



Wilburn Medical USA

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Cholestech LDX System Placement Program and Kit Purchase Agreement

---24-Month Commitment---

Check One: ☐ 60 Boxes of Lipid Profile (Item # 10-989) Test Kits 10 Tests/Box per year
☐ 60 boxes of Lipid Profile plus GLU (Item # 10-991) Test Kits 10 Tests/Box per year

Check One: ☐ **NEW ORDER** (Ship Instrument to end-user Customer. Kits ship from Wilburn Medical Inventory)
☐ **RENEWAL ORDER** (Do Not Ship Instrument. Kits ship from Wilburn Medical Inventory)

☐ **CANCEL DROP SHIP EFFECTIVE:** _____

Wilburn Medical ("Wilburn Medical") and the customer signing below ("Customer") hereby agree as follows.

1. Commencing on the date of Instrument installation and continuing for the term of this Agreement, Customer shall purchase the quantities of Cholestech LDX Lipid Profile or Lipid Profile plus GLU Test Kits ("Kits") as checked off in the first box above ("Purchase Commitment"). Customer shall use its best efforts to meet its Purchase Commitment by making regular monthly purchases of the Kits from Wilburn Medical. Notwithstanding the foregoing, Customer shall be deemed to have breached its Purchase Commitment in the event Customer fails to purchase at least the minimum commitment amount set forth in the first box above for Year 1, and if applicable, Year 2.
2. Wilburn Medical will invoice Customer for the Kits at the prices shown in the attached price list ("Prices") and Customer shall pay for such Kits within Net 15 days.
3. Should Wilburn Medical determine that the Customer has failed to meet its Purchase Commitment, Wilburn Medical shall have the right but not the obligation to remove the Instrument from the Customer's facility. In the event of removal, Customer shall immediately pay to Wilburn Medical a onetime Two Hundred Dollar (\$200.00) refurbishing fee. Should Wilburn Medical elect not to remove the Instrument, under no circumstances shall Customer use the Instrument.
4. This Agreement shall be for the term of 24 months ("Term"). This agreement shall automatically renew for an additional Term, unless Customer or Wilburn Medical gives the other party at least thirty (30) days written notice of the decision to terminate the Agreement prior to the renewal. If Customer fails to purchase the agreed number of Kits by the end of the Agreement period, Wilburn Medical shall have the right upon termination as set forth in Section 3.
5. The Instrument involved in this Agreement shall remain the exclusive property of Wilburn Medical at all times and may be subject to inspection by an authorized Wilburn Medical representative at any time during the Term thereof. Notwithstanding Wilburn Medical's ownership of the Instrument, Customer shall be responsible for any damage to the Instrument while in its possession. Customer shall use the Instrument solely in conjunction with processing of the Kits and for no other purpose. The Instrument while it is in the possession of the Customer (except for reasonable wear and tear) shall maintain adequate damage insurance coverage with respect to the Instrument. Wilburn Medical shall have no obligation with respect to the operation or use of Instrument. The parties are independent contractors, and neither party shall act or attempt to act, or represent itself as, an agent of the other party.

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6. Customer agree: (i) not to seek reimbursement from any private or public (e.g. Medicare or Medicaid) insurance for any product, meter or additional warranty service provided at no additional charge or at reduced charge by Wilburn Medical: or, in the alternative, if reimbursement is sought: (ii) to properly disclose and appropriately reflect discounts or price reductions, including items provided at no additional charge or at reduced charge by Wilburn Medical, in such costs claimed or charges made for reimbursement, or in response to requests by government agencies for such price reduction and disclosure: and (iii) to be bound by Wilburn Medical's standard terms and conditions contained on Wilburn Medical's invoice(s) to Customer. Customer shall purchase the Kits for its own use and shall not resell or redistribute the Kits.
7. **IT IS THE INTENT OF THE PARTIES TO ESTABLISH A BUSINESS RELATIONSHIP WHICH COMPLIES WITH THE MEDICARE AND MEDICAID ANTI-KICKBACK STATUTE SET FORTH AT 42 U.S.C. §1320a-7b(b). IN CERTAIN INSTANCES, INVOICES MAY NOT ACCURATELY REFLECT THE NET COST OF PRODUCT TO CUSTOMER. WHERE A DISCOUNT OR OTHER REDUCTION IN PRICE IS APPLICABLE, THE PARTIES ALSO INTEND TO COMPLY WITH THE REQUIREMENTS OF 42 C.F.R. §1320a-7b(b)(3)(A) AND THE "SAFE HARBOR" REGULATIONS REGARDING DISCOUNTS OR OTHER REDUCTIONS IN PRICE SET FORTH AT 42 C.F.R. §1001.952(H). IN THIS REGARD, THE PARTIES ACKNOWLEDGE THAT Wilburn Medical WILL SATISFY ANY AND ALL REQUIREMENTS IMPOSED ON SELLERS BY THE SAFE HARBOR AND CUSTOMER WILL SATISFY ANY AND ALL REQUIREMENTS IMPOSED ON BUYERS. THUS, CUSTOMER WILL ACCURATELY REPORT, UNDER ANY STATE OR FEDERAL PROGRAM WICH PROVIDES COST OR CHARGE BASED REIMBURSEMENT FOR THE PRODUCTS AND SERVICES COVERED BY THIS AGREEMENT, THE NET COST ACTUALLY PAID BY THE CUSTOMER.**
8. This Agreement supplements Wilburn Medical's standard terms of sale (the "Terms of Sale") and, except for such Terms of Sale, merges or cancels all prior negotiations, understandings or supplemental agreements between the parties, oral or written, and constitutes the entire Agreement of the parties with respect to the subject matter hereof. In the event of a conflict between this Agreement and the Terms of Sale, the conflicting provision of this Agreement shall prevail to the extent of the conflict. This Agreement shall be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without any construction or interpretation against the party causing this Agreement to be make and may only be amended in a writing signed by both parties. All exhibits and attachments to this Agreement, and the Terms of Sale, form a part of this Agreement are incorporated into this Agreement by reference. All notices shall be in writing, including notice of termination, and sent by certified mail, return receipt requested, or a commercial overnight courier to the addresses provided below.

Note: The list price for the Instrument is \$2,136.15.

Customer Name _____ Wilburn Medical Account # _____

Key Contact _____ Telephone _____

Customer Address _____ City _____ State _____ Zip _____

Customer Signature _____ Title _____ Date ____/____/____

Wilburn Medical Address _____ City _____ State _____ Zip _____

Wilburn Medical Signature _____ Title _____ Date ____/____/____