



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
WEH11147

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
**ROBERTA WAGNER
 304-558-0067**

VENDOR

*721112051 215-721-5400
DRAEGER MEDICAL INC
3135 QUARRY ROAD

TELFORD PA 18969

SHIP TO

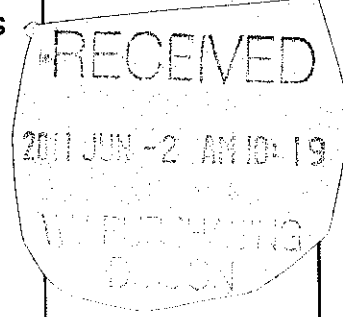
**HEALTH AND HUMAN RESOURCES
 WELCH COMMUNITY HOSPITAL**

**454 MCDOWELL STREET
 WELCH, WV
 24801 304-436-8710**

DATE PRINTED 04/27/2011	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: **06/07/2011** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	4	EA		475-00-99-001	15,734.48	62,937.92
<p>MECHANICAL VENTILATORS</p> <p>REQUEST FOR QUOTATION</p> <p>DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR HEALTH AND HEALTH FACILITIES IS SEEKING BIDS FOR THE PURCHASE OF FOUR (4) FULLY INHANCED MECHANICAL VENTILATORS PER ATTACHED SPECIFICATIONS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 05/26/2009</p> <p>INQUIRIES: <i>Dräger Medical, Inc. Terms and Conditions of Sale are attached hereto and made a part hereof.</i></p>						



SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE: *[Signature]* TELEPHONE: **1-800-4-DRAEGER** DATE: **May 31, 2011**

TITLE: **VP Finance & CFO** FEIN: **23-1699096** ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



June 1, 2011

State of West Virginia
Department of Administration
Purchasing Division
Building 15
2019 Washington Street, East
Charlestown WV 25305-0130

Attn: Roberta A. Wagner

RE: **Buyer RW/File 22**
RFQ: WEH11122
Bid Opening Date: 6/5/2011 – Time: 1:30 PM

Dear Ms. Wagner:

Thank you for the opportunity to participate in the above Request for Quotation. The following pages contain our reply to your request for medical equipment.

We have enclosed the following items for your review: response to the above mentioned RFQ, quotations, and our Terms and Conditions of Sale. Please note that Draeger Medical will extend an additional \$1000 1:1 trade-in allowance for each ventilator (model 7200) traded against the purchase of a new Draeger ventilator. Because it was not specified in the RFP, this additional discount is *not* included on the enclosed quotation, yet is available if desired.

Again, thank you for your time and interest in Draeger Medical solutions.

If you have any questions, please feel free to contact me.

Sincerely,

Brad Rogers

Ventilation Sales Executive

Dräger Medical, Inc.

3135 Quarry Road

Telford PA 18969, USA

Tel: 1-800-4DRAGER ext 4036

Cell Phone: 724-331-8235

Fax: 412-202-3806

Tel: 1-800-4DRAGER X-4036

Brad.Rogers@draeger.com

www.draeger.com

Dräger. Technology for Life ®



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
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Request for Quotation

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ADDRESS CORRESPONDENCE TO ATTENTION OF
ROBERTA WAGNER
304-558-0067

PROPERTY

***721112051 215-721-5400**
DRAEGER MEDICAL INC
3135 QUARRY ROAD

TELFORD PA 18969

SHIP TO

HEALTH AND HUMAN RESOURCES
WELCH COMMUNITY HOSPITAL

454 MCDOWELL STREET
WELCH, WV
24801 304-436-8710

DATE PRINTED 04/27/2011	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: **06/07/2011** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 05/19/2011. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25311</p> <p>FAX: 304-558-4115 E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATION IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>THIS TEAM EXHIBIT HAS BEEN REPLACED BY THE ONLINE</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE 	TELEPHONE 1-800-4-DRAGER	DATE May 31, 2011
TITLE VP Finance & CFO	FEIN 23-1699006	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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VENDOR

*721112051 215-721-5400
DRAEGER MEDICAL INC
3135 QUARRY ROAD

TELFORD PA 18969

SHIP TO

HEALTH AND HUMAN RESOURCES
WELCH COMMUNITY HOSPITAL

454 MCDOWELL STREET
WELCH, WV
24801 **304-436-8710**

DATE PRINTED 04/27/2011	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: **06/07/2011** **BID OPENING TIME 01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>VERSION WHICH IS AVAILABLE HERE: HTTP://WWW.STATE.WV.US/ADMIN/PURCHASE/VRC/VENPREF.PDF</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER:-----RW/FILE 22-----</p> <p>RFQ. NO.:-----WEH11147-----</p> <p>BID OPENING DATE:-----06/07/2011-----</p> <p>BID OPENING TIME:-----1:30 PM-----</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p style="text-align: center;">-----215-721-5811-----</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE 	TELEPHONE 1-800-4DRAGER	DATE May 31, 2011
TITLE VP Finance & CFO	FEIN 23-1699096	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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***721112051 215-721-5400**
DRAEGER MEDICAL INC
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TELFORD PA 18969

