

# VARIAN MEDICAL SYSTEMS, INC. TERMS AND CONDITIONS OF PURCHASE FOR COMMERCIAL OPERATIONS

Form VM-0617 (07/10)

1. **TERMS AND CONDITIONS:** The supplier identified on the purchase order (“Seller”) agrees to sell, and Varian Medical Systems, Inc. (“**Varian**”) agrees to purchase, the products identified in the purchase order, which incorporates these terms and conditions (collective, the “**Order**”). While Seller may acknowledge receipt of this Order by signing and returning it, any Seller terms and conditions in any specific order acknowledgement documentation, invoice, or other writing, preprinted or otherwise, shall be inapplicable and shall not modify this Order.

2. **INVOICES:** Seller shall invoice at the prices on the face of this Order or at Seller’s most favored customer price under similar circumstances, whichever is lower. Such price shall include all applicable taxes and duties, whether or not separately stated. Seller shall pay said taxes and duties and hold Varian harmless from them. Invoices covering only one order, shipping notices, bills of lading, and receipts shall be mailed promptly after shipment. Seller’s invoice shall identify the country of origin of each product sold to Varian. Discounts shall apply to payments mailed within the stated period, computed from the date of receipt of a proper invoice. Payment shall not be due and owing until thirty (30) days from acceptance of the products furnished under this Order.

3. **PACKAGING AND SHIPMENT:** Seller shall comply with Varian’s shipping instructions. Seller shall suitably wrap, box, and/or crate all products to protect against hazards of shipment, storage, and exposure. All packages containing hazardous materials/dangerous goods shall be prepared in accordance with and comply with all applicable regulations. Seller shall provide hazardous material data sheets promptly upon request. All packages must show purchase order number. Itemized packing slips showing this purchase order number must accompany each delivery. Varian’s count shall be conclusive in the absence of a packing slip. No separate charge shall be made for cartons, wrapping, packing, boxing, crating, delivery, drayage, or similar costs, unless otherwise agreed. Where transportation charges are to be prepaid by Seller and billed to Varian, the amount shall be separately stated on the invoice and supported by receipted bills. Seller assumes all risks regarding the goods ordered until delivery to Varian as specified. Unless otherwise agreed and stated on the face of this Order, all shipments are DDP (Incoterms 2000) Varian’s receiving dock at the Varian facility specified as the shipping destination.

4. **INSPECTION:** Seller shall maintain an inspection system adequate to ensure that all work performed and products delivered conform to Order requirements. Varian may reject nonconforming work and products or require Seller to correct the defects without charge after delivery or completion by Seller of any required installation, whichever last occurs. Payment shall not constitute acceptance. Neither payment nor acceptance shall relieve Seller of liability for failure to conform to Order requirements. Seller shall be liable to Varian for any nonconforming work or products and for any other damages suffered by Varian, except to the extent Seller proves that such damages would have been mitigated but for the failure of Varian to timely notify Seller.

5. **CHANGES:** Varian may at any time, by a written order and without notice to sureties, make changes within the general scope of this Order. If any change directed by Varian causes an increase or decrease in the cost of, or the time required for, any part of the work, Seller may request an equitable adjustment by written Order amendment to the price and/or delivery schedule. Any claim by Seller for such adjustment shall be asserted in writing within fifteen (15) days from the date of receipt of the written order directing the change. Seller agrees to advise Varian in writing, at least one hundred eighty (180) days in advance, of any changes that would materially affect the fit, form, function and/or appearance of the products governed by this Order.

6. **SUSPENSION OF WORK:** Seller shall develop and keep current a formal business recovery plan that details strategies for response to and recovery from a broad spectrum of potential disasters. Upon request, Seller shall make such plan available to Varian or its designated representative for review. If, without the fault or negligence of Seller, the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act or omission by Varian or as a result of changes requested by Varian under Section 5 (Changes), Seller may request an equitable adjustment in price and/or delivery schedule. No adjustment shall be allowed for any costs or delay incurred more than ten (10) days before Seller gives written notice to Varian of the basis of claim, and expected costs and delays.

7. **DELAY:** Seller shall immediately notify Varian of any threatened or actual labor dispute or other matter which may delay Seller’s performance under this Order and the anticipated duration of the delay, and Seller agrees to insert the substance of this requirement in all subcontracts and purchase orders connected to this Order. Excusable delays are those delays which arise out of causes beyond the control and without the fault or neglect of Seller, including acts of God or of the government, fires, floods, strikes, embargoes, or unusually severe weather. Notwithstanding any other provision of this Order, Varian may terminate this Order in whole or in part without cost to Varian where any actual or projected excusable

delay is material or indefinite, would result in frustration of purpose of this Order, or would require Varian to cover by purchasing substitute products.

