

TERMS AND CONDITIONS

- 1. ACCEPTANCE:** THE TERMS AND CONDITIONS SET FORTH BELOW AS WELL AS ANY SUPPLEMENTAL TERMS AND CONDITIONS PROVIDED IN WRITING BY ATRICURE TO BUYER, CONSTITUTE ALL OF THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND ATRICURE. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF ATRICURE THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL HAVE NO EFFECT. Buyer accepts the terms hereof by acknowledging or confirming this agreement, commencing performance, by accepting delivery of goods from AtriCure or by any other means manifesting assent to be bound. Any additional contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the goods described on the front side hereof are hereby objected to and shall be of no effect. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by AtriCure at its offices in Mason, Ohio. No waiver or alteration of terms herein shall be binding unless in writing, signed by an executive officer of AtriCure.
- 2. PRICE:** Pricing shall be fixed for the period set forth on the front side of this agreement. Thereafter pricing is subject to adjustment by AtriCure.
- 3. DELIVERY DATE:** All estimates of delivery time are approximate, and failure to effect shipment of an accepted order by such estimated delivery date will not be considered sufficient cause for cancellation.
- 4. TRANSPORTATION AND DELIVERY:** Unless otherwise specifically provided on the front side hereof, the price of any goods sold is F.O.B. shipping point. Title to any goods sold and the risk of loss of such goods passes to Buyer upon delivery by AtriCure to the carrier. AtriCure shall charge a 2% shipping and handling fee in addition to the cost of the goods (or a 1% fee if shipping costs are charged directly to Buyer's UPS or FedEx account), and reserves the right to ship goods via the most economical routing; if shipped otherwise upon the Buyer's request, Buyer shall pay the difference in the rate of transportation.
- 5. PAYMENT:** Payment for goods purchased hereunder shall be net thirty (30) days after the date of invoice. In the event of installment deliveries, AtriCure shall be relieved from making any further shipments if Buyer fails to make payment for any installment when due. If Buyer defaults in any payment, AtriCure may ship subsequent deliveries with sight draft attached to the Bill of Lading. AtriCure specifically does not waive any lien rights, but if so requested, partial waivers will be delivered in return for partial payments and final waiver will be delivered in return for final payment. All payments shall be made in U.S. currency unless otherwise agreed to by AtriCure in writing. Credit card payments shall not be accepted. If Buyer defaults with respect to any payment described herein, it shall reimburse AtriCure for all costs and expenses, including legal expenses and attorney's fees, incurred by AtriCure in exercising any of its rights or remedies.
- 6. TAXES:** Unless otherwise specifically provided for on the front side hereof the price for the goods purchased is net of sales, use, excise or similar taxes, whether federal, state, or local. The amount of

any such taxes applicable to the goods shall be paid by Buyer unless Buyer provides AtriCure with a valid exemption certificate acceptable to AtriCure and the appropriate taxing authority.

7. GENERAL CONDITIONS:

- (a) No agent, sales representative or other party is authorized to bind AtriCure by an agreement, warranty, statement, promise or understanding not herein expressed.
- (b) The sale of the goods pursuant to this order shall be governed by the laws of the State of Ohio, without reference to the principles of conflict of laws.
- (c) Any clerical errors are subject to correction.
- (d) AtriCure will not accept the return of any goods without its prior written consent or unless a Returned Goods Authorization (RGA) Number is issued by AtriCure. AtriCure shall not be required to accept the return of any sterile, outdated or discontinued goods. All returned goods are subject to a minimum 30% restocking fee, except shipments made by AtriCure in error, in which case no restocking fee will be charged.

8. LIMITED WARRANTY; LIMITATION OF LIABILITY: With respect to all disposable or single use products to be delivered hereunder, AtriCure warrants only that such products will be free from defects in workmanship and material, and shall operate in substantial conformity with the documentation, provided that the user of the goods complies with all indications, warnings, cautions and directions contained in such documentation. The foregoing warranties shall expire 60 days from the date of delivery of such disposable or single use products to Buyer. If any capital equipment is delivered hereunder, it may be subject to a separate warranty which will be attached to hereto.

THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY OR OBLIGATION OF ATRICURE. ATRICURE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY ATRICURE.

AtriCure has the option of either replacing defective goods or crediting Buyer for the purchase price for such goods. In no event shall AtriCure be responsible for incidental, consequential, special, or punitive damages from any defect in the goods or breach of warranty including, but not limited to, Buyer's, user's or any other person's loss of material or profits, increased expense of operation, downtime or reconstruction of work, or damages arising out of any products liability claim and, in no event shall AtriCure's liability (whether under the theories of breach of contract or warranty, negligence, or strict liability) exceed the contract price paid for the goods delivered by AtriCure. These remedies are the exclusive and sole remedies for any breach of warranty. All claims for clerical error or shortage must be made within thirty (30) days of delivery of the goods to Buyer. AtriCure shall be given a reasonable and prompt opportunity to investigate any goods concerning which a claim is made.

9. CAPITAL EQUIPMENT: With respect to any goods which are capital equipment designed and intended to be used solely in conjunction with AtriCure approved disposables, AtriCure warrants such goods only so long as the goods are utilized exclusively with AtriCure approved disposables. Any and all warranties provided for in Section 8 of these Terms and Conditions shall immediately cease with respect to capital equipment used with any disposable not approved by AtriCure. Furthermore, Buyer agrees to

hold harmless and indemnify AtriCure for any and all liability resulting from the use of such capital equipment with any disposable not approved by AtriCure, including, but not limited to, liability for personal injury or death, property damage or infringement of any patent, trademark or copyright.

Buyer also agrees to allow AtriCure periodic access to all capital equipment so that AtriCure is able to (i) service or upgrade such capital equipment and (ii) extract from such capital equipment usage data (which shall not contain any individually identifiable patient health information).

10. ENTIRE AGREEMENT; MODIFICATION: This contract constitutes the entire agreement between Buyer and AtriCure and there are no understandings or representations of any kind except as herein expressly set forth. Any alterations or modifications thereof shall be by mutual agreement of the parties and shall not be binding on AtriCure or Buyer unless made in writing and agreed to by a duly authorized official of AtriCure and Buyer. No claim or right arising out of breach of this contract can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is in writing.

11. FORCE MAJEURE: AtriCure shall not be liable for any loss, damage, delay, changes in shipment, schedules or failure to deliver, whether arising in tort, contract or warranty, caused by accident, fires, strikes, riots, civil commotion, terrorism, embargoes, failure of carriers, inability to obtain transportation facilities, foreign or local governmental requirements, acts of God, prior orders from customers or limitations on AtriCure's or its suppliers' production or any other causes of contingency beyond AtriCure's control. In such event, AtriCure shall not be liable for any consequential, incidental or special damages to Buyer. AtriCure may, at its option and without liability, cancel all or any portion of this Agreement and/or extend any date upon which performance hereunder is due.

12. CONFIDENTIALITY: Buyer covenants and agrees that it shall not, and shall cause its officers, directors, employees, agents and representatives to not, directly or indirectly, disclose or communicate to any person or entity any information of AtriCure disclosed hereunder or in connection with the sale contemplated hereby. Buyer shall be responsible for the compliance of this nondisclosure obligation by Buyer's officers, employees, agents and representatives. This nondisclosure covenant has no geographic, territorial or time limitation and applies no matter where Buyer may be located or conducts business in the future.

13. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Unions, and the jurisdictions in which AtriCure and Buyer are established or from which items may be supplied, will apply to its receipt and use of goods and services. In no event shall Buyer use, transfer, release, import, export or re-export goods or products in violation of such applicable laws, regulations, orders or requirements.