HEALTH AND HUMAN RESOURCES
WELCH COMMUNITY HOSPITAL

454 MCDOWELL STREET
WELCH, WV
24801 304-436-8710

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
04/27/2011				

BID OPENING DATE: **06/07/2011** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
CONTACT PERSON (PLEASE PRINT CLEARLY): <i>Brad Rogers (724) 331-8235</i>						
***** THIS IS THE END OF RFQ WEH11147 ***** TOTAL:						<u>62,937.92</u>
						<u>996.00</u>
						<u>\$63,933.92</u>
						<u> </u>

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE *[Signature]* TELEPHONE **1-800-4-DRAGER** DATE **May 31, 2011**

TITLE **VP Finance & CFO** FEIN **23-1699096** ADDRESS CHANGES TO BE NOTED ABOVE

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PROCUREMENT SPECIFICATIONS

WEH11147

The selected vendor will provide all services relating to the purchase of four (4) Philips Respironics V200 or equal intensive care unit mechanical ventilators by Welch Community Hospital consistent with all the applicable State and Federal laws and regulations. More specifically, the vendor shall provide the appropriate units to perform volume controlled-pressure limited respiratory support for adult and pediatric patients in an acute care hospital setting. The units must also support a non-invasive application.

The units must meet the following:

- a. The units must have the following modes:
 - Assist/Control (A/C)
 - Continuous positive airway pressure (CPAP)
 - Noninvasive ventilation (NIV)
 - Synchronous intermittent mandatory ventilation (SIMV)
 - SIMV with pressure support (SIMV/PSV)
- b. The units must provide ventilatory support of patients from pediatric to adult. Must be able to generate inspiratory tidal volumes in a range of minimum 50ml to maximum 2500ml per breath.
- c. The units must have a respiratory rate setting range of at least a minimum of 1 to a maximum of 80 breaths per minute in the SIMV and AC modes.
- d. The units must be able to cycle by pressure sensitivity. The pressure sensitivity must have a range of at least a minimum of -20 to a maximum of -0.1 cmH₂O.
- e. The units must be mobile, with all of the essential components housed within a mobile configuration.
- f. The units must be able to blend oxygen and air to produce a specific fraction of inspired oxygen (FiO₂). The range must be from a minimum of 21% to a maximum of 100%. Oxygen hose must be included with unit. Diameter index safety system (DISS) connection. Oxygen hose must be at least a minimum of eight feet in length and a maximum of twelve feet in length.
- g. The units must be able to produce a specific fraction of inspired oxygen (FiO₂) in areas where piped –in air is not available. Units must **not** utilize tanks for this function. Units must include air compressor or other mechanical device to blend a specific fraction of inspired oxygen (FiO₂) in areas where piped air is not available.
- h. The units must provide for positive end expiratory pressure (PEEP) at a range of a minimum of 0 to and a maximum of at least 35 cmH₂O.

- i. The units must provide the user a means of adjustment to produce desired inspiratory /expiratory ratios (I:E ratios).
- j. Each unit, including cart, must be within the following dimensions:
 - Height: minimum 36 inches, maximum 60 inches
 - Width: minimum 15 inches, maximum 30 inches
 - Depth: minimum 15 inches, maximum 40 inches
 - Weight: minimum 50 pounds, maximum 150 pounds
- k. The units must also provide pressure support at a range of a minimum of 0 to a maximum of 100 cmH2O.
- l. The units must provide an option to add and remove an inspiratory breath hold (Plateau) of two seconds.
- m. The following data must be monitored and displayed:
 - Total respiratory rate- Set rate and spontaneous rate.
 - Exhaled Tidal volume.
 - Exhaled Minute volume
 - Peak Inspiratory Pressure
 - Inspiratory/Expiratory ratio (I:E Ratio)
 - End expiratory pressure (PEEP)
- n. The units must provide for an audible alarm for the following:
 - high inspiratory pressure
 - low inspiratory pressure
 - low PEEP/CPAP pressure
 - high respiratory rate
 - apnea
 - low exhaled tidal volume
 - high minute volume
 - low oxygen supply
- o. Audible alarm must have a manual silence setting of two minutes. The unit must also include a "reset" function of alarms. Audible alarm volume must be user adjustable.
- p. Mounting kit for humidifier must be included on each unit. Mounting kit must be for a conchatherm (Model: Hudson RCI Conchatherm III, Catalog number 380-80) heated humidifier. Total of four mounting kits.
- q. The units must allow for nebulized medications to be administered. Nebulizer system must be included for each unit. Total of four nebulizing systems.
- r. The units must be able to deliver 100% oxygen for pre-suction oxygenation for two minutes in duration. After two minutes, the unit must return to the current oxygen setting without operator intervention.

- s. Units must operate on standard 120 V AC power.
- t. The units must be complete with all appropriate manuals.
- u. The units must have a minimum one (1) year all inclusive warranty.
- v. The vendor must include pricing for second year all inclusive warranty/maintenance and third year all inclusive warranty/maintenance.
- w. The vendor must provide onsite training for the units.
- x. The units must allow for an inspiratory and expiratory bacteria filter.