8. **DEFAULT:** Varian may terminate this Order in whole or in part upon written notice to Seller if Seller: (a) fails to deliver products or perform services within the Order schedule; (b) fails to make progress that endangers any scheduled performance, and does not cure such failure within a period of ten (10) days (or such longer period as Varian may authorize in writing) after receipt of written notice from Varian specifying such failure; (c) fails promptly to provide adequate written assurances of performance satisfactory to Varian when it appears that Seller may not perform in accordance with the Order and assurances are requested by Varian; or (d) fails to perform any other material provisions of this Order. If Varian terminates part of the work, Seller shall diligently continue performance of the remainder. Varian may terminate this Order at any later time for any continuing or subsequent breach. If Seller's default is not the result of excusable delay, as defined in Section 7 (Delay), Seller shall be liable to Varian for any excess costs for repurchasing similar products or services and other damages incurred. If it is determined Seller was not in default, such termination shall be converted to a termination for convenience under Section 9 (Termination for Convenience). In no event shall Seller be entitled to profit on terminated work remaining to be performed.

Upon any termination for default of Seller, Varian may require Seller to transfer title and deliver, as directed by Varian, (a) any completed products, and (b) such partially completed products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order; and Seller shall, at Varian's direction, protect and preserve property in Seller's possession in which Varian has an interest. Payment for delivered products or other materials accepted by Varian and for the protection and preservation of property shall be in an amount agreed upon.

Notwithstanding any defenses of Seller, Varian may set off, withhold, or recover from Seller such sums as may be claimed or withheld by Varian or its customer based upon or relating to any breach or alleged breach by Seller or any of its subcontractors or suppliers at any tier of any representations, certifications, or obligations under this Order or applicable laws, regulations, or orders of government agencies. Seller shall indemnify, defend, and hold harmless Varian and any higher tier contractor to which Varian owes a similar obligation from any and all loss, damage, expense, and liabilities, including administrative expenses and attorney's fees, relating in any way to any claims by any other person or entity arising out of or relating to any such breach or alleged breach.

The rights and remedies of Varian provided in this Order and by law are cumulative. Varian shall not be liable for penalties or for any amounts in excess of the price allocable to the units of product or work giving rise to the claim.

9. **TERMINATION FOR CONVENIENCE:** Varian for its convenience may, at any time by written notice, terminate this Order in whole or in part. In no event shall Varian be obligated for any amount in excess of the Order price for terminated products, or for any amount greater than the percentage of the Order price reflecting the percentage of the work performed prior to notice of termination, whichever is less, plus reasonable costs established by Seller to the reasonable satisfaction of Varian.

10. **PRICE ADJUSTMENTS:** Costs used in determining price adjustments pursuant to the Sections 5 (Changes), 6 (Suspension of Work), and 9 (Termination for Convenience), or any other provision of this Order, shall be those direct costs reasonably incurred, together with applicable indirect costs, computed in accordance with generally accepted accounting principles using Seller's customary accounting practices and procedures, consistently applied. Seller shall prepare its proposed price adjustments as specified by Varian, which proposal and Seller's related books and records shall be subject to audit by Varian or its representatives. Where the cost of property or products made obsolete or excess as a result of a change order or termination for convenience is included in an equitable adjustment, Varian shall have the right to prescribe disposition of the obsolete or excess items. Seller shall not be paid for any reasonably avoidable work performed or costs incurred.

11. **WARRANTY:** Seller warrants that (1) all products and work to be of new material, merchantable, free from defects, and unreasonable hazards, in design, material, and workmanship, fit for the purposes described in this Order, and to conform to applicable specifications of Seller and to Order requirements, (2) Seller has taken all proper and necessary precautions for the safety and protection of persons and property, and has provided all proper warnings for hazards related to products and work that cannot be eliminated, (3) the manufacturing facilities of Seller and its subcontractors will remain certified under ISO 9000 (2000) (and ISO 13485 [2003] if identified on the Order as being required), or the applicable successor standard, during the period of performance of the Order; Seller will notify Varian immediately in writing if Seller or its applicable subcontractor is no longer so certified and will have sixty (60) days to recertify; if Seller fails to recertify within this period, Varian may terminate this Order for cause, immediately, with no liability to Seller; and (4) Seller has the authority to enter into this Order and to perform its obligations. These warranties, Seller's service guarantees, and implied warranties, shall survive inspection, test, and acceptance, and shall run to Varian and subsequent owners and users of the products. Varian's remedies under the these warranties shall include at Varian's election (a) return and full refund of the purchase price paid by

