

PRICING AGREEMENT TERMS AND CONDITIONS

The following terms and conditions apply to and shall be deemed incorporated into any Pricing Agreement between Skeletal Dynamics, Inc. (the "Company") and any purchaser of its products (the "Customer").

Article 1 REPRESENTATIONS AND WARRANTIES

1.1 Company Representations and Warranties.

(a) The Company represents and warrants to the Customer that it is duly organized and in good standing under the laws of the State of Florida and that the Company is currently licensed and throughout the term of this Agreement shall continue to be licensed to do business in the State of FLORIDA.

(b) Company shall act in a manner consistent with all standards of professional ethics and conduct as are applicable during the term of this Agreement.

(c) Company represents that its representatives will comply with the Customer's reasonable industry standard vendor policy and procedures protocol as provided to the Company upon request for review and familiarization of the guidelines therein.

(d) Company warrants that each Product shall conform to its published specifications upon shipment to Customer. With respect to Products that do not conform to their published specifications, Company will repair or, at its option, replace any non-conforming Products and return the repaired or replacement Products to Customer without charge.

1.2 Customer Representations and Warranties.

(a) Customer represents that the Products received under this Agreement shall be used only to serve the Customer's patients, and Customer will not sell, consign or otherwise transfer the Products purchased under this Agreement to other hospitals, clinics, wholesalers, dealers, or third parties, or the general public.

(b) Customer acknowledges that the Products incorporate technology that are subject to Company's Intellectual Property Rights, and that such technology is not sold to Customer and is only provided to Customer solely as incorporated and/or embedded into the Product. Company or its licensors shall retain all Intellectual Property Rights and interests in and to or underlying the Products and nothing herein shall be construed to grant Customer a license of any kind to any Intellectual Property Rights of Company. To the maximum extent allowable under applicable law, Customer agrees that it shall not, directly or indirectly through any third party, reverse engineer, decompile, duplicate or translate any Product or seek to reveal any trade secret or know how underlying any Product. "**Intellectual Property Rights**" as used herein collectively means any and all patents, copyrights, trademarks, trade secrets, mask works, moral rights, know-how or any other statutory or common law proprietary right, and any applications for the foregoing, under the laws of the United States, any other jurisdiction, the European Union, or any other bi-lateral or multi-lateral treaty regime.

Article 2 TERM AND TERMINATION

2.1 Term. The Pricing Agreement shall continue for a period of one year (the "**Initial Term**"); thereafter, this Agreement shall renew only upon the written agreement of the Company for successive one-year terms (each a "**Renewal Term**") unless terminated in accordance with Section 2.2. The Initial Term and any Renewal Term shall collectively be the "**Term**."

2.2 Termination.

(a) Either Party may terminate the Pricing Agreement immediately upon finding any material warranty or representation of the other Party is false or incorrect when made, or hereafter becomes false or incorrect, or any warranty, representation or covenant of this Agreement is breached and is not cured within 30 days of being notified by the finding Party.

(b) Either Party may terminate the Pricing Agreement at any time by giving thirty (30) days advance written notice to the other Party. The General Provisions Article, along with any accrued rights and responsibilities, will survive termination or expiration of this Agreement.

Article 3

PRODUCT AND PRICING

3.1 Product Pricing. The Product pricing, including any discount at the time of sale and any retrospective payment (each, a “**Price Concession**”), for purchase of a given Product by the Customer is set forth in the Pricing Agreement with the Customer. The Company may change any pricing upon thirty (30) days’ notice to Customer.

3.2 Product Orders. All Products ordered by Customer are subject to this Agreement. While the Company will make its best effort to supply the Products and deliver them to the Customer by the specified delivery date, any failure to meet a product order, order or delivery deadline shall not constitute a breach of this Agreement. Customer shall submit a purchase order to the Company either before delivery or, in the case of usage for a specific surgical case, within two (2) business days after the surgery.

3.3 Delivery Terms; Returns. The Customer shall pay any and all third-party freight charges for shipping of Products. Direct delivery by any Company representative shall bear no cost to Customer. Any returns will be governed by the Company’s return policy found at <https://skeletaldynamics.com/wp-content/uploads/2023/06/Skeletal-Dynamics-Inc.-Return-Policy.pdf>.

3.4 Product Payment. Payment shall be due thirty days (30) after receipt of an invoice. If payment is not received by Company within the prescribed timeframe, the unpaid balance will accrue interest from the date due until the date paid at a rate of one percent (1%) per month, or the maximum rate allowed under applicable law, whichever is less. Any payment by credit or debit card shall be subject to a fee of 2.5%. Customer agree to pay all expenses incurred by the Company to collect unpaid invoices, including attorney’s fees and costs, whether legal action be brought or not. The Company, in its sole and absolute discretion, and without prejudice to any other lawful remedy, may refuse or discontinue further deliveries to the Customer, place the Customer on credit hold, and /or change the terms of payment for Customer until the Customer makes all past due payments and/or timely issues purchase orders, for products delivered to Customer.