Delivery, Installation, and In-Service Training:

- A. Delivery shall be within thirty (30) days after receipt of the approved purchase order. Vendor must furnish, deliver, setup, and install the equipment and provide one day basic instructional training on the equipment usage and features upon delivery. *Approximate delivery is for (4) weeks after receipt of purchase order.*
- B. Within seven (7) days of the vendor's receipt of the approved purchase order, the selected vendor must contact the Respiratory Therapy supervisor at Welch Community Hospital for coordination of vendor's delivery and healthcare staff in-service training for ten (10) people.

Warranty:

The units must have a minimum one year all inclusive warranty.

Payment:

The vendor shall submit invoices, in arrears, to the facility at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Payment will be made in arrears, upon completion of delivery and in-service training. State law forbids payment of invoices prior to receipt of goods and services.

Evaluation & Award Criteria:

Award is based on the grand total overall low price that meets specifications.

Welch Community Hospital

WEH11147

Cost Sheet

Description	Quantity	Unit Cost	Extended Cost
Phillips Respironics V200 or equal and a one year warranty per attached detailed specifications. <i>Draeger Medical, Inc. Savina</i>	4	15,734.48	62,937.92
Second year all inclusive warranty/maintenance renewal for 4 Phillips Respironics V200 or equal	4		
Third year all inclusive warranty/maintenance renewal for 4 Phillips Respironics V200 or equal	4		

+ freight charges
996.00
Grand Total \$ 63,933.92

Evaluation & Award Criteria:

Award is based on the grand total overall low price that meets specifications.

Draeger Medical, Inc.
Company Name

Signature

Date

RFQ No. WEH11147

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: Dräger Medical, Inc.

Authorized Signature: [Signature] Date: May 31, 2011

State of Pennsylvania

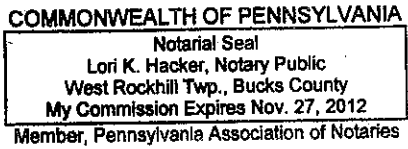
County of Bucks, to-wit:

Taken, subscribed, and sworn to before me this 31st day of May, 2011.

My Commission expires Nov. 27, 2012

AFFIX SEAL HERE

NOTARY PUBLIC [Signature]



State of West Virginia VENDOR PREFERENCE CERTIFICATE

N/A

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or,**
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or** 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or,**
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or,**
2. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or,**
3. **Application is made for 2.5% resident vendor preference for the reason checked:**
 Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or,**
4. **Application is made for 5% resident vendor preference for the reason checked:**
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or,**
5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or,**
6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____
 Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



Quotation

Customer no.
91045730

Quotation no. 136028455
Date of offer 05/26/2011

Please reference on inquiries

Customer
WELCH COMMUNITY HOSP
454 MCDOWELL ST
WELCH WV 24801-2029

Bill to 91045730
WELCH COMMUNITY HOSP
454 MCDOWELL ST
WELCH WV 24801-2029

Your request dated

02/22/2011
Savina R4

Ship to 91045730

WELCH COMMUNITY HOSP
454 MCDOWELL ST
WELCH WV 24801-2029

Your contact person

BRAD ROGERS
Tel.: 724-331-8235
Fax : 215-721-5811

Incoterms

Delivery Duty Unpaid

Dear Customer,

Thank you for the opportunity to provide this quotation.

Quotation no.: 136028455
Responsible: BRAD ROGERS

Telephone: 724-331-8235
Fax: 215-721-5811
E-mail: brad.rogers@draeger.com

Best regards

Dräger Medical GmbH

BRAD ROGERS

Draeger Medical, Inc.
Our Tax ID: 23-1699096
Bill to: 3135 Quarry Road; Telford, PA 18969
An Equal Opportunity Employer M / F / V / H
Telephone 800-437-2437
<http://www.draeger.com>



Quotation

Customer no.
91045730

Quotation no. 136028455 Date of offer 05/26/2011

Please reference on inquiries

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Bill to
91045730

Line	Quant.	Part no.	Description	Unit price USD	Total price Discount % USD
National account: Amerinet Vent T1					
Shipping Charges per above National Account					
Confirmation no. to customer:					
Date confirmation to customer:					
Order-No. from customer:					
Date order from customer:					
EARLY COMMITMENT INCENTIVE PROMO					
VALID: 02/01/2011 - 06/30/2011					
CUSTOMER WILL RECEIVE AN ADDITIONAL 2% DISCOUNT ON THE ENTIRE ORDER VALUE.					
CUSTOMER MUST TAKE DELIVERY OF ORDER ON/BEFORE DECEMBER 1, 2011.					
CURRENT LEAD TIME: 4 WEEKS					
0010	4 EA	8414450	Savina System		
*** Country Specific ***					
Target country					
USA					
120 V					
NEMA 5-15R Hospital Grade					
*** Machine version ***					
Basic Unit Savina					
Savina					
4 EA	OPC0408		Basic Unit Savina	11,233.18	44,932.72
*** Sensoren ***					
Spirolog Sens.(5pcs Set)					
*** Options ***					
4 EA	OPC0409		With option 90 degr.O2 adapter	63.14	252.56
4 EA	OPC0410		With Option AutoFlow	735.54	2,942.16
4 EA	OPC0411		With Option BIPAP	735.54	2,942.16
4 EA	OPC6015		With Option LPO	983.18	3,932.72
4 EA	OPC0412		With Option mask ventilation	865.92	3,463.68
4 EA	OPC0413		With option side rails	52.48	209.92
Without option nurse call					