Varian for such products, (b) repair by Seller or persons designated by Seller and accepted by Varian of any products found to be defective in violation of these warranties, without charge, or (c) replacement of products with new products that conform to the above requirements. Seller shall be responsible for all shipping and other fees in connection with return and/or replacement of defective products.

12. **PROPERTY FURNISHED BY VARIAN:** All items furnished by Varian, or the cost of which is charged against this Order, shall be kept confidential, be and remain Varian's property, not be used without Varian's permission, and be returned to Varian immediately upon request. Seller shall be responsible for their safekeeping, and for providing at Seller's expense property insurance acceptable to Varian covering all such items. Seller shall defend, indemnify, and hold harmless Varian, from loss of or damage to, and all claims that may be asserted against, such property. Seller shall mark all tooling and equipment subject to this clause with the name "Varian" and Varian's drawing or tool number where applicable. Seller shall not copy or permit the copying, in whole or in part, and shall not furnish, offer, quote, sell, or advertise for sale any items or information owned by Varian, nor any goods made in accordance with Varian specifications, drawings, or samples, without Varian's express written consent. Notwithstanding any defect in such items or information, or any fault or neglect of Varian, Seller shall indemnify, defend, and hold harmless Varian from any and all loss, damages, and claims relating in any way to any such use by Seller of such items or information or to the products produced from them.

13. **INTELLECTUAL PROPERTY RIGHTS:** The term "**Subject Innovations**" means each invention, improvement, method, design, idea, information, and discovery (copyrightable, patentable, or not) by Seller, or any of its subcontractors or suppliers at any tier, conceived or first reduced to practice during or in the performance of this Order or of work done upon the understanding that an order would be awarded to Seller by Varian. The term "**Technical Personnel**" means each person employed by or working for or with Seller, who would reasonably be expected to, or who actually makes, Subject Innovations or who would reasonably be expected to, or who actually is, exposed to Subject Innovations or Varian confidential information under this Order. Seller shall have the obligations set forth in Subsections (a) – (d), below, with respect to Subject Innovations.

(a) Seller shall obtain promptly intellectual property rights agreements with all its Technical Personnel, requiring them to disclose promptly in writing, and assign to Varian or Seller, all Subject Innovations made by them, either solely or jointly with others. Such intellectual property rights agreements shall specify, and Seller agrees, that (i) upon request of Varian and without further compensation therefor, Technical Personnel and Seller shall cooperate fully and do all rightful acts, including the execution of proper papers and oaths, which in Varian's opinion may be necessary or desirable in obtaining, sustaining, or reissuing United States Letters Patents or copyrights and foreign patents or copyrights on any Subject Innovations, or for maintaining Varian's title to them, and (ii) Technical Personnel shall be instructed to treat and shall treat as confidential all information received by them in connection with this Order and all Subject Innovations created by them, and shall not publish or disclose this information to others at any time without written consent of Varian.

(b) Seller shall obtain and deliver promptly to Varian full written descriptions of Subject Innovations along with the assignment of all rights in them to Varian from Technical Personnel and from Seller, to document Varian's entire and exclusive right, title, and interest throughout the world in such Subject Innovations including all United States and foreign patents, copyrights, and applications for them.

(c) If to the best of the knowledge and belief of Technical Personnel and Seller, no Subject Innovations have been conceived or first reduced to practice under or related to this Order, Seller shall so certify to Varian.

(d) Seller shall not furnish, and agrees that it has not been and will not be necessary for Varian to receive from Seller, any confidential information, and that Seller has not furnished or disclosed, and will not furnish or disclose, to Varian any materials, documents or other information which are deemed to be confidential information, or otherwise proprietary, to Seller or to any third party, including within the Subject Innovations. Any receipt of any confidential information from Seller must be the subject of a separate written agreement made prior to the receipt by or disclosure to Varian which specifically identifies the nature of the confidential information to be disclosed. Seller understands that Subject Innovations constitute confidential information of Varian and understands and agrees that it will neither use for its benefit or the benefit of any third party nor disclose the same to others without the express written permission of Varian in each instance.

