

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 7

Ordinance/Resolution# 14-15-066

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of October 6, 2014
(Adoption Date)

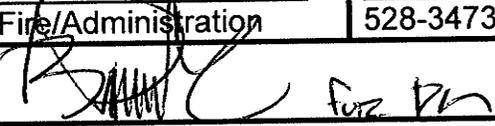
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION FOR THE PURCHASE OF FOUR DEFIBRILLATOR/HEART MONITORS FOR USE BY THE LAS CRUCES FIRE DEPARTMENT IN SUPPORT OF EMERGENCY MEDICAL SERVICES DUTIES, IN THE AMOUNT OF \$122,254.60.

PURPOSE(S) OF ACTION:

Purchase defibrillator/heart monitors.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Kristen Andersen	Department/Section: Fire/Administration	Phone: 528-3473
City Manager Signature: 		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This purchase will replace four units that no longer meet the specifications required of the City's advanced life support providers. In addition, the manufacturer of our current defibrillators, Physio-Control, began a phased discontinuation process in August 2013 and these units are no longer available. This purchase will complete the Fire Department's process of upgrading the minimum number of 10 defibrillator/heart monitors from Physio-Control LifePak 12 units to Zoll Medical X Series units.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract Form.
3. Attachment "A", Zoll Medical Quotation.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$ _____ for FY ____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Fire Fund	23807010-851200	\$122,254.60	\$140,000.00	\$17,745.40	Fire Dept. capital projects

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow the City of Las Cruces Purchasing Manager to move forward with the purchase of four more Zoll defibrillator/heart monitors.
2. Vote "No"; this will suspend our ability to efficiently upgrade our defibrillator/heart monitors.
3. Vote to "Amend"; this could modify the Resolution and delay the defibrillator/heart monitor upgrade and will incur a price increase resulting from a reduction of the trade-in value on item 22 of Attachment A.
4. Vote to "Table"; this could delay the defibrillator/heart monitor upgrade and will incur a price increase resulting from a reduction of the trade-in value on item 22 of Attachment A.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 14-15-066

A RESOLUTION FOR THE PURCHASE OF FOUR DEFIBRILLATOR/HEART MONITORS FOR USE BY THE LAS CRUCES FIRE DEPARTMENT IN SUPPORT OF EMERGENCY MEDICAL SERVICES DUTIES, IN THE AMOUNT OF \$122,254.60.

The City Council is informed that:

WHEREAS, the Las Cruces Fire Department has identified the need to provide defibrillators/heart monitors on all first due fire apparatus; and

WHEREAS, the Las Cruces Fire Department has performed comprehensive defibrillator/heart monitor product analysis and testing; and

WHEREAS, the Las Cruces Fire Department has identified the Zoll Medical X Series defibrillator/heart monitor as the most appropriate unit to purchase; and

WHEREAS, the Las Cruces Fire Department is upgrading their defibrillator/heart monitor fleet and has identified the need to replace four aging units; and

WHEREAS, the Zoll Medical X Series and defibrillator/heart monitor are available through an existing State contract.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the defibrillator/heart monitor purchase contract be awarded to Zoll Medical Corporation in the amount of \$122,254.60.

(II)

THAT the Las Cruces Purchasing Manager is authorized to contract with Zoll Medical Corporation, as outlined in the signed Exhibit "A", Purchasing Manager's Request to Contract Form, attached hereto and part of this resolution.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

APPROVED AS TO FORM:

A. P. [Signature]
City Attorney

CITY OF LAS CRUCES¹⁵¹

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: October 6, 2014

Resolution No.: 14-15-066

Existing Contract Purchase For Four Defibrillator/Heart Monitors

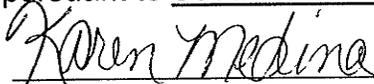
The Las Cruces City Council is provided the following information concerning this request:

RFP/BID SOLICITATION INFORMATION:

- | | |
|---|-----------------------------------|
| 1. Existing Contract Issuer | New Mexico State |
| 2. Contract Number: | 20-000-00-00082 |
| 3. Contract Expiration Date: | May 8, 2015 |
| 4. Description: | Four Defibrillator/Heart Monitors |
| 5. Using Department: | FIRE |
| 6. Current Award Recommendation To: | Zoll Medical Corporation |
| 7. Award Amount (includes any tax and contingency): | \$122,254.60 |
| 8. Projected Completion Date: | N/A |
-

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-316**.


