, improperly stored, abused, neglected, tampered with, or not maintained in accordance with Impulse’s instructions or if Customer does not cooperate with Impulse in good faith. This includes products that are implanted or otherwise used in an off-label or unapproved way.
  - Product in which “use before date” is more than 90 days from expiration.
- e. Explanted Product Returns. All Explanted Products must be returned to Impulse within five (5) working days of explant. Customer shall receive a Refund of not more than the cost of shipping. Shipping shall be mutually agreed upon by the parties prior to returning the Explanted Product to Impulse.
- f. Intellectual Property Infringement. 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 paid by Impulse. Upon receipt of such a written request, Customer shall comply with Impulse’s request as soon as commercially reasonable.
- g. Returning Product. 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.
- h. Refunds or Invoice Credits. Products described in Sections 9(b) and 9(c) may be returned for a Refund or Invoice Credit. Explanted Products shall not receive a Refund or Invoice Credit in excess of standard shipping fees.
- a. General. From time to time, including in contemplation or preparation of a legal action, either party (as “Discloser”) may disclose or make available to the other Party or its Representatives (as the “Recipient”) information about its business affairs, products, services, confidential intellectual property, trade secrets, customers or Patients, employees, and third party confidential information, requests for proposals, requests for information, forecasts, employee and vendor information, software, hardware, and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, that is marked or otherwise designated as “Confidential” or “Proprietary,” or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential (collectively, “Confidential Information”). All notes, memoranda, analyses, compilations, studies and other documents prepared by or on behalf of the Recipient or others, which contain or otherwise reflect, or are based upon Discloser’s Confidential Information will also be Discloser’s “Confidential Information”. For purpose of this Section 10, Confidential “Party” includes the Disclosure’s or Recipient’s agent, employee, physician whether employed or contracted, or attorney who are reasonably required to have the Confidential Information in order to carry out the terms of this Agreement.

Confidential Information shall not include information that: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement by the Recipient or its Representatives; (ii) is or becomes available to the Recipient on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Recipient or its Representatives on a non-confidential basis prior to being disclosed by or on behalf of the Discloser; or (iv) was or is independently developed by the Recipient without reference to or use of, in whole or in part, any of the Discloser’s Confidential Information.

- b. Treatment of Confidential Information. The Recipient shall: (i) protect and safeguard the Discloser’s Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information of a similar nature, but in no event with less than reasonable efforts, to prevent disclosure to all but those persons in the Party that require the Confidential Information to carry out the terms of this Agreement; (ii) not use the Discloser’s Confidential Information, or permit it to be accessed or used, for any purpose other than to carry out the terms of this Agreement; and (iii) not disclose the Discloser’s

**10. CONFIDENTIALITY**

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Confidential Information to any person or entity, except to the Recipient's Representatives who have agreed to, or are otherwise bound by, obligations of confidentiality substantially similar to those in this Agreement.

A Recipient shall notify the Discloser promptly of any unauthorized possession, use or knowledge, or attempt thereof, of the Discloser's Confidential Information and promptly furnish to the Discloser details of such unauthorized disclosure and use reasonable efforts to have the Confidential Information returned.

- c. Necessary Third-Party Disclosure. If a Recipient is presented with a request for Discloser's Confidential Information by any administrative agency or with a subpoena and which may be in Recipient's possession, Recipient must immediately notify the Discloser and withhold Discloser's Confidential Information until Discloser authorizes such disclosure or until Discloser has had the opportunity to contest such process by any means available to it.

**11. LIMITATION OF LIABILITY**

IN NO EVENT SHALL IMPULSE BE LIABLE TO CUSTOMER OR TO ANY OTHER THIRD PERSON OR ENTITY (I) 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 (II) 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.

**12. INTELLECTUAL PROPERTY RIGHTS**

Customer acknowledges that Impulse owns all right, title and interest in any and all intellectual property related to its branding or Products, including any related drawings, manuals, catalogues, brochures, know-how, order form templates, concepts, ideas, methods, processes, apparatus, improvements, enhancements, modifications, system(s), architecture, expressions, computer software, or derivative works thereof, any of which have patent rights, copyright rights, trademark rights, trade secrets, service mark rights, trade name rights and any other proprietary interest related thereto, which is in existence as of [MONTH] [DAY], 2019 (collectively, "Intellectual Property"). Customer acknowledges

that any improvement, enhancements, modifications or derivative works, which are developed, created or generated by any party in connection with the actions of the parties under this Agreement shall be owned by Impulse. Customer agrees to execute any formal assignments or other documents as Impulse may request to effectuate this assignment.