If the Customer disputes in good faith any amount of the invoice, the Customer shall pay the undisputed amount when due and submit a written explanation specifying the amount in dispute and the reason for the dispute. Upon resolution of the dispute, the Customer shall pay immediately the disputed amount that the parties agreed is due and owing. The Customer must notify the Company in writing of any disputed amounts within thirty (30) days of receipt of any invoice, or any dispute shall be considered waived.

3.5 Pricing Disclosure.

(a) The Customer acknowledges that, by law, it is required to disclose, in any cost reports or claims for reimbursement submitted to Medicare, Medicaid, or certain other health care programs, the cost (including, but not limited to, Price Concessions or any other price reductions) of any Product purchased under this Agreement and, on request, provide to the U.S. Department of Health and Human Services and any state agencies, any invoices, coupons, statements, and other documentation reflecting such costs for Products. The Customer may receive subsequent documentation under some programs reflecting adjustments or allocations to the Price Concessions available hereunder.

(b) In preparing any documentation referred to in the previous Section, the Customer may be required to evaluate as a discount, for cost-reporting purposes, the value of any Product listed as \$0.00 on any invoice.

(c) The Customer should not include as a discount, for cost-reporting purposes, the value of any item that is designated as a sample, or that the Customer knows constitutes a sample, nor should it seek reimbursement for any such items.

(d) The Customer may request additional information from the Company to meet its reporting or disclosure obligations by writing to the Company at the address stated.

3.6 Price Increases. Prior to the end of the Initial Term and each subsequent Renewal Term, all Products pricing will be reviewed. At this time, the price structure may be amended by the revised pricing which will take effect upon thirty (30) days' notice to Customer.

3.7 Wasted or Damaged Products. If any implant product is wasted or any instrument is damaged or lost, the Company shall bill the Customer, and the Customer shall pay seventy percent (70%) of the price shown on Schedule A. If the price is not reflected on Schedule A, then the Customer shall pay 70% of the Company's then list price.

3.8 Product Changes. During the term of a Pricing Agreement, the Company may develop and offer additional products ("**New Products**") that are not listed as a Product in the Pricing Agreement. The Parties acknowledge and agree that Products listed in a Pricing Agreement is not an exclusive list and the Company may communicate New Products (and corresponding pricing) to Customer that are to be covered by the Pricing Agreement. In the event that the Company determines that New Products are to be covered by the Pricing Agreement, the Company will notify Customer (by email or other writing) regarding the New Products and their prices and such New Products shall be deemed Products for purposes of Pricing Agreement. If products that are not included in the Pricing Agreement are used by Customer without prior product and pricing approval, pricing for such items shall be the pricing set by the Company in its communication to the Customer. The Company and Customer agree that pricing, under this methodology, shall be deemed agreed-upon, and incorporated into Exhibit A, within thirty (30) days of the Company's notice to Customer of the availability of a New Product.

3.9 Single-Use Products.

(a) The Customer shall ensure that any Single-Use Product that it purchases is used once, and only once, in delivering patient care and the Company conveys no right in any such Single-Use Product other than the right to use such Single-Use Product once, and only once. For purposes of this agreement, a "**Single-Use Product**" means any Product that is labeled "For Single Use," "Single-Use Only," or "Do Not Reuse," or is otherwise labeled to indicate that the Product is to be used once, and only once, in delivering patient care.

(b) The Pricing Agreement does not grant the Customer, or any other person or entity, any license to reprocess, remanufacture, or reconstruct any Single-Use Product. The sale or use by Customer of any reprocessed, remanufactured or reconstructed Single-Use Product will be subject to all available remedies, including remedies for infringement of intellectual property rights of Company.

3.10 Product Commitment. The Parties acknowledge that unless otherwise set forth in the Pricing Agreement attached hereto, this Agreement contains no commitment to market share or dollar volume.

Article 4 GENERAL PROVISIONS

4.1 Removal. Customer reserves the right to remove any Company representative due to the representative's inappropriate behavior, as determined by Customer.

4.2 Entire Agreement. The Pricing Agreement constitutes the entire agreement between the parties concerning the subject matter of the Pricing Agreement and supersedes all prior negotiations and agreements between the parties concerning the subject matter of the Pricing Agreement. The terms and conditions of any purchase order, invoice, or similar document used to implement the Pricing Agreement shall be subject to and shall not modify the terms and conditions of this Agreement.