Quotation

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Bill to
91045730

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Line	Quant.	Part no.	Description	Unit price USD	Discount %	Total price USD
	4 EA	5730293	Tube for Opt. LPO	4.92		19.68
			* Equipment selection ended * With ZV-hoses			
			*** Trolley ***			
	4 EA	8415886	With Savina Mobil with extens.	1,429.26		5,717.04
			Savina Mobil Accessories			
	4 EA	8411970	Set Cylinder Bracket	61.50		246.00
			*** DC Operation ***			
			With Batteries			
	8 EA	1843303	Battery 12V/17AH	91.02		728.16
	4 EA	8414092	With DC-Akku Cable S	36.08		144.32
			*** Patient Hose Systems ***			
			Without Patient Hose System			
			*** Hose PS-selection ***			
			DISS/CGAV-5 / Nipple+Nut Hand			
			Length of CS hoses 15ft			
	4 EA	4199591	O2 CS hose 15ft DISS Hand	101.12		404.48
			Value Savina System			65,935.60
0020	4 EA	8411956	HUMIDIFIER BRACKET EVITA MOBIL	81.18		324.72
0030	4 EA	1979831	ICON Complete	S 800.00	100.00	0.03
0035	1 EA	1902165	SEMINAR - SAVINA COURSE #650	0.01		0.01
0040	1 EA	1926705	FREIGHT CHARGES mt-i	996.00		996.00
0050	1 EA	1900046	2% Early Commitment Incentive	-1,345.12		-1,345.12
0060	1 EA	1900046	Non Clinical Evaluation Discount	-1,977.33		-1,977.33



Quotation

Customer no.
91045730

Quotation no. 136028455
Date of offer 05/26/2011

Please reference on inquiries

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Bill to
91045730

Line	Quant.	Part no.	Description	Unit price USD	Total price Discount % USD
<hr/>					
Net value excl. Sales Tax					63,933.91
<hr/>					
Final amount					63,933.91
<hr/>					
<p>The sale of the products identified herein is expressly subject to the Draeger Medical, Inc. - Terms and Conditions of Sale which are attached hereto and which may also be found at: http://www.draeger.com/termsandconditions.</p> <p>Customer is hereby informed that section 1128B(b) of the Social Security Act requires that discounts and other reductions in price or the existence of discount programs be properly disclosed and reflected in the costs claimed or charges made by a provider under Medicare or a Federal or State Health Program.</p> <p>PLEASE CHECK THIS ORDER CAREFULLY FOR ACCURACY IN PRICING, PART # AND DESCRIPTION. Contact Customer Service immediately if there are any discrepancies. This acknowledgement and note constitutes the entire agreement with respect to the contemplated transaction and supersedes all previous negotiations, proposals, writings, advertisements, or publications.</p> <p>Delivery time 3 Week/s after rec. of order * * After receipt of order, ready for dispatch ex works, subject to prior sale.</p> <p>Please let us know if you prefer partial delivery.</p> <p>Payment terms: 30 days after invoice date</p> <p>Offer valid until: 06/30/2011</p>					



Quotation

Customer no.
91045730

Quotation no.
136028455

Date of offer
05/26/2011

Please reference on inquiries

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Bill to
91045730

Line	Quant.	Part no.	Description	Unit price USD	Total price Discount % USD
			Remit to: Draeger Medical, Inc. PO Box 8500 S1225 Philadelphia, PA 19178		
			S = Service, no discount		

DRAEGER MEDICAL, INC.
TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1 Contract Terms. These terms and conditions apply to the purchase of Draeger Medical, Inc. ("DMI") products ("Products") by any customer ("Customer") identified on any invoice, confirmation order, purchase order, packing slip or otherwise issued by DMI for the sale of such Products by DMI to Customer (these terms and conditions, together with any of the foregoing, may hereinafter be referred to as the "Agreement"). "Products" include (i) any products manufactured by DMI directly and (ii) any products manufactured by any affiliate of DMI and offered for sale directly by DMI as part of DMI's portfolio of products. "Affiliate" shall mean any entity that (i) is owned or controlled by DMI, (ii) has an ownership interest in or controls DMI or (iii) is under common ownership/control with DMI. Unless otherwise indicated, these terms and conditions shall apply to the purchase of all DMI Products. DMI shall not be bound by, and specifically objects to, any term, condition or other provisions which are different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) which is set forth in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise of or by Customer, unless DMI specifically agrees to any such provision in a writing signed by DMI. Products may contain used, reworked or refurbished parts and components that comply with performance and reliability specifications. Customer acknowledges that this is a commercial and not a consumer transaction.

1.2 Formation of Contract. Customer makes an offer to purchase Products when Customer submits an order to DMI. An order is submitted when (i) Customer submits to DMI either a phone order or written order for Products, or (ii) a quotation or proposal ("Quotation") is issued for the purchase of Products and Customer either signs such Quotation or submits a purchase order or other writing to DMI for the purchase of any Products identified on such Quotation. DMI's acceptance of Customer's offer is expressly made conditional on Customer's assent to all of DMI's terms. An order shall be binding on DMI only after a credit approval and an order confirmation have been issued by DMI to Customer or DMI ships Products to Customer.

