

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20051162

1. ACTION REQUESTED/PURPOSE: Approve Bid Waiver # W-050691 to waive the formal quotation procedure, and allow Public Safety/EMS to purchase Zoll Medical Cardio-Respiratory Products and Services; including, but not limited to cardiac/respiratory/circulatory monitoring devices, upgrades, ancillary supplies, repairs, maintenance, extended warranties, etc., on an ongoing basis from Zoll Medical Corporation. A waiver has been requested because Zoll Medical Corporation is a proprietary sole source supplier. (Please see Attachment #3). Approval is also requested for an annual expenditure not to exceed \$300,000.00 (please see Attachment #4 Zoll Quotation for materials currently needed). Funding will come from the individual division/department budget and they will be responsible for monitoring their own expenditures.

2. WHAT ACTION ACCOMPLISHES: Allows Public Safety/EMS to purchase cardio-respiratory materials on an as needed basis in order to serve the health care needs of those in distress.

3. MANAGEMENT RECOMMENDATION: Approve as stated.

4. Departmental Category: 7 A7A **5. Meeting Date:** 08-30-2005

6. Agenda: <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)		8. Request Initiated: Commissioner _____ Department _____ Division <u>Public Safety</u> By: <u>John Wilson</u> <i>JW</i>
	<input type="checkbox"/> Statute	_____	
	<input type="checkbox"/> Ordinance	_____	
	<input checked="" type="checkbox"/> Admin. Code	<u>AC-4-1</u>	
	<input type="checkbox"/> Other	_____	

9. Background: On August 16, 2005, the Division of Purchasing received a request from Public Safety/EMS to waive the formal quotation procedure to allow for the purchase of cardio-respiratory products and services from Zoll Medical Corporation.

Funds are available: KF5260100100.506410, KF5260100100.505221, KF52601001000.505222 and KF5260100100.505280

ATTACHMENTS:

- (1) Request for Bid Waiver
- (2) Justification for Waiver Purchase
- (3) Sole Source Verification Letter from Zoll Medical Corporation
- (4) Zoll Quotation for initial order

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>[Signature]</i>	<i>[Signature]</i>			<i>[Signature]</i>	Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>	<i>[Signature]</i>			<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED
COUNTY ADMIN
8/17/05
COUNTY ADMIN
FORWARDED TO:

RECVU.
by CO. ATTY.
CO. ATTY.
FORWARDED TO:

Division of

MEMO

Public Safety

To: Janet Sheehan, Purchasing Director
From: Chief Chris Hansen, Deputy Director of Public Safety
Subject: Blue Sheet for Zoll Medical Corporation
Date: August 16, 2005



The purpose of this memorandum is to respectfully request your assistance to prepare a blue sheet for ongoing purchases of Zoll Medical Corporation defibrillator / monitors, upgrade modules, etc., for all County-owned Zoll defibrillators / monitors and needed ancillary equipment for use on Lee County Emergency Medical Services ambulances and helicopters. Allowing these acquisitions continues EMS product uniformity of essential medical devices. Uniformity helps to prevent mistakes and improve times to clinical service delivery since medics are trained and familiar with the ZOLL products.

These devices, upgrade modules, ancillary items, etc., were approved in our operating budget and will augment essential medical equipment required due to population growth and increasing demand for services. EMS has made clinical care advancements and is consistently improving levels of patient care. To properly monitor and treat cardio-respiratory distress patients, EMS must acquire essential module upgrades to our existing devices, and be approved to specify the same in future orders.

This open-ended request is needed for cardiac / respiratory / circulatory monitoring devices, comprehensive device upgrades, ancillary supplies, etc., and the designation of Zoll Medical Corporation as Lee County's sole source for these devices until recommended to the Board of County Commissioners to change this designation. The cost of the next required devices / upgrades is detailed in the attached quotation.

In addition to the items in this quote, EMS is requesting that the Board of County Commissioners approve an open-ended annual \$300,000 spending limit with ZOLL Medical Corporation for medically approved items, upgrades, devices, maintenance / repair, etc. The funding sources for this project is KF5260100100.506410, KF5260100100.505221, KF5260100100.50222, and KF5260100100.505280. Thank you for your assistance.