4.3 Amendment. The Pricing Agreement may only be amended by the Company's written Amendment.

4.4 Assignment. Except as provided in this section, neither party may assign any of its rights or obligations under the Pricing Agreement, either voluntarily or involuntarily (whether by merger, consolidation, dissolution, operation of law, or otherwise), without the prior written consent of the other

party which consent shall not be unreasonably denied. If the Company or any of its affiliates divests itself of any Product(s), then the Company may assign to the person or entity acquiring the Product(s) any of the Company's rights under the Pricing agreement relating to the acquired Product(s), on the condition that the assignee will also assume the Company's obligations under the Pricing Agreement relating to the acquired Product(s). Any purported assignment in violation of this section will be void.

4.5 Notices. Notices under the Pricing Agreement must be in writing, signed by the sending party, and sent to the address below by one of the following methods: personal delivery; registered or certified mail, in each case return receipt requested and postage prepaid; nationally recognized overnight courier, with all fees prepaid; facsimile; or email. A notice under the Pricing Agreement is effective upon receipt or refusal of delivery by the other party. The address listed below may be changed by notice in accordance with this section.

If to the Customer: at the address, facsimile, and email on file in the Company's records.

If to the Company: Skeletal Dynamics, Inc.
7300 N Kendall Dr., Ste.800
Miami, FL 33156

Attention: Contracts
Facsimile: 305-596-4804
Email: contracts@skeletaldynamics.com

4.6 Waiver. No provision of the Pricing Agreement may be waived except by a writing signed by the party waiving the provision. No waiver, or failure to enforce any provision of this agreement, constitutes a waiver of future enforcement of that provision or of any other provision of the Pricing Agreement.

4.7 Relationship of the Parties. For purposes of the Pricing Agreement, each party is an independent contractor. The Pricing Agreement does not create a partnership, association, or other business entity. Neither party has any authority to act for or to bind the other.

4.8 No Third-Party Beneficiaries. No one other than the Company and the Customer has any rights, or is entitled to any remedies, under the Pricing Agreement.

4.9 Other Contractual Obligations. Each party represents that it is not prohibited from entering into, or performing its obligations under, the Pricing Agreement by the terms of any other Agreement.

4.10 Publicity and Trademarks. Each party will not, and will cause its affiliates not to, issue any press release or make any announcement regarding this Agreement nor use the name or any trademark or service mark of the other party or any of its affiliates without the prior written consent of the other party.

4.11 Confidentiality.

(a) Each party shall hold the following "**Confidential Information**" in strict confidence and not disclose the same to any other person or entity except as provided herein: all information, pricing and terms relating to or contained in the Pricing Agreement; all Product data, trade secrets, financial data, pricing, business plans or any other information received from the other party in implementing this agreement; and all information derived from the foregoing.

(b) Notwithstanding the above:

(1) A party may disclose Confidential Information to the personnel within its organization and its legal and accounting advisors that require the Confidential Information in connection with the Party's rights and obligations under this Agreement, provided that the disclosing Party requires any such recipient to use the information solely for these purposes and to keep it strictly confidential.

(2) A Party may disclose Confidential Information as required by law, provided that the disclosing Party provides reasonable prior notice to the other Party, unless prohibited by law, to enable such other Party to attempt to prevent or limit the disclosure and the disclosing Party assists the other Party upon request in seeking relief from or limiting the disclosure.

(3) The Company may disclose the Pricing Agreement and Confidential Information related to the Pricing Agreement to: any prospective buyer of rights with respect to a Product, provided that such buyer agrees in writing to use the information solely in that capacity and to keep it strictly confidential; to its affiliates; and to any entity that manufactures, markets, co-markets, or distributes any Product, provided that any such entity uses the information solely for these purposes and keeps it strictly confidential.

(4) Neither Party shall be obligated to hold the following information in confidence: information that is or becomes publicly available through no fault of the recipient, information developed by a Party without using any Confidential Information, information lawfully possessed by a Party before receipt from the disclosing Party, and information lawfully disclosed to a Party on a non-confidential basis from a person or entity that is not bound by a duty of confidentiality.

(5) A Party may disclose Confidential Information with the prior written consent of the other Party.

4.12 Force Majeure and Product Shortage. Noncompliance with any obligation under this agreement due to an event of force majeure or any other cause beyond the reasonable control of the entity affected will not constitute a breach of this agreement. In the event of a shortage of Product, the Company and its affiliates reserve the right to allocate Products among their customers in any manner that they, in their sole discretion, determine is reasonable.