14. **PATENT INDEMNITY:** Seller shall indemnify, defend, and hold Varian, subsequent owners of the products, and their affiliates, and each of their directors, employees, and agents harmless against any and all actions, claims, liabilities, costs, damages and expenses (including reasonable attorneys fees), with respect to actual or alleged infringement of any intellectual property rights arising out of, resulting from or caused by the manufacture, sale, offer for sale, delivery, storage, use, or handing of products furnished under this Order, except to the extent such products manufactured by Seller in compliance with Varian's detail designs and stated requirements for specific structure, provided such designs and requirements could not have been implemented in a noninfringing manner. Seller shall give Varian prompt written notice to Seller of any infringement claim.

15. **INDEMNIFICATION.** Seller shall indemnify, defend and hold Varian and its affiliates and their directors, employees, and agents harmless from and against any and all actions, claims, liabilities, costs, damages and expenses (including reasonable attorneys fees) for physical damage to or loss of tangible property, for injury or death of any person and for any product recall or retrofit, in each case to the extent arising out of, resulting from or caused by: (a) acts or omissions of Seller, its employees, agents and subcontractors, or (b) any defect in design, workmanship, or materials carried out or employed by Seller or its employees, agents, or subcontractors, or (c) entering upon premises occupied by or under the control of Varian, any of its customers, or suppliers in the course of performing this order, except in each case to the extent that any such damage to or loss of property and injury or death of any person is caused by acts or omissions of Varian, its employees, agents and subcontractors. This indemnification shall be in addition to warranty obligations of Seller. Seller will obtain and maintain product liability insurance or self insurance retention program to cover its liability to third parties in connection with the sale of products, to cover obligations set forth above, and to cover workers' compensation and employer's liability for all employees engaged in performing the work. Seller will furnish certificate of insurance to Varian with respect thereto upon request.

16. **CONFIDENTIALITY AND PUBLICITY:** Information disclosed by Varian, whether written, disclosed orally, visually, or learned by observation that is marked with the legend indicating its confidential nature, or stated to be confidential, or reasonably understood to be confidential, shall constitute Varian confidential information under this Order. Seller will hold Varian confidential information in strict confidence and use the same only for the purpose of this Order and not use for its own benefit or the benefit of any third party or disclose to any third party. Seller shall not reverse engineer any Varian confidential information and shall limit access to the Varian confidential information to only those of its employees who have a need to know such information to accomplish the purposes of this Order and have been advised of the confidential nature of such information and are bound by the agreement described in Section 13(a) (Intellectual Property Rights). No publicity releases shall be made by Seller regarding this Order without Varian's express written permission.

17. **COMPLIANCE WITH IMPORT/EXPORT LAWS.** Both parties will cooperate to effect compliance with all applicable U.S. export and/or import regulations. Neither party will export or re-export, directly or indirectly, any product, software or technical data provided under this Order, or the "direct product" of such software or technical data, to any country without first obtaining any required U.S. government approvals or licenses. In addition, the parties agree to comply with all applicable local country export and/or import laws and regulations of the country(ies) of procurement, production, and/or destination of the product. The parties understand and agree that the foregoing obligations are legal requirements and that they shall survive any term or termination of this Order. Seller shall provide Varian with complete and accurate information for all products, software, and technical data sold or licensed to Varian under this Order for purposes of Varian's compliance with U.S. import and export regulations, including the following information: (a) description of the product, including Varian part number, if any; (b) U.S. Harmonized Tariff System ("**HTS**") number; (c) country of origin, as determined in accordance with U.S. Customs rules of origin; (d) U.S. Food and Drug Administration ("**FDA**") regulatory approval and clearance information, including accession codes, for any products regulated for import to the U.S.; (e) statement of any applicable U.S. anti-dumping orders, and exclusions thereto; (f) statement that the product is controlled for export under the U.S. International Traffic in Arms Regulations ("**ITAR**") or the U.S. Export Administration Regulations ("**EAR**"), whichever is applicable; and (g) Export Control Classification Number ("**ECCN**"), including a copy of any formal classification determination ("**CCATS**") obtained from the U.S. Department of Commerce. Such information shall be provided to Varian prior to the first delivery of products and shall be included on the commercial invoice accompanying shipment of the products. Seller agrees to maintain records of Varian transactions as required under the record keeping provisions of the U.S. import and export laws and regulations and to make such records available to Varian at Varian's request. Upon Varian's request, Seller will promptly provide Varian with a complete and accurate manufacturer's certificate of origin for all products. Supplier shall provide valid NAFTA certificates to Varian for each of the products as applicable on an annual blanket basis.

