



QUOTATION

40 Parker Irvine, CA 92618-1604  
 1.800.326.4890  
 customerorders@masimo.com

Quote Number 00111678  
 Created Date 11/26/2014  
 Expiration Date 12/19/2014

**Attn**

Account Name Franklin Fire Dept  
 Ship To 109 3rd Ave S  
 Franklin, Tennessee 37064  
 United States  
 Bill To Name Franklin Fire Dept  
 Bill To 109 3rd Avenue S Ste 133  
 Franklin, Tennessee 37064  
 United States

Prepared By Ted Piper  
 Title Regional Manager, EMS Channel  
 E-mail tpiper@masimo.com  
 Phone (813) 597-5729

Payment Terms: Net 30 days from date of delivery or date of invoice, whichever is later

Delivery: 2-4 weeks after receipt of order

Delivery terms: FOB destination, freight prepaid and added.  
 Price: Excludes sales tax but includes shipping charges

Quote Line Items

Product Code	Product	Sales Price	Quantity	Total Price
9216	KIT, RAD-57, HANDHELD	USD 695.00	3.00	USD 2,085.00
2296	CARBOXYHEMOGLOBIN SATURATION (SpCO)	USD 2,350.00	3.00	USD 7,050.00
2297	METHEMOGLOBIN SATURATION (SpMet)	USD 2,350.00	3.00	USD 7,050.00
2201	RAINBOW DCI-DC3, SpO2/SpCO/SpMet, 1/BX	USD 695.00	3.00	USD 2,085.00
2208	CARRYING CASE, RAD-57, RED	USD 0.00	3.00	USD 0.00
2815	DISPOSABLE OPTICAL LIGHT SHIELD, ASSY,MA	USD 0.00	3.00	USD 0.00
33650	QUICK REFERENCE GUIDE, RAD-57 CONFIG EMS	USD 0.00	3.00	USD 0.00
6333	DVD Rad57 Training Video	USD 0.00	3.00	USD 0.00
31740	OPERATOR'S MANUAL, RAD 57	USD 0.00	3.00	USD 0.00

Totals

Total Price USD 18,270.00  
 Shipping and Handling USD 30.00  
 Grand Total USD 18,300.00



Please scan and email Purchase Orders along with a copy of this quotation to [customerorders@masimo.com](mailto:customerorders@masimo.com). Alternatively, Purchase Orders may be faxed to (949) 297-7499.

This Quotation is an offer. Upon Masimo's receipt of Customer's purchase order confirming and referencing this Quotation, a contract is formed between the parties. Any additional or conflicting terms or conditions in Customer's purchase order to those set forth above and those incorporated herein will not apply. Customer's performance of this Quotation will serve as acceptance of Masimo's terms and conditions. Masimo's terms and conditions, as attached, are incorporated herein by reference.

Pricing may include discounts (including and subject to any rebates) and must be fully and accurately reported to the extent required by law or contract. Customer must retain discount documentation and allow agents of federal or state agencies access to it upon request. Cost reporting entities must report actual prices paid net of discounts/rebates on all federal health care program cost reports in the fiscal year in which discount/rebate is earned or the following year.

Approved for Masimo Corporation:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved for City of Franklin, TN:

Name: Eric S. Stuckey  
Title: City Administrator  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

Name:  
Title:  
Signature:  
Date:

## MASIMO TERMS AND CONDITIONS

### 1) TERMS AND CONDITIONS

- a) The Terms and Conditions contained herein, including the City of Franklin, TN Standard Procurement Terms and Conditions as attached hereto and hereby incorporated herein, constitute the entire agreement ("Agreement") between Masimo and Customer. Customer acknowledges that the terms and conditions of Customers Purchase Order are not part of this Agreement.

### 2) PACKAGING AND SHIPPING

- a) Masimo shall be responsible for packaging, marking and shipping the products in accordance with good commercial practices and all applicable laws. An itemized packing list shall accompany each shipment.

### 3) SHIPMENT AND RISK OF LOSS

- a) Delivery term are as indicated on the first page of this quote.
- b) Masimo reserves the right to make partial deliveries.
- c) The carrier shall not be construed to be an agent of Masimo. Masimo shall not be held responsible for delays by carrier to make deliveries for any cause.

### 4) PAYMENT, SERVICE CHARGE AND TAXES

- a) Payment terms are as indicated on the first page of this quote.
- b)
- c) Customer is a tax exempt organization and shall provide valid tax exemption certificate to Masimo..