19/19/14
 Purchasing Manager Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	15101122
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**GUIDELINES
2010 READY**

ZOLL Medical Corporation

Worldwide Headquarters
269 Mill Rd
Chelmsford, Massachusetts 01824-4105
(978) 421-9655 Main
(800) 348-9011
(978) 421-0015 Customer Support
FEDERAL ID#: 04-2711626

TO: Las Cruces Fire Department

201 East Picacho Avenue
Las Cruces, NM 88001

Attn: **Kristen Andersen**

email: kblaschke@las-cruces.org
Tel: 575-528-3473

QUOTATION 171039 V:5

DATE: September 12, 2014

TERMS: Net 30 Days

FOB: Destination

FREIGHT: Prepay and Add

**

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2221411-01	<p>X Series® Manual Monitor/Defibrillator \$14,995 with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"(16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display.</p> <p>Accessories Included:</p> <ul style="list-style-type: none"> • Six (6) foot 3- Lead ECG cable • MFC cable • MFC CPR connector • A/C power adapter/ battery charger • A/C power cord • One (1) roll printer paper • 6.6 Ah Li-ion battery • Carry case • Declaration of Conformity • Operator's Manual • Quick Reference Guide • One (1)-year EMS warranty <p>Advanced Options:</p> <p>Real CPR Help Expansion Pack \$ 995 CPR Dashboard quantitative depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI)</p> <ul style="list-style-type: none"> • See - Thru CPR artifact filtering <p>ZOLL Noninvasive Pacing Technology: \$2,550</p> <p>Masimo Pulse Oximetry</p>	4	\$38,270.00	\$31,381.40	\$125,525.60 *

This quote is made subject to ZOLL's standard commercial terms and conditions (ZOLL T's + C's) which accompany this quote. Any purchase order (P.O.) issued in response to this quotation will be deemed to incorporate ZOLL T's + C's. Any modification of the ZOLL T's + C's must be set forth or referenced in the customer's P.O. No commercial terms or conditions shall apply to the sale of goods or services governed by this quote and the customer's P.O unless set forth in or referenced by either document.

Page 1 Subtotal **\$125,525.60**

1. DELIVERY WILL BE MADE 60-90 DAYS AFTER RECEIPT OF ACCEPTED PURCHASE ORDER.
2. PRICES WILL BE F.O.B. DESTINATION.
3. WARRANTY PERIOD (See above AND Attachment).
4. PRICES QUOTED ARE VALID FOR AN ORDER RECEIVED ON OR BEFORE SEPTEMBER 30, 2014.
5. APPLICABLE TAX AND FREIGHT CHARGES ARE ADDITIONAL.
6. ALL PURCHASE ORDERS ARE SUBJECT TO CREDIT APPROVAL BEFORE ACCEPTANCE BY ZOLL.
7. PURCHASE ORDERS TO BE FAXED TO ZOLL CUSTOMER SERVICE AT 978-421-0015.
8. ALL DISCOUNTS OFF LIST PRICE ARE CONTINGENT UPON PAYMENT WITHIN AGREED UPON TERMS.
9. PLEASE PROVIDE A COPY OF OR REFERENCE TO YOUR QUOTATION NUMBER WITH PURCHASE

Rachel Schramka
EMS Territory Manager
800-242-9150, x5457



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Tel: 575-528-3473

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
		SP02 \$1,795 • Signal Extraction Technology (SET) • Rainbow SET NIBP Welch Allyn Includes: \$3,495 • Smartcuff 10 foot Dual Lumen hose • SureBP Reusable Adult Medium Cuff End Tidal Carbon Dioxide monitoring (ETCO2) Oridion Microstream Technology: \$4,995 Order required Microstream tubing sets separately Interpretative 12- Lead ECG: \$8,450 • 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set Two Temperature monitoring channels with digital displays: \$ 995 Order Temperature probes separately				
2	8000-0330	SpO2 Rainbow Reusable Patient Cable: Connects to LNCS Single Use and Reusable Sensors (4 ft)	4	\$295.00	\$224.20	\$896.80 *
3	8000-0294	SpO2 LNCS Adult Reusable Sensor (1 each)	4	\$295.00	\$224.20	\$896.80 *
4	8000-0295	SpO2 LNCS Pediatric Reusable Sensor (1 each)	4	\$350.00	\$266.00	\$1,064.00 *

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Page 2 Subtotal **\$128,383.20**