18. **COMPLIANCE WITH LAWS, MARKING, AND DUTY DRAWBACK:** All agreements required by any applicable federal law or regulation to be incorporated are hereby incorporated. Seller shall mark each item of foreign goods with the English name of the country of origin (if known) as conspicuously and permanently as possible (or on the container if the item cannot be so marked), and comply with all other marking requirements. At Varian's request, subject to the applicable manufacturer providing the same to Seller, Seller shall (a) inform Varian of the existence of any duty drawback rights, (b) provide a certificate of country of origin of imported goods sufficient to satisfy the customs authorities of the country of receipt, (c) designate Varian as importer of record of imported and dutiable goods, (d) furnish Varian properly executed documents required by U.S. Customs to prove importation and duty payment, and (e) transfer customs duty drawback rights from Seller to Varian. Seller warrants that the goods and services in this Order have been or will be produced and sold in compliance with the provisions of all applicable federal, state, or other laws.

19. **ENVIRONMENT.** Seller represents and warrants that (a) no product shall have come into physical contact with: (i) a Class I substance, as defined in Article 611 of the Federal Clean Air Act (the "**Act**"), during any portion of the manufacturing process; or (ii) a Class II substance, as defined in the Act and Title 40, Code of Federal Regulations, Article 82 (the "**Code**"), during any portion of the manufacturing process or (b) the Products will not contain or be manufactured

using ozone depleting substances including without limitation chlorofluorocarbons, halons, methylchloroforms, and carbon tetrachlorides. If any of these requirements are not satisfied and/or Seller becomes aware that Seller is subject to any warning or labeling requirements regarding a Class I substance or a Class II substance pursuant to the Act or any regulation promulgated under the Act, Supplier shall immediately notify Varian in writing, explaining the circumstances constituting any of the foregoing and identifying the products involved. Unless otherwise directed in writing by Varian, the products will not contain any substance set forth on the list of prohibited substances as made available by Varian to Seller from time to time in writing, including a posting on Varian's website. In addition, all products are subject to Materials Declaration Requirements, without respect to whether the products or Varian finished products into which the products are integrated, if any, are exempt from such requirements. "**Materials Declaration Requirements**" means any requirements concerning the disclosure of hazardous substances contained or used in any product, component, material or part, such as those in Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment as amended from time to time ("**RoHS Directive**"), Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment, as amended from time to time ("**WEEE Directive**"), any European Union Member State implementations of them, the equivalent of the RoHS Directive as implemented in China and Japan, and/or other similar environmental and/or materials declaration laws, directives, regulations and requirements, including international laws and treaties regarding such subject matter, as amended from time to time, as well as those set forth in JIG-101. Seller shall provide and shall obtain from suppliers, when necessary, documentation certifying compliance with Materials Declaration Requirements with respect to the products, the form of which has been provided, or approved in writing, by Varian ("**Compliance Certification**") and which Compliance Certification shall be provided to Varian prior to the initial Order for such product and thereafter, at Varian's request.

20. **MEDICAL DEVICE REGULATORY COMPLIANCE.** The following shall apply medical devices and to parts, components, and software that will be included with Varian's medical devices.

20.1. **Government Approvals.** Seller will provide language translations of the product documentation and the product's user interface for English, French, German, and Spanish, at no additional charge to Varian. Seller agrees to provide the glossaries developed for such language translations to Varian at no additional charge to Varian for Varian's use in any additional language translations; provided that Seller shall have no other obligations with respect to such additional language translations unless agreed as part of a Statement of Work.

20.2. **Regulatory Inquiries.** Seller shall promptly inform Varian of the existence and substance of any inquiry or investigation related to the products initiated by any government authority or certification agency. The existence of any such inquiry or investigation shall not alone constitute a breach of this Order by either party or excuse any performance due under this Order by either party.