1.3 Third Party Products. If this Agreement includes the sale of third party products not manufactured by DMI (other than Products offered for sale directly by DMI but which may have been manufactured by a DMI affiliate as defined in Section 1.1), then Customer agrees and acknowledges that (a) Customer has made the selection of these products on its own, (b) the products are being acquired by DMI solely at the request of and for the benefit of Customer, in order to eliminate the need for Customer to issue a separate purchase order to the manufacturer of the products, (c) no representation, warranty or guarantee has been made by DMI with respect to the products, (d) the obligation of Customer to pay DMI for the products is absolute and unconditional, (f) Customer will not assert any claim against DMI with respect to the products, and will look solely to the manufacturer regarding any such claims, and (g) Customer will indemnify and hold DMI harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the products or any work or service provided by the manufacturer of the products or any other party.

2. PRICES

2.1 Quotations. Unless otherwise agreed to in writing or set forth in the quotation, all prices quoted by DMI are based on U.S. dollars F.O.B. shipping point, and include standard and customary packaging. Domestic prices apply only to purchasers located in, and who will use the Products in, the U.S. International prices apply to all purchasers located outside of, or who will use or ship or facilitate shipment of the Products outside of, the U.S. Unless otherwise stated, the quotation shall only be valid for thirty (30) days from the date of the quotation.

2.2 Delay in Delivery or Implementation. In the event Customer and DMI have agreed in a separate writing to a specific delivery and/or implementation schedule for Products included in certain project business of Customer, such delivery or implementation schedule may only be changed by Customer as permitted pursuant to the terms of such writing. Notwithstanding the foregoing, should the agreed delivery date be postponed by Customer, DMI shall have the right to deliver to storage at Customer's risk and expense, and payments due upon delivery shall become due when DMI is ready to deliver.

2.3 Acceptance of Products. All Products delivered by DMI to Customer hereunder shall be deemed to have been accepted by Customer the earlier of (i) the date Customer first uses the Products for patient use or (ii) thirty (30) days after delivery of the Products to Customer.

3. TAXES

3.1 Any sales, use or manufacturer's tax which may be imposed upon the sale or use of Products, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and shall be paid by Customer.

4. PAYMENT TERMS

4.1 Due Date. Unless otherwise set forth in the quotation, the purchase price for the Products and all other amounts due hereunder are due net thirty (30) days from the date of invoice. All amounts payable hereunder are payable in U.S. dollars. Partial shipments of Product(s) shall be billed as shipped and installation/implementation shall be billed when completed in accordance with any mutually agreed upon installation/implementation schedule.

4.2 Late Payments. A service charge of 1% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Customer's outstanding balance which is not paid within thirty (30) days after invoice date, which charge shall be determined and compounded on a daily basis from the due date until the date paid. Payment of such service charge shall not excuse or cure Customer's breach or default for late payment. In addition, in the event that Customer fails to make any payment to DMI within this thirty (30) day period, including but not limited to any payment under any service contract or other agreement with DMI, then DMI shall no obligation to continue performance under any agreement with Customer.

4.3 Payment of Lesser Amount. If Customer pays, or DMI otherwise receives, a lesser amount than the full amount due under this Agreement, such payment or receipt shall not constitute or be construed other than as an account of the earliest amount due DMI. DMI may accept any check or payment in any amount without prejudice to DMI's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment elsewhere shall constitute or be construed as an accord or satisfaction.

4.4 Failure of Customer to Pay. At DMI's election upon Customer's failure to pay when due any amount required to be paid to DMI under this Agreement: (a) the entire amount of any indebtedness and obligation due DMI under this Agreement and interest thereon shall become immediately due and payable without notice, demand or grace period; (b) Customer shall put DMI in possession of the Products upon demand; (c) DMI may enter upon the premises where the Products are located and take possession of the Products without notice or demand and without legal proceedings; (c) Customer shall assemble the Products and make them available to DMI at a place designated by DMI; (d) DMI may sell or dispose of all or any portion of the Products and apply the proceeds thereof against any amounts due DMI under this Agreement (Customer agrees that a period of ten (10) days from the time notice is sent to Customer shall be a reasonable period of notification of sale or other disposition of the Products by or for DMI); and (e) Customer shall pay any deficiency remaining after collection of or realization by DMI on the Products. Further, Customer shall pay all costs and expenses incurred by DMI (i) in connection with the restoration of any Products which are returned to DMI pursuant to this paragraph and which are damaged or nonfunctional and (ii) in enforcing the terms of this Agreement against Customer (including, without limitation, reasonable attorneys' fees, court costs and other legal expenses).

5. EXPORT TERMS

5.1 Unless other arrangements have been made, payment on export orders shall be made by irrevocable confirmed letter of credit, payable in U.S. dollars against DMI's invoice and standard shipping documents. Such letter of credit shall be in an amount equal to the full purchase price of the Products and shall be established in a U.S. bank acceptable to DMI. Customer shall procure all necessary permits and

licenses for shipment and compliance with any governmental regulations concerning control of final destination products.