C: Patti Hojnacki, Public Safety Sr. Fiscal Officer
John Wilson, Public Safety Director
John Norton, Public Safety Logistics Manager

ATTACHMENT 2

APPROVED: 7/9/02

JUSTIFICATION FOR SOLE SOURCE AND/OR WAIVER PURCHASE

REQUISITION NUMBER _____ DATE _____

DEPARTMENT Public Safety BUSINESS UNIT EMS

SUGGESTED VENDOR

Zoll Medical

ITEM DESCRIPTION AND REASON FOR SOLE SOURCE AND/OR WAIVER:
(MAY ALSO BE ATTACHED AS A MEMO)

Please see list of items and justification on attached sheets. List is current

but upgrades and modifications to the base monitor unit may require other

ancillary items in the future.

TECHNICAL CHARACTERISTICS:

REASON FOR REQUESTING SOLE SOURCE:

() ITEM MUST MATCH EXISTING EQUIPMENT, WHICH IS:

() ITEM IS A REPAIR PART FOR EXISTING EQUIPMENT, WHICH IS:

() ITEM IS TO BE ATTACHED TO EXISTING ITEM, WHICH IS:

Revision Date:

() TECHNICAL CHARACTERISTICS OF REQUESTED ITEM ARE ESSENTIAL TO OUR NEEDS BECAUSE:

After evaluations we found the Zoll products best suit our needs for patient care.

() NO OTHER MANUFACTURER OF THIS TYPE OF PRODUCT EXISTS

() OTHER MANUFACTURERS OF THIS TYPE OF PRODUCT DO NOT MEET OUR MINIMUM REQUIREMENTS:

MANUFACTURER'S NAME: Physio-Control Life-Pak 12

REASON: Did not meet our critical care protocol requirement after testing.

MANUFACTURER'S NAME: MRL Corporation

REASON: Did not meet the Medical Director's standard.

MANUFACTURER'S NAME: Hewlett Packard

REASON: Did not have a comparable product available for testing.

() OTHER _____

MUST PERFORM PRICE OR COST ANALYSIS OR ATTACH NEGOTIATED PRICE QUOTE FROM VENDOR; LETTER FROM MANUFACTURER STATING SOLE SOURCE.

A) PRICE ANALYSIS PERFORMED

BASED ON:

Revision Date:

B) COST ANALYSIS PERFORMED:

BASED ON:

McCannery Deputy Director Public Safety

 SIGNATURE AND TITLE OF REQUESTER

I, *Chris Joffeart*, AUTHORIZED BUYER,
 CONCLUDE THE FOLLOWING:

SOLE SOURCE JUSTIFICATION IS ADEQUATE AND PURCHASE IS AUTHORIZED WITHOUT COMPETITIVE BIDDING.

SOLE SOURCE JUSTIFICATION IS INADEQUATE AND REQUISITION IS RETURNED TO DEPARTMENT.

DUE TO TIME RESTRAINTS PURCHASE IS AUTHORIZED WITHOUT COMPETITIVE BIDDING.

COMPETITIVE/NON-COMPETITIVE BID WAIVER APPROVED.

Chris Joffeart

 BUYER

Janet Sheehan 8-12-05

 PURCHASING DIRECTOR

Zoll Major Item and Ancillary Items

Zoll "M" series heart monitor

Side stream capnography upgrade

Zoll CCT modification upgrade

Oral/Nasal CO2 Sampling Cannula, Adult

Oral/Nasal CO2 Sampling Cannula, Pediatric

Airway Adapter Kit, Adult/Pediatric

Airway Adapter Kit, Pediatric/Infant

Defib Pads (Adult Zoll)

Defib Pads (Pedi Zoll)

Electrodes ECG Zoll

12-ld ECG Simulator

XL Batteries (3-pack)

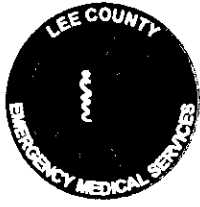
Adult SP02 Sensor

Disposable Pediatric SP02

SP02 Trunk Cable

4-ld pt cable

BP hose



Lee County
Emergency Medical Services

25 April 2005

H.C. Hansen, EMT-P
Deputy Director, Lee County Division of Public Safety
Program Manager, Lee County Emergency Medical Services
1825 Hendry Street; Suite 302
Fort Myers, FL 33901

