



# Edwards Lifesciences

## CONSIGNMENT AGREEMENT

This Agreement is entered into by and between Edwards Lifesciences LLC, a Delaware limited liability company (hereinafter, "Consignor") and Customer who is provided Edwards products on a consignment basis (hereinafter, "Consignee").

### WITNESSETH:

WHEREAS, Consignor manufactures and distributes, among other medical devices, a proprietary line of heart valve therapy products (hereinafter, the "Products"); and

WHEREAS, Consignee is an existing customer for Products and requires the ready availability of Products for implantation in patients as the need arises, and wishes to maintain an inventory of Products at its premises (hereinafter, the "Premises") on a consignment basis;

WHEREAS, Consignor is willing to supply Products to Consignee on a consignment basis, subject to the terms and conditions set forth hereinbelow; and

WHEREAS, Consignor agrees to provide to Consignee on a consignment basis, and Consignee agrees to maintain in storage at the Premises the Products (hereinafter, the "Consigned Products").

WHEREAS, Consignor has heretofore shipped to Consignee, and Consignee maintains in storage at the Premises on the date of this Agreement, Products on consignment (hereinafter, the "Existing Consigned Products" and, together with Products hereafter shipped by Consignor to Consignee pursuant to Section 1 below, the "Consignment Inventory").

NOW, THEREFORE, in consideration of the mutual promises and accommodations contained herein, the parties agree as follows:

### I. SHIPMENT, STORAGE AND PURCHASE/SALE OF PRODUCTS

#### 1. Inventory of Consigned Products.

(a) From time to time during the term of this Agreement, and subject to its terms, Consignor and Consignee will mutually determine Products to be provided by Consignor to Consignee on a consignment basis. Following such determination: (i) Consignee will issue no-cost purchase orders for such Products; and (ii) Consignor will designate such Products in writing as Consigned Products in future shipments of such Products. Such Products shall be considered to have been consigned pursuant to, and will be governed by the terms and conditions of, this Agreement.

(b) Consignor will ship Consigned Products to Consignee as necessary to replace Products from the inventory of existing Consigned Products maintained in storage at the Premises upon receipt of an order: (i) to replace purchased Consigned Products in accordance with Section 6 below; or (ii) to provide additional Consignment Inventory as needed and requested by Consignee.

(c) Consignee may reduce Consignment Inventory by (i) issuing a bill only purchase order following use of a Consigned Product; or (ii) returning Consigned Product to Consignor in unopened, undamaged and saleable condition.

(d) All Products ordered by Consignee to replace purchased Consignment Inventory and/or designated as Consigned Product in shipping records or invoices, as well as all of the Existing Consigned Products, shall be considered to have been consigned pursuant to the terms of this Agreement.

Notwithstanding the foregoing, if in the course of its inspections performed pursuant to Section 7 below Consignor determines that models in Consignment Inventory have not been used by Consignee in the preceding six (6) month period, Consignor shall have the right, but not the obligation, to remove such models from Consignment Inventory and adjust Consignee's par levels and product mix as deemed necessary in Consignor's reasonable discretion. Consignee shall use the Consignment Inventory only for its own internal use.

2. Delivery and Sales Terms. The parties acknowledge that Consigned Products shall be deemed to be consigned to Consignee FOB Shipping Point. Consignee shall at that place and time promptly take possession of the Consigned Products and pay all transportation, insurance, taxes and other costs incident to the eventual arrival and storage of the Consigned Products at the Premises. All anticipated purchases of Consigned Products by Consignee shall be governed by the terms and conditions of this Agreement and those additional terms and conditions set forth in the Pricing Agreement in effect, provided, however if Consignee is a member of a group purchasing organization or an integrated delivery network that has a valid and existing agreement with Consignor that covers the supply of any Products (a "GPO/IDN Agreement"), then the additional terms and conditions of such GPO/IDN Agreement shall be set forth, and shall apply to the purchase of such Consigned Products by Consignee. This Agreement will take precedence in the event of any conflict with the provisions set forth in the Pricing Agreement or in any GPO/IDN Agreement.

3. Ownership. Anything in this Agreement to the contrary notwithstanding, the Consigned Products will remain the sole and exclusive property of Consignor until purchased as provided below, at which point title to each of the Consigned Products shall pass from Consignor to Consignee. Consignee shall not represent itself to any third party as being the owner of any such Consigned Products, claim any rights of ownership therein, nor encumber, lease, transfer or otherwise dispose of (other than in accordance with the terms of Section 6 below) any such Consigned Products.

4. Storage of Consigned Products. Consignee shall hold the Consigned Products at the Premises as agent and bailee of Consignor and will store the Consigned Products at the Premises at no cost to Consignor. Consignee shall have full responsibility for the care and condition and the safe and satisfactory storage and maintenance of the Consigned Products. Consignee assumes full liability for any Consigned Products that are missing, damaged, destroyed, or otherwise no longer in saleable condition (i.e., properly stored and maintained and in unopened and undamaged packages) resulting from any cause whatsoever, including but not limited to breakage, theft, damage by water, fire or other occurrences. Consignor shall remove and may replace expired Consigned Products at no cost to Consignee and upon expiration of Consigned Product, Consignor shall review product usage and determine if Consigned Product(s) will be replaced to the Consignee or an adjustment to Consignee's consigned inventory levels is necessary. Consignee shall be solely responsible for all taxes and charges imposed with respect to the Consigned Products while they are stored at the Premises. Consignee further agrees to segregate the Consigned Products physically from any Products owned by Consignee and to post one or more signs conspicuously identifying the Consigned Valves as the property of Consignor.