### 5) LIMITED USE

- a) No Implied License. Possession of the Equipment does not convey any express or implied license to use the Equipment with unauthorized sensors or cables that would, alone, or in combination with the Equipment, fall within the scope of one or more of the patents relating to the Equipment. Sensors designated for single patient use only are licensed to Customer under patents owned by Masimo to be used on a single patient only, and Customer shall not use Masimo's patented single-patient use Sensors which have been reprocessed or previously used with a different patient, unless specifically authorized by Masimo. There is no license, implied or otherwise, that would allow use of disposable Sensors beyond their intended single use. After use of Sensors designated for single patient use only, there is no further license granted by Masimo to use the Sensors and they must be returned to Masimo.
- b) Qualified Personnel. Customer will not permit the Equipment to be used by anyone other than Customer's qualified and trained personnel.
- c) No Modifications. Except for use of the communication ports provided by Masimo to transmit data from the Masimo monitors and systems to other equipment, modification or connection of other Equipment to the Masimo Equipment, including software, hardware and related instruments cannot be made without Masimo's prior written authorization, which authorization may be withheld at Masimo's sole discretion.
- d) Cleared Use Only. The Equipment, Software, Sensors and related disposable accessories may not be used for any processes, procedures, experiments or any other use for which the Equipment is not intended or cleared by the Food and Drug Administration (FDA), or in any manner inconsistent with the instructions for use or labeling.

### 6) LICENSE

- a) License Grant. The Sensors and Equipment contain Masimo proprietary technology and/or software (the "Software"), trade secrets and other proprietary information (collectively, "Intellectual Property"). Masimo grants to Customer a non-exclusive, non-transferable, license to use the Software, Sensors, Equipment in connection with its authorized use of the Equipment and Sensors in conformance with the instructions for use and labeling and this Agreement. Notwithstanding any other provision of this Agreement, Sensors and Equipment are licensed, not sold. This Agreement does not constitute a sale of the Software, Sensors, Equipment, trade secrets, any copy of the Software or any Intellectual Property.
- b) Optional Software Parameters. Masimo may offer optional software parameters ("Software Parameters") with additional functionality at the then current license fees. The optional Software Parameters contain Masimo Intellectual Property, and are licensed separately from the Software in Section 6a) above. If Customer elects to obtain term license(s) for optional Software Parameters, Masimo shall grant to Customer (subject to the Payment terms of this Agreement), a non-exclusive, non-transferable, non-sub licensable, revocable limited term software license to use the optional Software Parameters in accordance with the terms of this Agreement for the term license period. Any license granted to Customer in this Section 6b) is limited to use of the optional Software Parameter solely on a single Masimo Oximeter.

- c) Additional Software Parameter Licenses. Additional term licenses for the optional Software Parameters may be obtained at any time during the Term of this Agreement. Such additional optional Software Parameter licenses shall become a part of this Agreement, subject to its licensing provisions.
- d) No Modifications. Customer may not reverse engineer, copy, modify, loan, rent, lease, assign, transfer, or sub-license the Software or Intellectual Property without Masimo's prior written consent, which may be withheld at Masimo's sole discretion; any attempt to do so will render the license null and void and use of the Software and Intellectual Property invalid.

**7) WARRANTY.**

- a) Warranty. Masimo warrants that the Masimo Products provided will materially conform to the published Product specifications of Masimo at the time of shipment and be free from material defects in materials and workmanship. Provided that payments are current and Customer is not otherwise in breach of this Agreement, Masimo's obligation if any Masimo Products or other accessories are found upon examination by Masimo to be defective during the warranty period shall be limited to repair or replacement. Masimo is not responsible and will charge Customer for repair, replacement, or maintenance caused by damage, neglect, misuse, improper operation, accident, fire, water, vandalism, weather, war, any Act of God, unauthorized Equipment attached to Masimo Equipment, or unauthorized modification of Masimo Products or Software. Except as expressly noted herein, all remedies set forth herein are exclusive and in lieu of all other representations and warranties, oral or written, express or implied.
- b) Standard Warranty. For Equipment, the duration of the warranty shall be one (1) year from the date of first use, not to exceed fourteen (14) months after shipment; for reusable Sensors, batteries and other accessories, the duration of the warranty is six (6) months from the date of first use, not to exceed eight (8) months after shipment; and disposable Sensors are warranted for single-patient use prior to their expiration, within six (6) months after shipment. ReSposable Sensors are warranted as follows: (a) reusable components are warranted for the number of uses indicated on the package, within six (6) months after shipment; and (b) disposable components are warranted for single-patient use within six (6) months after shipment.
- c) Exclusions. This warranty does not apply or extend to any Product (i) damaged, neglected, misused or improperly operated; (ii) modified, disassembled, or reassembled; (iii) used with supplies, devices or electrical work external to the Products or not manufactured by Masimo; (iv) used with sensors or other accessories other than those manufactured and distributed by Masimo; (v) put to a use or used in environments for which they are not intended; and (vi) where the Software has been damaged, modified by anyone other than Masimo or without the express written authorization of Masimo, or used contrary to Masimo's instructions. Masimo's warranty does not extend to any equipment or software not manufactured by Masimo. For equipment manufactured by third-parties, Masimo will pass on to Customer all terms and rights provided by the manufacturer. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, ARISING BY OPERATION OF LAW OR OTHERWISE, AND NO OTHER WARRANTIES EXIST, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