Dear Chris,

Pursuant to our recent meeting concerning the addition of new technology/equipment to our ambulances, please find the following justification:

The application of capnography or the measurement end-tidal carbon dioxide (etCO₂) is now the accepted standard of care in pre-hospital transport services. Recently, etCO₂ monitoring has played an increasingly more important role in emergency medicine as well as in the emergency medical services industry. Today, capnography is not only essential in monitoring the endotracheally intubated patient but it serves a major function in the non-endotracheally intubated patient as well. Capnography is currently being used in the industry to verify endotracheal tube placement, continuously monitor endotracheal tube positioning, assess pulmonary status (spontaneous and positive pressure ventilations), provide differential diagnosis of pulmonary disease anomalies, determine states of perfusion (shock), identify diabetic ketoacidosis, manage intracranial pressure and to evaluate resuscitative efforts including the return of spontaneous circulation (ROSC). With that said, etCO₂ monitoring is a state-of-the-art, cardiopulmonary output diagnostic tool that greatly enhances patient care and outcomes, and its multiple uses cannot be overstated.

Capnography as it exists today is limited in our system to colorimetric etCO₂ detection (EasyCaps™) for our road paramedics and mainstream etCO₂ monitoring (Zoll CCT™ Monitor) at *MEDSTAR* for our flight paramedics. This is inconsistent and unacceptable in terms of patient care and risk management. Full spectrum, sidestream capnography is now widely accepted in healthcare and is considered by leading medical experts to be a "standard-of-care".ⁱ

But even more pertinent to this quest is how capnography relates to our Crash Airway Management (CAM). The use of pharmacy agents to facilitate oral endotracheal intubation comes with inherent risks that are only mitigated by advanced diagnostic capabilities... Capnography. The clinical decision to "CAM a patient" and endotracheal tube placement are two areas that remain a concern and quite frankly, we are deficient in. There is no doubt that confirmation of the endotracheal tube in a sedated, paralyzed patient should be our primary focus and needs occupy our greatest attention in order to avoid liability. So much so that should the deficiency of endotracheal confirmation continue to prove to be insurmountable, serious consideration must be given to reserve the practice of Crash Airway Management for advanced practice clinicians or remove the practice procedure completely from our arsenal of treatment modalities. This is a double-edged sword. If we remove or limit CAM, a large number of patients will suffer. Keep CAM without full spectrum, sidestream capnography, the entire system may suffer. The only win here is to be true patient care advocates and provide for both CAM and capnography.

In closing, we wish to thank you for the opportunity to be passionate about this issue in print. We hope that you found the aforementioned enlightening and applicable to our position. We also submit to you that capnography is the single most objective and beneficial diagnostic device in emergency medicine today and from a risk versus benefit point of view, we have no options here... we must find a way to fund this project.

Respectfully,

Hamel

Michael G. Hamel, REMT-P
Flight Paramedic
Team Leader, Crash Airway Management Project

Joseph D. Lemmons

Joseph D. Lemmons, DO
Medical Director

Cc: Michael P. Pcolar, EMT-P, LCEMS Training Manager
Art Garcia, EMT-P, LCEMS Quality Improvement Manager

¹ Baruch Krauss, MD, EdM, FAAP, JEMS Magazine, Capnography, January 2003

ZOLL**ATTACHMENT 3**

ZOLL Medical Corporation

Worldwide Headquarters
269 Mill Road
Chelmsford, Massachusetts 01824-4105
U.S.A.800 348-9011 Main
978 421-9655 Fax

March 21, 2005

Chief Chris Hansen, Deputy Director
Lee County Division of Public Safety
Emergency Medical Services
1825 Hendry Street, 3rd Floor
P.O. Box 398
Fort Myers, FL 33901

Dear Chief Hansen:

ZOLL Medical Corporation, headquartered in Chelmsford, MA, designs, manufactures and markets an integrated line of proprietary, noninvasive resuscitation devices and disposable electrodes. These innovative products are used by health care professionals to provide pacing and defibrillation in the emergency treatment of cardiac arrest victims in hospitals and pre-hospital settings. ZOLL Medical Corporation is the sole manufacturer and distributor of the M Series Monitor/Defibrillator that Lee County Division of Public Safety EMS has selected.

