

**Purchase Order Terms and Conditions for ZOLL X Defibrillators and Accessories
Purchase (2019_**

These general conditions shall apply at all times, unless otherwise agreed to, in writing, by the City of Daytona Beach (hereinafter "City").

A. The Contractor or Vendor (hereafter Vendor) shall:

1. For value received, the Vendor shall fully indemnify, defend and hold the City, its agents, employees and officers, harmless from any and all third party liabilities, damages, injuries, losses, claims, suits, actions, judgments, charges, expenses, or costs, including attorney's fees and court costs, and without limitation, which the City, its agents, employees and officers may suffer, sustain, incur or in any way be subjected to caused by any negligent act or, omission or the violation of any federal, state or local law or regulation, by the Vendor, its subcontractors, agents, assigns, invitees, or employees, except when caused by the negligence of the City. The Vendor also agrees to fully indemnify, defend and hold harmless the City, its agents, employees and officers from any and all third party liabilities, damages, injuries, losses, claims, suits, actions, judgments, charges, expenses, or costs of any nature and kind, including reasonable attorney's fees and court costs, arising from or relating to actual or alleged violation of or infringement of any patent, trademark, copyright, services mark, trade secret or intellectual property right for or on account of the use of any product or services sold to the City or used in performance of the work under this Purchase Order. The City shall give prompt written notice to Vendor. Vendor shall have the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the Claim with counsel of its own choosing; The City shall be entitled to participate at its own expense in the defense of the Claim; *provided, that*, The City shall not be entitled to control the defense or negotiations for a settlement or compromise of the Claim; Vendor shall not be responsible for any settlement of a Claim that it does not approve in writing; and in no event shall either party be responsible to the other for any compensation, reimbursement or damages on account of consequential damages including the loss of prospective profits or anticipated sales or for any expenditures, investments or other commitments made in connection with this Agreement. These indemnification provisions shall survive acceptance of any goods and/or performance of services and work and payment therefore by the City, and is separate and apart, and in no way limited by, any insurance provided pursuant to the agreement under this Purchase Order.

2. Warrant that the goods, materials, machinery and apparatus supplied under this Purchase Order are well made, of good materials, and conform to any model or sample provided by the Vendor to the City. Vendor shall replace or repair, free of charge, FOB City, any parts of machinery and/or apparatus supplied herein under which proved defective in workmanship or material, within one year from date of shipment. Vendor further shall fully indemnify, defend and hold harmless the City from all claims, suits or actions of any kind for damages to property and/or injuries to persons and from all judgments recovered therefore and from all expenses of defending said claims, suits and actions, including court costs, attorney fees, investigation and other related expenses caused by the Vendor acts, negligence or omissions or by having supplied products or services not conforming to City specifications.

3. Supply a Material Safety Data Sheet (MSDS) with each initial delivery of any materials defined by the State of Florida or the Federal Government as being toxic or harmful.

B. Vendor, if any portion of this contract or agreement is for, or in conjunction with, any construction, alteration, repair or demolition of a building, structure, appurtenance, or appliance, including moving and excavation connected with it, shall accept the sum of One Dollar (\$1.00) as consideration for the indemnification and hold harmless provisions of sub-paragraphs 1 and 2 of paragraph A above.

C. Vendor shall practice no discrimination against any employee who is employed in the work, services, manufacture, or supplies relative to this contract or agreement, or against any applicant for such employment because of race, color, sex, age, handicap, religion or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay; other forms of compensation; and selection for training, including apprenticeship.

D. Vendor shall be subject to all ordinances, rules and regulations of the City and shall be in compliance with all federal, state or local law, regulations and rules in its performance of services or delivery of products under this Purchase Order.

E. Prices shall include any and all shipping costs, shipped F.O.B. Daytona Beach, Florida or to the facility specified on the Purchase Order. Prices shall include all royalties and costs arising from patents, trademarks or copyrights in any way involved in the work.

F. All invoices, packing lists and packages must bear this Purchase Order number as printed on the face of the Purchase Order. All invoices must have a unique invoice number, date, and pricing by line item and unit price that are consistent with the Purchase Order. Improper invoices will be returned to the Vendor.

G. Acceptance by the Vendor of this Purchase Order includes acceptance of all items, conditions, prices, delivery instructions and specifications as shown on the Purchase Order, or attached to the Purchase Order, or referenced in any bid document or contract document, which are made a part hereof by reference, as fully and to the same extent as if copied at length herein. In the event of a conflict or discrepancy between this Purchase Order and any referenced bid or contract document, if one exists, the contract or bid document shall govern.

H. No right, obligation or interest in this Purchase Order shall be assigned or delegated by the Vendor without the prior written consent of the City. Any such unauthorized assignment or delegation by Vendor shall be void and may render this Purchase Order void, at the sole option of the City, without prejudice to City's other rights and remedies.

I. The Vendor shall maintain books, records and documents pertinent to performance under this Purchase Order in accordance with generally accepted accounting principles. The City shall

have inspection and audit rights to such records during the term of the contract and for five years following the termination of obligations hereunder. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Purchase Order shall be made available until a final disposition has been made of such litigation, appeals or claims.

J. Any dispute regarding this Purchase Order shall be governed by the laws of the State of Florida. The venue of any legal action shall be in Volusia County, Florida and the Vendor waives whatever rights it has in the selection of the venue.

K. In the event no funds or insufficient funds are appropriated for expenditures under this Purchase Order, the City will notify the Vendor in writing of such occurrence and this agreement shall terminate without penalty or expense to the City on the last day of the fiscal year in which sufficient funds have been appropriated.

SALES TAX EXEMPTION NO; 85-8012621557C-0

Municipalities are exempt from federal taxes on transportation charges. If you are to prepay charges do not pay tax as City will not reimburse you for taxes paid. If any articles ordered bear exercise tax, the amount of the tax must be stated separately on the invoice. City does not pay late charges.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Purchasing Agreement as of the date appearing below their respective signatures.

ZOLL MEDICAL CORPORATION

CITY OF DAYTONA BEACH

By:  _____

By: _____

Print Name: Michael Trotter

Print Name: _____

Title: EMS Group VP of North American Sales

Title: _____

Phone: 978-421-9214

Phone: _____

Date: January 10, 2019

Date: _____