**8) LIMITATION OF LIABILITY.**

- a) THE PARTIES AGREE THAT MASIMO'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE VALUE OF EQUIPMENT PROVIDED IN THIS QUOTE.

**9) INDEMNIFICATION.**

- a) Bodily Injury. Masimo will defend, indemnify and hold Customer harmless against any and all liability, loss, damages, costs or expenses that Customer may hereafter incur, as a result of any injury, illness or death of any person which is caused by any Products, to the extent that such injury, illness or death resulted from failure of any Product at the time of shipment to Customer to materially comply with its published specification. Masimo will indemnify third party monitors that contain Masimo SET or Rainbow SET technology under license from Masimo to the extent that the Masimo technology is the cause of any bodily injury.
- b) Infringement. Masimo will defend, indemnify and hold Customer harmless against infringement or alleged infringement directly resulting from standard Products furnished under this Agreement, of any patent, copyright, trademark, trade secret or any other proprietary right of any third party. In the event of such claim, Masimo may, at its sole discretion, (i) modify the particular Product to make it non-infringing, (ii) obtain a license to allow the continued use of the Product, or (iii) terminate this Agreement, and take possession of and refund all fees paid for the infringing Products, and pay fair market value, but no more than the price paid by Customer for the infringing Product, if any.
- c) Exclusions. Masimo shall have no liability or responsibility of any kind to Customer under this Section ("Indemnification") unless Customer (i) promptly notifies Masimo of such claims, (ii) gives Masimo an adequate opportunity to defend, including complete control of such defense, and (iii) provides reasonable assistance to Masimo, at Masimo's expense and request, in connection with the defense and settlement of any such claim. Masimo shall have no liability for settlements made without Masimo's express written consent. Should Customer desire to

have its own counsel participate in any such action, the cost of such counsel shall be exclusively Customer's. Notwithstanding the above, Masimo shall not be liable for any infringement of intellectual property rights of third parties or for any liability, loss, damages, costs or expenses which Customer may incur as a result of any injury, illness or death resulting from (i) alterations or modifications to the Products made by Customer or others (or by Masimo, in the case of an infringement claim) at Customer's request, (ii) electrical/electronics, software/firmware, sensors, or product interface not furnished by Masimo, (iii) combination of the Products with other apparatus or technology not furnished or, in the case of infringement claims, specified in writing by Masimo, (iv) use of Products or components not supplied by Masimo, (v) use of Products not permitted under this Agreement, (vi) Products improperly used (including use past the expiration date where applicable) or maintained, or used where defects arose from normal wear and tear; or (vii) for any claims not related directly to the Products. The preceding sentence does not exclude Masimo's indemnification obligations for claims arising out of Masimo SET or Rainbow SET technology contained in OEM Monitors or the combination of such technology with Masimo Products.

**10) RELATIONSHIP BETWEEN PARTIES**

- a) Nothing in this Agreement shall be construed as creating any partnership, joint venture or agency between the parties.

**11)** This section has been deleted.

**12)** This section has been deleted.

**13) LEASE TRANSACTIONS:**

- a) If Customer converts its Product purchase into a lease through a third party financier, then Customer acknowledges that its financier will buy the Product from Masimo and will own the Product, that Customer is legally obligated to remit payments specified by Customer's lease to its lessor, and that its lessor and not Masimo will have all subsequent financial interest in the Product (but the Product warranty stated above will still apply). Customer further acknowledges that any and all disputes that may arise during the term of its lease with respect to payment for the Product will be between Customer and Customer's financier, and Customer waives any and all rights and recourse against Masimo with respect to such disputes and/or payments.

**14) TECHNOLOGY**

- a) In the event that Masimo releases a Sensor or other Product that is a direct replacement for, or a direct substitute or alternative with equivalent function and performance specifications to an existing Sensor or other product covered by this Agreement, then Masimo, at its discretion and upon written notice to Customer may substitute, on a going forward basis, the existing Sensor or Product covered by this Agreement with such new Sensor or other product replacement at no additional charge to Customer.

