

COHPA PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS

Version 1

1. INCORPORATION INTO PURCHASE ORDER

These purchase order terms and conditions (“**Terms**”) are incorporated into any purchase order that incorporates them by reference and that is issued by COHPA (whether acting on its own behalf, or as agent for one or more hospital Purchasers) (in either case, a “**Purchase Order**”). In the event of any conflict or inconsistency between these Terms and the Purchase Order, these Terms shall govern unless the Purchase Order makes specific reference to the conflict and authorized signing officers of the Purchaser and the Supplier have initialed next to that reference. In the event of any conflict or inconsistency between these Terms and any master agreement to which the Purchase Order is subject (a “**Master Agreement**”), the terms and conditions of the Master Agreement shall govern. The Purchaser shall not be bound by any terms or conditions in any of the Supplier’s forms or documents. The Purchaser may insist upon strict compliance with these terms and conditions despite any previous custom, practice or course of dealing to the contrary.

2. CHANGES, TERMINATION

The Purchaser reserves the right to make any changes to this Purchase Order including, without limitation, changes in drawings, specifications, additions or deletions from the quantities, or termination of all or part of the Purchase Order. If any such change causes any increase or decrease in the cost of, or the time required for, the performance of any part of this Purchase Order, an equitable adjustment shall be made in the price or delivery date, or both and this Purchase Order shall be modified in writing accordingly. Any claim for an adjustment shall be asserted by the Supplier within thirty (30) days of the notification of change from the Purchaser.

3. PRICES, PAYMENTS

Unless otherwise expressly stated in the Purchase Order, all prices specified shall be fixed, and in the currency indicated on the Purchase Order (which shall be Canadian dollars unless otherwise stated in the Purchase Order or Master Agreement) and shall include all charges and expenses of the Supplier, as well as freight and insurance to destination including packing, boxing, cartage and any and all applicable import and other taxes, fees and duties of federal, provincial and local governments. Any applicable HST shall be shown separately. Any Supplier document, including but not limited to invoices, credit notes, delivery notes and packing slips must quote the valid Purchase Order number. The time specified for payment of invoices, or for accepting any payment of discounts offered, shall run only from the date invoices satisfactory to the Purchaser are furnished to the Purchaser or satisfactory receipt of the goods by the Purchaser, whichever is later. Payment may be delayed if an invoice is received without a valid Purchase Order number in which case any late payment fees cannot be applied.

4. DELIVERY (GENERAL)

The Supplier shall deliver the specified goods to the destination(s) specified in the Purchase Order or such other destination as the Purchaser may subsequently inform the Supplier in writing from time to time, on the delivery date(s) and within the receiving hours specified, if any. In the event that the shipped unit of measure and product description differs from the purchase order unit of measure and product description, the purchaser will not be liable to pay any fees associated with returning or restocking the item. If the vendor requires any clarification before shipping the items it should contact COHPA customer services. Delivery shall not be complete,

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and title shall not pass to the Purchaser, until goods have been received that comply with the terms and conditions of this Purchase Order. All risk of damage to or loss of the goods until completion of delivery shall be borne by the Supplier. Acceptance of goods shall neither bind the Purchaser to accept future shipments, nor deprive the Purchaser of the right to return goods already received. Where a delivery date or schedule is specified in this Purchase Order, timely delivery to the destination is of the essence, and the Supplier shall be responsible to ensure that such delivery is made and shall advise the Purchaser immediately of any anticipated delays and the reasons therefor. The Supplier is responsible, at its expense, within two (2) days of delivery of the goods, for the off-site disposal of the crating and packaging of the goods when requested by the Purchaser. The Supplier shall contact the Purchaser within two (2) days of delivery of the goods if off-site disposal is not possible and on-site disposal shall be made through the approval of the Purchaser at the Supplier's expense.

5. DELIVERY OF PERISHABLE GOODS

In addition to the provisions in Section 4, in respect of the transportation and the delivery of perishable goods, the Supplier shall:

- a) ensure that the perishable goods, packing slip and carrier manifest are clearly marked "perishable" and with an expiry date if applicable;
- b) use dry ice for the perishable goods as applicable;
- c) provide the carrier with the necessary instructions for transportation;
- d) upon the departure of the perishable goods from the Supplier's warehouse, inform the Purchaser contact person immediately by facsimile, telephone or email of the following information: waybill tracking number and expected arrival to destination;
- e) take all steps possible to ensure that if the perishable goods go through customs that they do so on an expedited basis, including issuing a pre-alert to the Purchaser's customs broker and fully completing a Canada Customs Invoice ("CCI") or commercial invoice by using the instructions referred to below for completing the CCI. The CCI or commercial invoice must contain the Purchase Order number and non-generic description of the perishable goods. The CCI forms and instructions can be located at <http://www.taco.ca/forms.html>. Pre-alert consists of a copy of the CCI or commercial invoice and the tracking number, forwarded via email or facsimile to the customs broker;
- f) make three (3) delivery attempts to deliver all perishable goods within a period of twenty-four (24) hours from when the perishable goods leave the Supplier, subject to the carrier's policy; and
- g) ensure that the perishable goods are signed off by the receiving department responsible for the perishable goods and request that the carrier endeavour to ensure that the perishable goods are off-loaded from the carrier's vehicle and kept separate from non-perishable goods also being off-loaded to prevent co-mingling.