We at ZOLL Medical Corporation value our relationship with Lee County Division of Public Safety EMS. Thank you for your confidence in our products and service. If you have any questions, please do not hesitate to contact me at 954-614-8028.

Sincerely,

Kevin Jung
EMS Territory Manager
V-mail: 800-242-9501 ext. 9576
Mobil: 954-614-8028
kjung@zoll.com

ZOLL

ATTACHMENT 4

ZOLL Medical Corporation

Worldwide Headquarters
 269 Mill Road
 Chelmsford, Massachusetts 01824-4105
 (978) 421-9655 Main
 (800) 348-9011
 (978) 421-0015 Telefax

TO: Lee County Division of Public Safety
 P.O. Box 398
 1825 Henry Street 3rd Floor
 Fort Myers, FL 33901

QUOTATION

Attn: **Chief Chris Hansen**
 Deputy Director

DATE: August 15, 2005

TERMS: Net 30 Days

FOB: Shipping Point

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	4 1 6 2 1 7 3 1 1 0 0 1 2 3 0 1 0 M SERIES MED-PRO PLUS BIPHASIC	Manual/Advisory Defibrillator with Rectilinear Biphasic Waveform, AC Power, Multiple Application Printer with Summary Report, Code Markers, SPO2 w/reusable sensor & 8' cable, Noninvasive Pacing, 12-Lead w 1 Step cable NIBP w/Adult-Plus cuff & hose & EtCO2 w/sensor Includes: High contrast display, 3-lead patient cable with integral lead wires, universal cable, 1 XL Smart Battery, carry case, ac mains power cord, 1 package of recorder paper, integral diagnostic frequency response, 2 PCMCIA card slots, RS232 data transfer capabilities and 1 Operator's manual. Standard One Year EMS Warranty	3	\$26,210.00	\$22,072.00	\$66,216.00 *
1a	8000-0365	M Series Sidestream LoFlo Module	3	\$1,695.00	Included	Included *
2	8000-0718	Xtreme Pack II Carry Case, XL with rear and side pockets for use with hands-free defibrillation, NIBP (Price at time of initial purchase)	3	\$495.00	\$170.00	\$510.00 *
3	8000-0900	Bed hook accessories compatible with M Series CCT, M Series w/XL Battery, & XL Battery Upgrade for M Series	3	\$25.00	\$20.00	\$60.00 *
4	8204-0103-01	Smart Battery (In lieu of standard at time of purchase)	3	\$50.00	\$40.00	\$120.00 *
5	7777-0352	EtCO2 Sidestream LoFlo Upgrade (Must have SPO2) (for M Series with no Mainstream EtCO2 installed)	44	\$6,000.00	\$4,800.00	\$211,200.00 *
SPECIAL CONSIDERATIONS						
6	8778-2022	MSeries 2 Year Extended New Purchase Warranty Includes: 2 Year Extended Warranty, Battery Replacement throughout the Extended Warranty period on an as needed basis, if the battery fails the charger test or if a battery is	3	\$2,010.00	\$2,010.00	*Optional*
7	8778-2044	MSeries 4 Year Extended New Purchase Warranty Includes: 4 Year Extended Warranty, Battery Replacement throughout the Extended Warranty period on an as needed basis, if the battery fails the charger test or if the battery is	3	\$3,780.00	\$3,780.00	*Optional*
Estimated Shipping:						\$60.00
*Reflects Discount Pricing						
All discounts off List Price are contingent upon payment within agreed upon terms.						
TOTAL						\$278,166.00

WE PROPOSE TO FURNISH THE ITEMS LISTED ABOVE, SUBJECT TO CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF, AND THE WRITTEN ACCEPTANCE OF THIS QUOTATION.

- DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
- PRICES WILL BE F.O.B. SHIPPING POINT.
- WARRANTY PERIOD (See above and reverse side).
- PRICES QUOTED ARE FIRM THROUGH SEPTEMBER 30, 2005.
- APPLICABLE TAX & FREIGHT CHARGES ADDITIONAL.
- ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTANCE BY ZOLL.
- PURCHASE ORDERS TO BE FAXED TO ZOLL CUSTOMER SERVICE AT 978-421-0015.

Kevin Jung/el
 Territory Manager
 800/242-9150, x9576

ZOLL QUOTATION GENERAL TERMS & CONDITIONS

1. **ACCEPTANCE.** This Quotation constitutes an offer by ZOLL Medical Corporation to sell to the Customer the equipment (including a license to use certain software) listed in this Quotation and described in the specifications either attached to or referred to in this Quotation (hereinafter referred to as Equipment). Any acceptance of such offer is expressly limited to the terms of this Quotation, including these General Terms and Conditions. Acceptance shall be so limited to this Quotation notwithstanding (i) any conflicting written or oral representations made by ZOLL Medical Corporation or any agent or employee of ZOLL Medical Corporation or (ii) receipt or acknowledgement by ZOLL Medical Corporation of any purchase order, specification, or other document issued by the Customer. Any such document shall be wholly inapplicable to any sale made pursuant to this Quotation, and shall not be binding in any way on ZOLL Medical Corporation.

Acceptance of this Quotation by the Customer shall create an agreement between ZOLL Medical Corporation and the Customer (hereinafter referred to as the "Contract" the terms and conditions of which are expressly limited to the provisions of this Quotation including these Terms and Conditions. No waiver change or modification of any of the provisions of this Quotation or the Contract shall be binding on ZOLL Medical Corporation unless such waiver, change or modification (i) is made in writing (ii) expressly states that it is a waiver, change or modification of this Quotation or the Contract and (iii) is signed by an authorized representative of ZOLL Medical Corporation.

2. **DELIVERY AND RISK OF LOSS.** Unless otherwise stated, all deliveries shall be F.O.B. ZOLL Medical Corporation's facility. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

3. **TERMS OF PAYMENT.** Unless otherwise stated in its Quotation payment by Customer is due thirty (30) days after the ship date appearing on ZOLL Medical Corporation invoice. Any amounts payable hereunder which remain unpaid after the date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.

4. **CREDIT APPROVAL.** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL Medical Corporation. ZOLL Medical Corporation may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL Medical Corporation.

5. **TAXES.** The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges. The Customer shall pay in addition for the prices quoted the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL Medical Corporation). In lieu thereof the Customer may provide ZOLL Medical Corporation with a tax exemption certificate acceptable to the taxing authorities.

6. **WARRANTY.** (a) ZOLL Medical Corporation warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL Medical Corporation's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period noted on the reverse side. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL Medical Corporation will at no charge to the Customer either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's regular service charges shall apply. (b) ZOLL Medical Corporation shall not be responsible for any Equipment defect failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL Medical Corporation, or (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation, or (v) installation or writing of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items to lamps, fuses, batteries, cables and accessories. (d) The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). (e) The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder. **THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL MEDICAL CORPORATION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

7. **SOFTWARE LICENSE.** (a) All software (the "Software" which term shall include firmware) included as part of the Equipment is licensed to Customer pursuant to a nonexclusive limited license on the terms hereinafter set forth, (b) Customer may not copy, distribute, modify, translate or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose or use any proprietary algorithms, techniques or other confidential information contained therein, (c) All rights in the Software remain the product of ZOLL Medical Corporation, and Customer shall have no right or interest therein except as expressly provided herein. (d) Customer's right to use the Software may be terminated by ZOLL Medical Corporation in the event of any failure to comply with terms of this quotation, (e) Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. (f) ZOLL Medical Corporation warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in section 6. (g) Customer understands that the Software is a complex and sophisticated software product and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet Customer's requirements. Except as set forth in section 7(f). **ZOLL MEDICAL CORPORATION**

MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software.