**15) REIMBURSEMENT COVERAGE:**

- a) Customer acknowledges and confirms that: (a) Customer has reviewed and understood all rules and guidelines for Medicare and other public and private insurance reimbursement coverage applicable to Masimo technology; (b) all reimbursements for test procedures done with Masimo Products are subject to Customer's compliance with requirements & policies set by Medicare and other public or private insurance carriers, and neither those requirements & policies nor Customer's compliance with them are within Masimo's responsibility or control; (c) Masimo and its representatives have made no representation, warranty or guarantee to Customer of payment or reimbursement by any public or private insurance carrier for any tests done with Masimo Products, and (d) Masimo is not responsible or liable to Customer in any way for any costs, damages, amounts, etc. that may arise or be incurred if any insurance carrier denies reimbursement for any tests the Customer does with a Masimo Product.

**16) PRODUCT RETURNS**

- a) MASIMO WILL ACCEPT NO UNAUTHORIZED PRODUCT RETURNS . ANY PRODUCT RETURNS MUST BE APPROVED BY MASIMO IN WRITING IN ADVANCE.

**17) SAFE HARBOR**

- a) The terms of this Agreement are permitted under the discount safe harbor of 42 C.F.R. § 1001.952(h) which is a statutory exception to the anti-kickback law specifically where the offer and acceptance are part of an arms length transaction and two conditions are met, namely that (i) the discount must be fixed and disclosed in writing to Customer at the time of the transaction and (ii) Customer must disclose the arrangement to the government if requested; and a discount arrangement where Masimo gives away or reduces the price of one Product in connection with the acquisition of another are explicitly permitted under 64 Fed. Reg. 63530.

**18) COMPLIANCE WITH LAWS**

- a) Masimo warrants that in performance of a Purchase Order it has complied with or will comply with all applicable federal, state and local laws and ordinances including, but not limited to, OSHA, the Fair Labor Standards Act, as amended and Executive Order 11246, as amended. In addition, Masimo shall secure and maintain adequate Worker's Compensation coverage.

**19) GOVERNMENT CONTRACTS**

- a) Masimo warrants that in the performance of a Purchase Order it has complied with or will comply with all Federal Acquisition Regulations or their counterpart for other governmental agencies, which are applicable to the products or

services purchased hereunder. Upon request, Masimo shall certify compliance with any of the aforementioned rules or regulations.

**20) ACKNOWLEDGEMENT AND ACCEPTANCE**

- a) Masimo reserves the right to revoke this offer at any time prior to its acceptance. This Agreement contains the entire understanding between Masimo and Customer; supersede all prior understandings, written or oral, regarding the subject of this Agreement; and may only be amended, modified or superseded by a written agreement signed by Masimo and by Customer. Only an authorized representative of Masimo and Customer has the authority to sign such amending document.

**21) EEO COMPLIANCE**

- a) If applicable, the Equal Opportunity Clauses set forth in 41 C.F.R. parts 60-1.4(a), 60-250.5(a), 60-300.5(a) and 60-741.5(a), and the employee notice found at 29 C.F.R. Part 471, Appendix A to Subpart A are hereby incorporated by this reference.

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
  
2. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the vendor's performance of all provisions of this procurement.
  
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
  
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

In the case of Vendor:

City of Franklin

Ted Piper

Attn: Purchasing Manager

Regional Manager, EMS Channel

Re: City of Franklin Contract No. 2014-0251

109 Third Ave. South

Masimo Corporation

P.O. Box 305

40 Parker

Franklin, TN 37065-0305

Irvine, CA 92618-1604

FAX: 615/550-0079

FAX: 949/297-7499

E-mail: [purchasing@franklintn.gov](mailto:purchasing@franklintn.gov)

E-mail: [customerorders@masimo.com](mailto:customerorders@masimo.com)

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor 's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
6. Derivative Works. To the extent that the Agreement contains Vendor's reservation of rights, such definitions and limitations are superseded by the following: "Derivative Work" means a program that is based on or derived from one or more existing programs or components. If the original software is modified to create a new program, a derived work is created. If the original software was designed to accept plug-ins or drivers using a defined mechanism, such a driver or plug-in does not form a derived work. Linking to a library in the way it was designed to be interfaced with, does *not* constitute deriving a work. "Derivative work" is *not* the data that the Licensee inputs, manipulates, modifies or otherwise improves, nor the images resulting therefrom.
7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
9. Warranties/Limitation of Liability/Waiver. City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.



# **Standard Procurement Terms and Conditions**

## **City of Franklin, Tennessee**

11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.
  
12. Indemnification. Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the work done in connection with the contract of which this agreement is a part, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.
  
13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
  
14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
  
15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination by the vendor, the City shall be entitled to retain ownership of any and all goods and equipment purchased. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30<sup>th</sup> calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.