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
5	8000-0580-01	Six hour rechargeable Smart battery	8	\$495.00	\$405.90	\$3,247.20 *
6	8300-0500-01	SurePower 4 Bay Charging System Including 4 Battery Charging adapters	2	\$2,583.00	\$2,118.06	\$4,236.12 *
7	REUSE-12-2MQ	Welch Allyn REUSE-12-2MQ Cuff, Lg Adult, 2-Tube, Twist lock connector	4	\$52.50	\$43.05	\$172.20 *
8	REUSE-09-2MQ	Welch Allyn REUSE-09-2MQ Cuff, Child, 2-Tube, Twist lock connector	4	\$52.50	\$43.05	\$172.20 *
9	REUSE-07-2MQ	Welch Allyn REUSE-07-2MQ Cuff, Infant, 2-Tube, Twist lock connector	4	\$52.50	\$43.05	\$172.20 *
11	REUSE-10-2MQ	Welch Allyn REUSE-10-2MQ Cuff, Small Adult, 2-Tube, Twist lock connector	4	\$52.50	\$43.05	\$172.20 *
12	8900-0400	CPR stat*padz HVP Multi-Function CPR Electrodes - 8 pair/case	2	\$560.00	\$425.60	\$851.20 *
13	8000-0339	SpO2/SpCO/SpMet Rainbow Single use Sensors: Patients 10-50 kg (10 per case)	4	\$795.00	\$604.20	\$2,416.80 *
14	8000-002005-01	Cable Sleeve, Propaq / X Series, ZOLL Blue	6	\$49.95	\$40.96	\$245.76 *
15	8000-0670	YSI reusable adult Skin Temperature probe	10	\$75.00	\$57.00	\$570.00 *

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Page 3 Subtotal **\$140,639.08**

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QUOTATION 171039 V:5

DATE: September 12, 2014

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FOB: Destination **

FREIGHT: Prepay and Add

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
16	8000-0671	YSI reusable pediatric Skin Temperature probe	10	\$75.00	\$57.00	\$570.00 *
17	8778-0122	6 Year, 1 Preventative Maintenance (at time of equipment sale)	4	\$1,380.00	\$1,380.00	\$5,520.00
18	20100000302011010	AED Plus with Professional Interface (no circle of icons). Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator's Guide and (5) five year limited warranty.	1	\$1,995.00	\$1,215.96	No Charge *
19	8900-0810-01	pedi*padz® II Pediatric Multi-Function Electrodes - Designed for use with the AED Plus. The AED recognizes when pedi*padz II are connected and automatically proceeds with a pediatric ECG and adjusts energy to pediatric levels. Twenty four (24) month shelf-life. One pair.	1	\$95.00	\$80.75	No Charge *
20	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	1	\$75.00	\$63.75	No Charge *
21	8900-0402	CPR stat*padz HVP Multi-Function CPR Electrodes - 1 pair	2	\$75.00	\$57.00	No Charge *
22	7800-0308	LifePak 12 Biphasic w/Pacing, 12 lead + 1 parameter Trade-In	4		(\$6,118.62)	(\$24,474.48) **
<p><u>*Trade values are only valid through September 30, 2014.*</u></p>						

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Page 4 Subtotal **\$122,254.60**

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
<p>*Reflects State of New Mexico Contract Pricing.</p> <p>**Trade-In Value valid if all units purchased are in good operational and cosmetic condition, and include all standard accessories such as paddles, cables, etc. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.</p>						
TOTAL						\$122,254.60

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Rachel Schramka
EMS Territory Manager
800-242-9150, x5457

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 & FEES. The pricing quoted in its Quotation do not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. 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), and any order processing fees that ZOLL may apply from time to time. 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 inspection detects no defects in material or workmanship, 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 wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions. (c) Warranty does not cover items subject to normal wear and burnout during use, including but not limited 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. This License applies only to ZOLL Medical Corporation 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 delay 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 CORPORATION'S 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 award, 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 with 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 or render any further warranty or other services without in any way affecting 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.

20. GENERAL. Any Contract resulting from this Quotation shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This constitutes the entire agreement between Buyer and Supplier with respect to the purchase and sale of the Products described in the face hereof, and only representations or statements contained herein shall be binding upon Supplier as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Buyer for the Products set forth on the face of this Agreement. To the extent that this writing may be treated as an acceptance of Buyer's prior offer, such acceptance is expressly made conditional on assent by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer to the terms hereof, and, without limitation, acceptance of the goods by Buyer shall constitute such assent. All cancellations and reschedules require a minimum of thirty (30) days notice.