20.3. **Regulatory Inspections.** To the extent required by law or at its reasonable discretion, Seller shall permit all governmental authorities and certification agencies the reasonable right to inspect Seller's facilities at which the products or any components of them are handled, stored, or shipped, and all records related to them. Seller shall reasonably assist such governmental authorities and certification agencies with such inspections. Seller shall promptly notify Varian of all such inspections related to or affecting the products and shall use reasonable efforts to provide Varian the opportunity to be present at such inspections. Seller shall use reasonable efforts to provide to Varian, within five (5) days of its submission or receipt by Seller, a copy of all letters, documents, and similar instruments related to the products, which Seller submits to or receives from any governmental authority or certification agency, including all ISO Audit Observations, FDA Warning Letters, and Form 483s. Seller shall immediately correct any deficiencies identified by any governmental authority or certification agency.

20.4. **Product Complaints/Reports.** Seller shall promptly notify Varian of any product complaint, report, or recall. Seller shall promptly provide to Varian with any information received by Seller regarding real or potential deficiencies or defects in the products and any information that might otherwise constitute a complaint about the products or would reasonably be considered material to the safety of them for their intended use. Each party shall reasonably cooperate with the other in sharing any information that may constitute a complaint related to the products and shall designate a representative responsible for the exchange of such information and all other regulatory information required to be shared under this Order. Seller shall at all times reasonably cooperate with any Varian investigation, inspection, or inquiry regarding the products.

20.5. **Recalls.** Varian shall have the sole authority to declare a recall of any products, as standalone products or as contained within Varian products, if Varian believes that there is a potential significant health hazard or non-compliance with applicable government regulations. Seller agrees to reimburse Varian for all damages related to any recall provided that such recall is attributable to a breach of any of Seller's obligations or warranties under this Order. The parties will work together in good faith to minimize the parties' financial exposure as part of the recall.

21. GOVERNMENT CONTRACTS: Because Seller's supplies or services may be incorporated into products sold by Varian to United States government agencies as Commercial Items (in accordance with Federal Acquisition Regulation ("FAR") Part 12), Seller agrees to comply with the following requirements:

- (1) FAR 52.222-26 Equal Employment (B.O. 11246)
- (2) FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212)
- (3) FAR 52.222-36 Affirmative Action for Workers with Disabilities (29 U.S.C. 793)

If Seller's supplies or services are being sold by Varian to the United States, then to the extent appropriate to effectuate the purpose of the clauses set forth in the contract between Varian and the United States, references to "the Government" shall mean Varian Medical Systems; references to "Offeror" and "Contractor" shall mean Seller; and references to the "Contracting Officer" shall mean the Varian representative authorized to modify the provisions of this Order. Applicable procurement regulations that are required by federal statute or regulation to be inserted in contracts or subcontracts shall take precedence as between the parties to the extent any right or obligation specified in such statutes or regulations is inconsistent with the terms and conditions set forth fully in this Order.

22 GOVERNING LAW AND DISPUTE RESOLUTION: This Order shall be construed under and governed by the law of the State of California without regard to conflicts of laws rules. Varian and Seller shall meet in good faith to attempt to resolve informally any disputes arising out of this Order. If the parties are unable to resolve such disputes informally, either side may initiate legal action for relief. Venue shall be in the state and/or federal courts of Santa Clara County, California, which shall have the exclusive jurisdiction over the subject of such disputes. In any action to enforce this Order, the prevailing party shall be awarded all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

23. ASSIGNMENT: Seller may not assign any rights nor delegate or subcontract any duties under this Order without the prior written consent of Varian; except that Seller may enter into subcontracts for purchases of parts and supplies, and subcontracts for commercial products, and may assign its right to receive payment upon written notice. Varian may assign or otherwise transfer this Order, in whole or in part, to a subsidiary or affiliate, or a purchaser or transferee of substantially all of the assets used by Varian in its business to which this Order relates upon written notice to Seller. Whether or not assigned, all payments shall be subject to setoff or recoupment for any present or future claims that Varian may have against Seller.

24. ENTIRE AGREEMENT, MODIFICATION, WAIVER, NOTICES: This Order, including any attached Schedules and Exhibits, constitutes the entire agreement of the parties hereto with respect to the sale of products and services by Seller to Varian and supersedes all prior representations, warranties, agreements, and understandings, of any kind, written and oral, of the parties hereto. It may not be modified or amended except by written amendment specifically referencing this Order signed by the authorized representatives of the parties. No waiver of any term of this Order shall imply a subsequent waiver of the same or any other term or constitute a continuing waiver. All notices shall be given in writing and be personally delivered or sent by postage prepaid mail addressed to the parties at their addresses first mentioned above or as otherwise designated to the other by notice as herein required.