4.13 Compliance with Law. In performing their obligations under the Pricing Agreement, the Customer and the Company shall comply with all applicable federal and state laws and regulations, including without limitation the Federal Food, Drug and Cosmetic Act, the Prescription Drug Marketing Act, equal-opportunity laws, and fraud and anti-kickback laws.

4.14 Government Program Participation. Each Party represents that it has not been excluded from participating in any "federal health care program," as defined in 42 U.S.C. § 1320a-7b(f), nor any other federal or state government payment program, and that it is eligible to participate in the foregoing programs. If either Party is excluded or becomes otherwise ineligible to participate in any such program during the term of the Pricing Agreement, such party will notify the other party of that event within thirty (30) days. Upon occurrence of that event, whether or not such notice is given, either Party may terminate this Agreement effective upon written notice to the other Party.

4.15 Governing Law; Venue. This agreement shall be subject to and governed by the laws of the State of Florida without regard to its conflict of laws provision. The Parties agree that any legal action relating to or arising out of the Pricing Agreement, shall be commenced and maintained exclusively in the state or federal courts located in Miami-Dade County Florida, and waive any rights to challenge or otherwise question personal jurisdiction, venue or forum non conveniens with respect to such courts. Each party irrevocably waives the right to trial by jury in any legal action between them.

4.16 Product Warranty. The Company warrants to Customer that Products purchased under the Pricing Agreement conform to Company's published specifications ("**Specifications**") and are free from defects in workmanship and material at the time of shipment. If, upon inspection within a reasonable time after delivery and before implantation or use, Customer discovers a failure of a Product to conform to Specifications or a defect in material and workmanship, it must promptly notify the Company in writing. Within a reasonable time after such notification, the Company will correct any failure of the Product to conform to the warranty by providing, at its option, repair of the Product, a replacement unit, or a refund of the purchase price, if applicable. The aforementioned remedies are Customer's exclusive remedies for breach of warranty under this Agreement.

The foregoing warranties, unless otherwise agreed by the parties in a written addendum to this agreement or expressly provided in the specifications, shall extend for a period of one (1) year commencing on the date of shipment of the product to customer.

This warranty does not extend to or cover: (a) any product, components, or parts not manufactured or sold by the Company; (b) damage caused by use of any Product for purposes other than those for which it was designed as indicated in the Company's published materials; (c) damage caused by unauthorized attachments or modification; (d) any other abuse or misuse by Customer, its employees, representatives, contractors and agents; or (e) any Product where the Customer is not the first purchaser of the Product.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THIS AGREEMENT OR THE PRODUCTS OR MATERIALS TO BE PROVIDED UNDER THE PRICING AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

4.17 Insurance. The Company will maintain product liability and general public liability insurance against any insurable claims that are reasonably likely to arise regarding Products purchased from the Company in such amounts and with such insurance companies as determined by Company in its sole discretion.

4.18 Indemnity.

(a) The Company will indemnify the Customer for losses arising from any claim made by any person or entity, other than the Customer, alleging: (a) that use of any Product in accordance with Company-approved labeling resulted in bodily injury to the extent such claims arise out of manufacturing or material defects in Products; or (b) that any Product infringes the intellectual property of any other person or entity.

(b) It is a condition to the Company's obligations that the Customer notify the Company promptly of that claim, permit the Company to control the litigation and settlement of that claim, and cooperate with the Company in all matters related thereto, including by making its documents, employees and agents available as reasonably necessary.

(c) The Company will not be required to indemnify the Customer with respect to: any claim arising out of negligence or willful misconduct by the Customer; its employees, agents or any third party operating on Customer's premises, use of a Product by any person or entity other than in accordance with Company-approved Product labeling including, without limitation, any restrictions on re-use of products; or breach by the Customer of its obligations under this Agreement.

(d) The Company may not settle any claim without the consent of the Customer unless there is no finding or admission that the Customer has violated any law or the rights of any person or entity and the sole relief provided is monetary damages that the Company pays in full.

(e) The Customer will indemnify the Company for losses arising from any claim made by any person or entity other than the Company, caused by negligence, willful misconduct, fraud, violation of applicable law or breach of this Agreement by Customer, its employees, agents and or any third party operating on Customer's premises, including, but not limited to, Customer's negligence or willful misconduct as set forth in subsection (c) of this Section.

4.19 Direct Agreement. The Pricing Agreement is unrelated to any agreement with any group purchasing organization of which the Customer is a member. The Company will not pay administrative fees to any group purchasing organization with respect to any Product purchased under the Pricing Agreement.

4.20 Limitation of Liability. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO CASE SHALL THE COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES.