Cochlear™ Baha® Drill Kit Rental

Terms and Conditions

Cochlear Americas ("Cochlear") is pleased to provide your clinic or hospital ("Organization") with the Baha® Drill Kit Rental ("Kit"). This Kit is provided to your Organization, pursuant to your Organization’s purchase order, under the following terms and conditions (hereinafter “Agreement”). Your Organization agrees to these terms by its acceptance and use of the Kit.

1. Definitions. “Kit” means the surgical drill kit comprised of: drill console; hand piece; motor cable; foot pedal; power supply; sterilization cassette; and Baha® instrument cassette with accompanying surgical tools. Cochlear, in its sole discretion, reserves the right to substitute substantially equivalent parts and components without notice to Organization. “Millstone” means Millstone Medical Outsourcing LLC, with the following contact information: 8836 Polk Lane, Olive Branch, MS 38654-7812, sales@millstonemedical.com, Phone: 662-892-3612, Fax: 662-893-0924.

2. License and Use. Cochlear grants to Organization a limited, revocable, non-transferable, non-exclusive license (without the right to sublicense) to use the Kit (i) solely for internal use by employees and agents of Organization, (ii) at or from Organization’s primary place of business and (iii) only in accordance with the terms herein.

3. Rental Term. A Kit may be rented for a period of 7 calendar days from the date on the associated packing slip (“Rental Term”), and must be returned to and received by Millstone on or before the 7th calendar day from the associated packing slip (“Return Deadline”).

4. Extended Rental Term. If Organization fails to return the Kit to Millstone on or before the Return Deadline, then Cochlear will invoice Organization equal to the cost of the original Rental Term for each successive 7-day period during which the Kit is not returned (“Extended Rental Term”).

If Millstone does not receive the Kit by the Return Deadline, then Organization is responsible for paying all applicable Extended Rental fees.

5. Return Instructions. Organization shall return the Kit to Millstone on or before the Return Deadline by using the pre-printed shipping label provided with the Kit after completing the sterilization process per the instructions provided with the Kit, including the signed Contamination Certificate attesting to the performance of the proper sterilization of all applicable parts and components. Organization shall return the Kit to Millstone in its entirety. Cochlear maintains the right to invoice Organization for damaged or missing components. Organization shall not send a Kit directly to Cochlear unless Cochlear issues instructions to do so in writing.

6. Invoicing and Payment. Cochlear shall invoice and Organization shall pay the full amount for each Rental Term or Extended Rental Term as applicable. Cochlear shall invoice Organization after the Kit is returned and/or every 30 days during which the Kit is not returned.

7. Maintenance and Handling. Organization shall, upon receipt of the Kit, (i) sterilize the Kit and its components per the Organization’s sterilization procedures; (ii) verify that the Kit is fully operational before the surgery is underway; and (iii) maintain the Kit in a secure manner.

8. Shipping and Delivery. Cochlear shall, as instructed by Organization, arrange for delivery of the Kit within: (i) 2 business days prior to the scheduled surgery date; or (ii) the date on which Organization requests the Kit to arrive. Organization is responsible for the cost of freight to ship the Kit and Cochlear shall pay the shipment costs for returning the Kit, provided Organization uses the pre-paid return label supplied by Cochlear.

9. Loss or Damage. Organization shall promptly notify Cochlear in writing of any loss, theft, or damage of any type. Cochlear may charge and Organization shall pay for replacement costs for any loss or theft of Kit, and for any damage to Kit determined by Cochlear not to be the result of normal wear and tear. Damage assessment will be performed by Cochlear. Organization assumes all risk of loss and damages to the Kit while under Organization’s control (ordinary wear and tear excepted).

10. Limitations on Use. Cochlear reserves the right to refuse to provide additional Kits, in whole or in part, should Cochlear reasonably believe that Organization is withholding payment or is misusing the Kit. Organization is not authorized to sell, lease, sublease or otherwise request any form of consideration or payment in exchange for the provision of the use of the Kits. Cochlear’s provision to Organization of Kit hereunder does not constitute a sale or lease to Organization. Title and ownership to the Kit is and shall remain exclusive to Cochlear.

11. Taxes. Organization is responsible for payment of any taxes or regulatory fees that may be imposed by Cochlear’s provision of a Kit hereunder and any charges that accrue with respect to Extended Rental Terms.

12. Disclaimer of Warranties. THE KIT (AND ALL PORTIONS THEREOF) ARE PROVIDED TO ORGANIZATION “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. ORGANIZATION ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES IN ACCEPTING THE KIT.

13. No Liability. Cochlear has no liability for any claim related to (a) use not in strict accordance with this Agreement; or (b) modification by any person other than Cochlear or its authorized agents. In no event shall Cochlear have any liability as to any third parties related to the use of this Kit by Organization.

14. Audits and Inspections. Cochlear shall have the right, upon reasonable prior written notice to Organization, to review Organization’s relevant records, inspect Organization’s facilities and any Kit to ensure compliance with this Agreement or applicable laws.

©2015 Cochlear Limited. All rights reserved. Trademarks and registered trademarks are the property of Cochlear Limited or Cochlear Bone Anchored Solutions AB. AUN313 ISS2 JAN15

[Logo]