5.2 Customer shall not, directly or indirectly, violate any U.S. law, regulation or treaty, or any other international treaty or agreement, relating the export or reexport of any Product or associated technical data, to which the U.S. adheres or with which the U.S. complies. Customer shall defend, indemnify and hold DMI harmless from any claim, damage, liability or expense (including but not limited to reasonable attorneys' fees) arising out of or in connection with any violation of the preceding sentence. If Customer purchases a Product at the domestic price and exports such Product to a third party for export outside the U.S., Customer shall pay to DMI the difference between the domestic price and the international retail price of such Product pursuant to the payment terms set forth herein. Customer shall deliver to DMI, upon DMI's request, written assurance regarding compliance with this section in form and substance acceptable to DMI.

6. DELIVERY, RISK OF LOSS

6.1 **Delivery Date.** Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Customer's order by DMI. DMI shall make every reasonable effort to meet the delivery date(s) quoted or acknowledged, but shall not be liable for any failure to meet such date(s).

6.2 **Risk of Loss, Title.** Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession of the Products to common carrier, F.O.B. shipping point, whereupon title to and risk of loss to the Products shall pass to Customer. All freight charges and other transportation, packing, and insurance costs, custom duties and other similar charges shall be the sole responsibility of Customer unless otherwise agreed to in writing by DMI. In the event of any loss or damage to any of the Products during shipment, Customer should make claim against the carrier.

7. SECURITY INTEREST/FILING

7.1 From the F.O.B. point, DMI shall have a purchase money security interest in the Products (and all accessories and replacements thereto and all proceeds thereof) until payment in full by Customer and satisfaction of all obligations hereunder. Customer agrees that an original or a photocopy of this Agreement (including all attachments and amendments hereto) may be filed by DMI as a Uniform Commercial Code financing statement. Customer further represents and covenants that (a) Customer will keep the Products in good repair and working order until the purchase price has been paid in full, (b) Customer will promptly pay all taxes and assessments upon the Products or use thereof, and (c) Customer will not attempt to transfer any interest in the Products until the purchase price has been paid in full.

8. CHANGES, CANCELLATION AND RETURN AND REPAIR

8.1 Orders accepted by DMI pursuant to Section 1.2 above are not subject to change except upon written agreement of the parties.

8.2 Products delivered by DMI are not returnable by Customer except as follows:

All Products to be returned must have prior authorization by DMI and a valid Return Material Authorization ("RMA") number must appear on the shipping label, packing slip, purchase order, and any other related paperwork. Products received without such authorization will be refused at DMI's receiving dock and returned immediately to the customer. When requesting authorization to return material, the following information must be provided:

1. Customer purchase order number and date.
2. DMI sales order number and shipping date.
3. Quantity, DMI Product number, and description of material to be returned.
4. Reason for return.
5. Contact DMI at 800-4-Dräger for RMA number

The following are the only accepted reasons for return of material:

1. Breach of warranty (covers Products within their applicable warranty period).
2. Customer order error.
3. DMI order or shipping error.

Products returned due to breach of warranty are subject to the terms of the DMI warranty. Products to be returned that are not under warranty must have been purchased within thirty (30) days of request for return, returned within fourteen (14) days after request, and approved for return as stated previously. Products must be unused and in DMI shipping containers. Returned Products, with the exception of returns of Products under warranty or due to DMI error, are subject to a twenty percent (20%) restocking charge.

The following non-warranty Products are not eligible for return:

1. Sterile material, unless shipped in error by DMI.
2. Products that have been used.
3. Specially ordered or produced items.
4. Products that have been altered or abused by Customer.
5. Products that are known to be contaminated with communicable diseases.

Upon receipt of authorized returned Products, an inspection of the Products will be conducted by DMI and appropriate action taken. DMI's decision regarding disposition of returned Products is final. All Products to be returned (including any in need of factory repair) shall be shipped, freight and insurance prepaid, to the following address unless otherwise advised by DMI:

DrägerService®
3124 Commerce Drive
Telford, PA 18969
(Include Return Material Authorization Number.)

Products in need of factory repair must have prior authorization by DMI before return. A valid RMA number must appear on the shipping label, packing slip, purchase order, and other related paperwork in order to expedite repair. When requesting a RMA number, the following information must be provided:

1. Customer purchase order.
2. Quantity and description of Product to be returned.
3. Reason for repair.

It is the responsibility of Customer to disinfect, pack, insure, and ship equipment to DMI at Customer's sole expense.

8.3 DMI shall have the right to change the manufacture and/or design of its Products if, in the judgment of DMI, such change does not alter the general function of the Products.

9. FORCE MAJEURE

9.1 DMI will make every effort to complete shipment, and installation where indicated, but shall not be liable for any loss or damage for delay in delivery, inability to install or any other failure to perform due to causes beyond DMI's reasonable control, including, without limitation, acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil disturbance, fire or other casualty, strike or labor dispute or unavailability of labor, raw materials, power or supplies. Should such a delay occur, DMI may reasonably extend delivery or production schedules, or, at its option, cancel the order in whole or in part without liability other than to return any unearned deposit of prepayment.

10. WARRANTY

10.1 DMI warrants that the Products manufactured by DMI and sold hereunder shall be free from defects in material or workmanship under normal use and service for the warranty period. Unless otherwise set forth in a separate warranty statement covering the Products to be provided by DMI, the warranty period shall commence on the date that the Products are delivered to Customer and shall continue for twelve (12) consecutive months except for the following: (a) Used/refurbished DMI Products are warranted for a period of ninety (90) days from the delivery date, (b) Oxygen sensor capsule part number 6850645 is warranted for 12 months from date of delivery, (c) Oxygen sensor capsule part number 6850930 is warranted for six (6) months from the date of delivery, (d) All other sensors, accessories, complementary products and spare parts are warranted for ninety (90) days from date of delivery, (e) Factory repairs and service exchange replacements are warranted for ninety (90) days from the date of delivery, (f) Expendable/disposable/consumable goods are warranted at time of delivery only, and (g) Information systems/software will operate in all material respects in conformity with DMI's published specifications, under normal use, for a period of ninety (90) days from installation. DMI makes no warranty for any Products other than Products

expressly covered under the terms of this Agreement and Customer's sole warranty therefore, if any, is the original manufacturer's warranty, which DMI agrees to pass on to Customer, as applicable.

10.2 No warranty extended by DMI shall apply to any Products: (a) which have been damaged by accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 9 hereof or by Customer's failure to operate the Products in accordance with the manufacturer's instructions or to maintain the recommended operating environment and line conditions; (b) which are defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Products by Customer or any third party or due to the attachment and/or use of non-DMI supplied equipment without DMI's prior written approval; (c) which failed due to causes from within non-DMI supplied equipment; and/or (d) which have been damaged from the use of operating or cleaning supplies or consumable parts not approved by DMI. DMI's obligation under this warranty is limited to the repair or replacement of or credit for, at DMI's option, defective parts. DMI may effectuate such repair at Customer's facility, and Customer shall furnish DMI safe and sufficient access for such repair. Repair or replacement may be with parts or products that are new, used or refurbished. Repairs or replacements shall not interrupt, extend or prolong the term of the warranty. Customer shall, upon DMI's request, return the non-complying Product or part to DMI pursuant to the terms of Section 8 above. Customer shall pay DMI its normal charges for service and parts for any inspection, repair or replacement that is not, in DMI's sole judgment, required by noncompliance with the warranty set forth in this Section 10. DMI's warranty does not apply to consumable materials, except as specifically stated in writing, nor to products or parts supplied by Customer.

10.3 This warranty is made on condition that immediate written notice of any noncompliance be given to DMI and DMI's inspection reveals that the Customer's claim is valid under the terms of the warranty (i.e. that the noncompliance is due to traceable defects in original materials and/or workmanship).

10.4 Warranty service will be provided without charge during DMI's regular working hours (8:00am - 5:00pm), Monday through Friday, except DMI's recognized holidays. If Customer requires that service be performed other than during these times, such service can be made available at an additional charge, at DMI's then current rates.

DMI MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN OR THAT WHICH MAY BE PROVIDED IN A SEPARATE WARRANTY COVERING THE APPLICABLE PRODUCT. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS AND ANY DEFECT, DEFICIENCY OR NONCONFORMITY IN ANY PRODUCT, SERVICE OR OTHER ITEM FURNISHED UNDER THIS AGREEMENT.

11. LIMITATION OF LIABILITY

11.1 In no event shall DMI's liability hereunder exceed the actual loss or damage sustained by Customer, up to the purchase price of the Products.

11.2 **DMI SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, LOSS OF STORED, TRANSMITTED OR RECORDED DATA, OR FOR ANY INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS.** This provision does not affect third party claims for personal injury arising as a result of DMI's negligence or product defect. **THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.**

12. INSTALLATION - ADDITIONAL CHARGES

12.1 **General.** Unless otherwise expressly stipulated in writing, the Products covered hereby shall be installed by and at the expense of Customer.

12.2 **Installation by DMI.** If DMI specifies it will install the Products, the following applies: subject to fulfillment of obligations set forth in 12.4 below, DMI shall install the Products covered hereby and connect the same to the requisite safety switches and power lines to be installed by Customer. Except as otherwise specified below, if such installation and connection are performed by DMI technical personnel, prices shown include the cost thereof, provided that the installation and connection can be performed within the Continental United States and during normal business hours. Any overtime charges or other special expenses shall be additional charges to the prices shown.

12.3 **Trade Unions.** If a trade union, or unions, prevents DMI from performing the above work, Customer shall make all required arrangements with the trade union, or unions, to permit DMI to complete said work. Moreover, any additional cost related to such labor disputes shall be paid by Customer and DMI's obligations under such circumstances will be limited to providing engineering supervision of installation and connection of DMI equipment to existing wiring.

12.4 **Customer's Obligations.** Customer shall, at its expense, provide all proper and necessary labor and materials for plumbing service, carpentry work, conduit wiring, and other preparations required for such installation and connection. All such labor and materials shall be completed and available at the time of delivery of the Products by DMI. Additionally, Customer shall provide free access to the premises of installation and, if necessary, safe and secure space thereon for storage of Products and equipment prior to installation by DMI. If any special work of any type must be performed in order to comply with requirements of any governmental authority, including procurement of special certificates, permits and approvals, the same shall be performed or procured by Customer at Customer's expense. Customer shall provide a suitable environment for the Products and shall ensure, at its sole cost and expense, that its premises are free of asbestos, hazardous conditions and any concealed dangerous and that all site requirements are met. In the event that DMI is requested to supervise the installation of the Products, it remains the Customer's responsibility to comply with local regulations.