8. DELAYS IN DELIVERY. ZOLL Medical Corporation shall not be liable for any delay in the delivery of any part of the Equipment if such delays is due to any cause beyond the control of the ZOLL Medical Corporation including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL Medical Corporation. In addition ZOLL Medical Corporation shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL Medical Corporation may allocate available Equipment among its Customers on any reasonable and equitable basis. The delivery dates set forth in this Quotation are approximate only and ZOLL Medical Corporation shall not be liable for or shall the Contract be breached by, any delivery by ZOLL Medical Corporation within a reasonable time after such dates.

9. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL ZOLL MEDICAL CORPORATION BE LIABLE FOR INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL MEDICAL CORPORATIONS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS QUOTATION OR THE CONTRACT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL MEDICAL CORPORATION OR OTHERWISE.

10. PATENT INDEMNITY. ZOLL Medical Corporation shall at its own expense defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL Medical Corporation, provided that (i) such alleged infringement consists only in the use of such Equipment or the Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL Medical Corporation immediate notice in writing of any such suit and permits ZOLL Medical Corporation through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL Medical Corporation all requested information, assistance and authority at ZOLL Medical Corporation's expense, to enable ZOLL Medical Corporation to defend such suit.

In the case of a final award of damages for infringement in any such suit, ZOLL Medical Corporation will pay such aware, but it shall not be responsible for any settlement made without its written consent.

Section 10 states ZOLL Medical Corporation's total responsibility and liability's, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL Medical Corporation be liable for any indirect, special, or consequential damages resulting from any such infringement.

11. CLAIMS FOR SHORTAGE. each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL Medical Corporation of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within ten (10) day period, the shipment shall be conclusively deemed to have been complete.

12. RETURNS AND CANCELLATION. (a) The Customer shall obtain authorization from ZOLL Medical Corporation prior to returning any of the Equipment. (b) The Customer receives authorization from ZOLL Medical Corporation to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. (c) Any such change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

13. APPLICABLE LAW. This Quotation and the Contract shall be governed by the substantive laws of the Commonwealth of Massachusetts without regard to any choice of law provisions thereof.

14. COMPLIANCE WITH LAWS. (a) ZOLL Medical Corporation represents that all goods and services delivered pursuant to the Contract will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the Fair Labor Standards Act of 1938, as amended. (b) The Customer shall be responsible for compliance with any federal, state and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder, and will obtain any permits required for such installation and use.

15. NON-WAIVER OF DEFAULT. In the event of any default by the Customer, ZOLL Medical Corporation may decline to make further shipments without in any way effecting its right under such order. If, despite any default by Customer, ZOLL Medical Corporation elects to continue to make shipments its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL Medical Corporation's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL Medical Corporation.

16. ASSIGNMENT. This Quotation, and the Contract, may not be assigned by the Customer without the prior written consent of ZOLL Medical Corporation, and any assignment without such consent shall be null and void.

17. TITLE TO PRODUCTS. Title to right of possession of the products sold hereunder shall remain with ZOLL Medical Corporation until ZOLL Medical Corporation delivers the Equipment to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL Medical Corporation. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL Medical Corporation the right, without liability to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.

18. EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION.

VETERAN'S EMPLOYMENT - If this order is subject to Executive Order 11710 and the rules, regulations, or orders of the Secretary of Labor issued thereunder the contract clause as set forth at 41 CFR 60-250.4 is hereby included as part of this order.

EMPLOYMENT OF HANDICAPPED - if this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended and the rules, regulations or orders of the Secretary of Labor as issued thereunder, the contract clause at 41 CFR 60-741.7 is hereby included as part of this order.

EQUAL OPPORTUNITY EMPLOYMENT - if this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause set forth at 41 CFR 60-1.4 (a) and 60-1.4 (b) are hereby included as a part of this order and Seller agrees to comply with the reporting requirements set forth at 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth as 41 CFR 60-1.40.

19. VALIDITY OF QUOTATION. This Quotation shall be valid and subject to acceptance by the Customer, in accordance with the terms of Section 1 hereof for the period set forth on the face hereof. After such period, the acceptance of this Quotation shall not be binding upon ZOLL Medical Corporation and shall not create a contract, unless such acceptance is acknowledged and accepted by ZOLL Medical Corporation by a writing signed by an authorized representative of ZOLL Medical Corporation.

ZOLL Medical Corporation