5. Insurance. Consignee shall procure and maintain in force at all times during the term of this Agreement, at Consignee's expense, all-risk property insurance acceptable to Consignor

covering the Consigned Products, in an amount at least equal to the aggregate prices as set forth in Consignor's published price list for Consigned Products in effect for the period of the insurance by Consignor for all Consigned Products stored in the Premises. Upon request, Consignee shall furnish a certificate of the existence of such insurance executed by Consignee's insurance carrier.

6. Purchase of Consigned Products. Consignee shall have the right to withdraw Consigned Products from storage, from time to time, but only for immediate use in providing care to Consignee's patients. Consignee agrees to withdraw for use those Consigned Products, from the Consignment Inventory, which have the shortest remaining shelf life, based on the expiration date on the package. Upon such withdrawal, or upon report by Consignor to Consignee of any "Discrepancy" as described in Section 7 below, Consignee shall be considered to have purchased the pertinent Consigned Products. Following such purchase of each Consigned Product, Consignee shall promptly issue to Consignor an order, but in no event later than fourteen (14) days after such purchase, for a replacement Consigned Product, thereby fully replenishing the Consignment Inventory (unless the parties have implemented an automated process, such as RFID, that detects withdrawal of Product and automatically places an order for replenishment). Consignee shall be responsible for maintaining traceability of the Products used. All orders for Consigned Products shall include: (i) the Product name, catalog/item number and serial number; (ii) the number of units to be delivered; (iii) the delivery address; (iv) any special shipping instructions; and (v) reference to this Agreement. Upon receipt of any such order, Consignor will issue an invoice for the Consigned Product or Products that was or were purchased. Consignment Products purchased by Consignee will be billed to Consignee at the price set forth in the Pricing Agreement in effect at the time of shipment of the replacement Consigned Product; provided, however, if the purchase is governed by a GPO/IDN Agreement, then the purchase price set forth in the GPO/IDN Agreement shall apply to such purchase.

7. Inspection. Consignor shall have the right, but not the obligation, to conduct a physical inspection of the Consigned Products at the Premises no less frequently than on semi-annual basis to verify the quantity and condition of the Consigned Products, to ensure that the required Consignment Inventory is being maintained. Consignor will identify and report to Consignee any discrepancy between

- a. the Consigned Products located at Premises that are undamaged and in saleable condition, and
- b. the Consignment Inventory

(hereinafter, a "Discrepancy"). If, within thirty (30) days of Consignor's report of a Discrepancy, Consignee fails to issue to Consignor an order for Consignment Products sufficient to replenish the Consignment Inventory, Consignor is entitled to deliver Consignment Products sufficient to replenish the Consignment Inventory and issue an invoice for Consigned Products subject to the Discrepancy. Consignee shall provide Consignor's representatives reasonable access to the Premises to conduct such inspections.

8. Payment for Consigned Products. Within thirty (30) days of the date of invoice for the Consigned Product that was purchased, payment shall be due from Consignee to Consignor for such Consigned Product.

9. Obligations upon Termination. Notwithstanding any past, present or future commitment by Consignor to ship Products to Consignee, Consignee shall, no later than ten (10) days following the expiration or termination of this Agreement: (i) return to Consignor, through an authorized Consignor sales representative any or all Consigned Products then in Consignee's possession, FOB the Premises, that are unexpired, undamaged, and in saleable condition, together with an affidavit stating that Consignee has at all times stored and maintained the returned Consigned Product as required in the Product directions for use; (ii) issue a final order for all Consigned Products that are not returned or that are not in saleable condition, including any Consigned Products that are lost, opened, or damaged;

and (iii) pay any outstanding invoices by the payment due date, including for the final order. At that time, Consignee shall prepare, pack and crate the applicable Consignment Products for shipment, and arrange for shipment to such new location and via such carrier as Consignor directs.

10. Evidence of Ownership of Consigned Products. Consignee agrees to execute and deliver to Consignor, at any time and from time to time upon Consignor's request, such documentation as Consignor may deem necessary or advisable to evidence Consignor's ownership of the Consigned Products. Consignee will pay all costs and expenses of recording same, in order to establish, preserve, protect and maintain Consignor's right and title to and ownership of the Consigned Products.

## II. GENERAL PROVISIONS

11. Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

12. Waiver. No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by an authorized representative of both parties hereto. Failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

13. Entire Agreement. This Agreement constitutes the entire agreement, superseding all prior or contemporaneous agreements, understandings, representations and negotiations, between the parties on the subject hereof; and there are no conditions to this Agreement which are not set forth herein. Notwithstanding the foregoing, the parties may modify the additional terms and conditions of sale by mutual written agreement, except those orders covered by a GPO/IDN Agreement. No modification to this Agreement or the exhibits attached hereto shall be affected by the acknowledgement or acceptance of any order or shipping instructions forms or similar documents containing terms or conditions at variance with or in addition to those set forth herein. In the event of a conflict between this Agreement and the exhibits hereto, the terms of this Agreement shall control.

14. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties. Consignee may not assign or otherwise transfer (through merger, consolidation, sale of assets or otherwise) this Agreement or any interest herein without the prior written consent of Consignor. Any purported assignment without such required consent shall be void. No assignment shall relieve any party of responsibility for the performance of any obligation that accrued prior to the effective date of such assignment.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws, without reference to principles of conflicts of laws, of the State of California.