Customer acknowledges and agree that it is not acquiring any rights or interests whatsoever to Impulse's Intellectual Property by virtue of Customer's purchase of the Products. Impulse makes no warranty or representation that the use or sale of the Products, whether alone or in combination with other products, will not infringe the claims of any letters patent, trademarks, registered designs or other proprietary rights of any third party.

Upon Impulse's request, Customer shall return all such documents and destroy copies thereof of documents related to Impulse's Intellectual Property as soon as commercially reasonable.

**13. TRACEABILITY OF IMPLANTS**

Impulse has to ensure the traceability of its Products. Observing the pertinent data protection law provisions, the Customer shall guarantee the traceability of the delivered Products by keeping a data overview that contains information (collectively, "Product Information") on:

- **PRODUCT NAME, MODEL NUMBER, AND SERIAL NUMBER;**
- **DATE OF PRODUCT DELIVERY;**
- **NAME AND ADDRESS OF THE PHYSICIAN AND ASSOCIATED CLINIC RESPONSIBLE FOR IMPLANTATION;**
- **NAME OF PATIENT IMPLANTED WITH THE DEVICE;**
- **DATE OF IMPLANTATION; AND**
- **DATE OF EXPLANTATION.**

The Customer shall ensure that in an emergency the relevant data can be conveyed to Impulse within five days. The applicable data protection law provisions have to be observed. Emergencies are for example voluntary or FDA-initiated recalls, product liability cases, and possible violations of applicable laws. In order to ensure the traceability and to prevent a loss of data, Customer agrees to give to Impulse Product Information and Other information requested by Impulse if such information is available.

**14. PRODUCT RECALL AND CUSTOMER COMPLAINTS**

- a. Product Recall. In case of a Product recall, the parties shall work together to effectively recall all Products that have not been implanted. Customer shall not unilaterally recall any Product or publicly disclose the possibility of a potential recall without authorization and directions provided by Impulse. Impulse shall recall all identified Products in accordance with 21 C.F.R. Part 7 or 21 C.F.R. Part 810.

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- b. Product Complaints. In case of product complaint from a Patient, Customer shall inform Impulse in writing (letter, fax, e-mail) without delay of the cause of the complaint, within two working days after it has become known to Customer. Customer shall not report a product complaint to the U.S. Food and Drug Administration ("FDA") as Customer is a device user facility that is not required to comply with the FDA's mandatory medical device reporting requirements. Impulse shall report all complaints received by Customer as soon as reasonably necessary but also in accordance with the mandatory medical device reporting requirements in 21 C.F.R. Part 803.

**15. LICENSES**

Customer hereby represents and warrants that it and its Physicians have any and all current licenses (e.g. state pharmacy license, physician's license, etc.) required to purchase Impulse's Products. Customer further represents and agrees that this Section 15 is material consideration for purchasing Products from Impulse and that Impulse is relying on such representation. Upon Impulse's request, Customer shall forward a copy of such licenses to Impulse.

**16. 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.

**17. IMPLANTATION RESALE**

- a. Implantation. Customer understands that Impulse has made all known risks and warnings associated with the Product available. Customer warrants that it or its Physicians will review and understand the risks and warnings associated with the Product before each Patient is implanted with the Product. Customer further warrants that it will not use the Products in an off-label or otherwise unapproved way.
- b. Prohibited Resale. Except as required by laws, Customer agrees that it will not resell or otherwise transfer any Products, in their original form, to any reseller, distributor or end-user. Customer agrees that its Physicians or other licensed employees may only use the Products for the purposes of implantation into Customer's Patients.

**18. 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.

**19. 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.

**20. 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).

**21. SURVIVAL**

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

**22. 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.

**23. 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

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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.

**24. AMENDMENTS**

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

**25. 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), facsimile, or email (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 25.

**26. 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, once it is so executed and delivered, will be binding upon and enforceable against the Customer strictly in accordance with its provisions.

**27. ENTIRE AGREEMENT**

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

**28. GENERAL**

Purchaser 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 Purchaser of the Products from Impulse.

**29. MODIFICATION AND LEGAL COMPLIANCE**

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

[DATE STAMP]