12.5 **Completion of Installation.** Installation shall be complete upon the conclusion of final calibration and checkout under DMI standard procedures to verify that the Products meet applicable written performance specifications. Notwithstanding the foregoing, first use of the Products by Customer, its agents or employees for any purpose after delivery shall constitute completion of installation.

13. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS

13.1 **Infringement by DMI.** DMI warrants that the Products manufactured by DMI and sold hereunder do not infringe any U.S. patent or copyright. If Customer receives a claim that any such Product, or parts thereof, infringe upon the rights of others under any U.S. patent and copyright, Customer shall notify DMI immediately in writing. As to all infringement claims relating to Products or parts manufactured by DMI:

(a) Customer shall give DMI information, assistance and exclusive authority to evaluate, defend and settle such claims.

(b) DMI shall then, at its own expense, defend and/or settle such claims, procure for Customer the right to use the Products, or remove or modify them to avoid infringement. If none of these alternatives are available on terms reasonable to DMI, then Customer shall return the Products to DMI and DMI shall refund to Customer the purchase price paid by Customer less reasonable depreciation for Customer's use of the Products.

13.2 **Infringement by Customer.** If some or all of the Products sold hereunder are made by DMI pursuant to drawings or specifications furnished by Customer, or if Customer modifies or combines, operates or uses the Products other than as specified by DMI or with any product, data, software apparatus or program not provided or approved by DMI, then the indemnity obligation of DMI under Section 13.1 shall be null and void and should a claim be made that such Products infringe the rights of any third party under patent, trademark or otherwise, then Customer shall indemnify and hold DMI harmless against any liability or expense, including reasonable attorneys' fees, incurred by DMI in connection therewith.

14. SOFTWARE LICENSE

14.1 Any drawings, data, designs, software programs or other information (collectively, the "Product Software") supplied by DMI to Customer in connection with the sale of the Products are not included in the sale of the Products to Customer, shall remain DMI's property and shall at all times be held in confidence by Customer. Product Software includes any and all copies of (i) software programs consisting of a series of statements or instructions to be used directly or indirectly in a programmable controller or computer to bring about a certain result and (ii) databases consisting of systemized collections of data to be used or referenced directly or indirectly by a programmed controller or computer. Customer shall have a license to use the Product Software in the ordinary course of business and for the purpose and in the manner for which the Product Software was designed and produced subject to the terms of this Agreement. Customer will not translate, modify, reverse engineer, disassemble, decompile, or create derivative works based on any of the Product Software or to permit any third party to do so. The Product Software may not be copied or transferred to another party or made commercially available in any other device, without DMI's prior written consent. Protocols may be used to communicate with a device produced by another manufacturer, provided that manufacturer has been licensed by DMI to use said protocol.

14.2 For all goods purchased hereunder which utilize Product Software for their operation, such Product Software shall be licensed to Customer under the terms of Section 14.1 of this Agreement and any DMI Software License Schedule which may be attached hereto.

14.3 Diagnostic/maintenance software is not included under this Section 14 but is available under a separate license agreement and may be subject to a licensing fee.

15. ENGINEERING CHANGES

15.1 DMI makes no representation that engineering changes which may be announced in the future will be suitable for use on, or in connection with, the Products.

16. ASSIGNMENT

16.1 Customer may not assign any rights or obligations under this Agreement without the prior written consent of DMI and any attempt to do so shall be void. DMI may assign any of its rights and obligations under this Agreement without notice to or consent of Customer. This Agreement shall inure to and be binding on the parties and their respective successors, permitted assigns and legal representatives.

17. DAMAGES, COSTS AND FEES

17.1 In the event any dispute or difference is brought arising from or relating to this Agreement or the breach, termination or validity thereof, the prevailing party shall NOT be entitled to recover from the other party any punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees incurred, together with such other costs and expenses as may be allowed by law.

18. MODIFICATION

18.1 This Agreement may not be changed, modified or amended except in writing signed by duly authorized representatives of the parties.

19. GOVERNING LAW

19.1 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

20. INTEGRATION

20.1 These terms and conditions including any attachments or other documents incorporated by reference herein, constitute the entire agreement and the complete and exclusive statement of agreement with respect to the subject matter hereof, and supersede any and all prior agreements, understandings and communications between the parties with respect to the Products.

21. SEVERABILITY; HEADINGS

21.1 No provision of this Agreement which may be deemed unenforceable will in any way invalidate any other portion or provision of this Agreement. Section headings are for reference only and will have no substantive effect.

22. WAIVER

22.1 No failure and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

23. NOTICES

23.1 Any notice or other communication under this Agreement shall be deemed properly given if given in writing and delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the face of the invoice or confirmation or purchase order to which these terms and conditions are attached. Either party may from time to time change such address by giving the other party notice of such change in accordance with this section.

24. RIGHTS CUMULATIVE

24.1 The rights and remedies afforded to DMI under this Agreement are in addition to, and do not in any way limit, any other rights or remedies afforded to DMI by any other agreement, by law or otherwise.