If the perishable goods are delivered in a less than satisfactory state (as determined in the Purchaser's sole discretion), the Purchaser shall so notify the Supplier and the Supplier shall:

- i) make arrangements to have the perishable goods returned to the Supplier at no expense to the Purchaser;

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- ii) reissue and replace the spoiled perishable goods within a timeframe agreeable to the Purchaser at no additional expense (which reissued and replacement goods shall be subject to the above-noted process); and
- iii) when shipping reissued or replacement perishable goods, ensure that the Canada Customs documentation clearly indicates the value of the goods and that the perishable goods are no charge replacement.

6. SHIPMENT

Subject to Section 5, the Supplier shall suitably pack, mark and ship the goods in adequate protective packaging and in accordance with any instructions from the Purchaser and the requirements of common carriers in a manner to secure the lowest transportation cost and no additional charge shall be made by the Supplier therefor unless otherwise stated in this Purchase Order. The Supplier shall be liable for any difference in freight/transportation charges or damage to the goods resulting directly or indirectly from any failure by the Supplier to comply with this section.

7. INSPECTION, REJECTION

The Purchaser shall have the right to inspect and test the goods at any time during manufacture or prior to shipment and to final inspection within a reasonable time after arrival at the ultimate destination. The Purchaser's personnel and/or authorized representative shall be allowed reasonable access to the Supplier's plant(s), and to those of the Supplier's suppliers, for the purposes of inspection and observation of progress towards completion of order. Goods shall not be deemed accepted until after a satisfactory final inspection. In addition, for goods that require installation and testing, goods shall not be deemed to be accepted until after installation, configuration, calibration, and performance testing has been completed, all to the Purchaser's satisfaction (acting reasonably). On written notice to the Supplier, the Purchaser may reject (a) unordered goods at any time after delivery; and (b) defective or non-conforming goods at any time within the Warranty Period (as defined below). The Supplier shall be responsible for removal and/or replacement of the said rejected goods at its own expense and within a reasonable time following its receipt of the rejection notice. Goods specified in such rejection notice shall be at the Supplier's risk for damage or loss. The making or failure to make any inspection to, or payment for, or acceptance of the goods, shall in no way impair the Purchaser's right to reject certain goods or to avail itself of any other remedies to which the Purchaser may be entitled. For a reasonable period following delivery of the rejection notice, the Purchaser shall ensure that rules of good storage management are applied pending the return of any rejected goods or pending the inspection, installation, configuration, calibration and performance testing of any goods that may be subject to rejection.

8. OWNERSHIP

Ownership of any documents, including specifications or drawings, supplied by the Purchaser, or produced by the Supplier upon request of the Purchaser (unless otherwise provided on the Purchase Order), shall rest with the Purchaser at all times.

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9. WARRANTY, GUARANTEE, COMPLIANCE

The Supplier warrants that the goods and/or work shall conform to the description and applicable specifications, drawings, samples or other description furnished or specified by the Purchaser, shall be of good merchantable quality, of good material and workmanship, free from defect and fit and sufficient for the purposes intended, for the period of time set out in this Purchase Order, and failing a specific term set out in this Purchase Order, the period of two (2) years from completed delivery (collectively, the “**Warranty Period**”). Defective goods and or parts shall be replaced at the Supplier’s expense during the Warranty Period. The Supplier also warrants that the goods and/or work shall be new, shall comply with all federal, provincial and local laws, regulations and orders applicable to the manufacture, sale, packaging, storage, labeling and delivery of the goods and to the performance of the work, that the Supplier has absolute title to the goods, and that the use of the goods by the Purchaser shall not infringe on any other entities’ rights (provided such use is in accordance with the applicable specifications, manuals, or other documentation approved by the Purchaser). The warranties set out herein shall apply notwithstanding any inspection, testing, acceptance of, or payment for the goods. The foregoing is in addition to any warranty or service guarantee given by the Supplier to the Purchaser or implied by law.

10. ELECTRICAL GOODS

All electrical goods purchased pursuant to this Purchase Order shall be authorized or approved in accordance with the Ontario Electrical Safety Code by a Certification Organization, accredited with the Standards Council of Canada Act (Canada), and shall bear the Certification Organization's mark which identifies goods certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the goods at the Purchaser's facilities.

11. MEDICAL GOODS

The Supplier and the goods shall have received all applicable licensing under, and shall be in compliance with the Food and Drugs Act (Canada) and its regulations.

12. LATEX

The Supplier shall provide the following information with respect to the goods, at the time of delivery or before if requested, whether:

- a) the goods contain any latex;
- b) the packaging of the goods contains any latex; and
- c) the goods indicate on the smallest unit packaging if there is latex in the goods or if it is latex-free.

The Purchaser requests the right to ask for additional information with respect to latex.

13. CUSTOMS

All commercial customs documents, including but not limited to commercial invoices, Canada Customs Invoices, and bills of lading, as applicable, shall be fully and satisfactorily completed in accordance with Canada Border Services Agency (“CBSA”) requirements. The Supplier shall

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obtain from the Purchaser, and show on the relevant commercial documents: the Purchase Order Number or the department name of the Purchaser purchasing the goods. Goods eligible for duty-free entry into Canada according to NAFTA shall be accompanied by a fully completed NAFTA Certificate of Origin or Statement of Origin, stamped or printed. Penalties assessed by CBSA due to incomplete, inaccurate or missing information on a commercial customs document shall be the responsibility of the Supplier, shall be charged to and paid by the Supplier or shall be deducted from any payment owing to the Supplier by the Purchaser.

14. INDEMNIFICATION

The Supplier shall be responsible for and shall save harmless and indemnify the Purchaser, the Purchaser's employees, subcontractors, agents, officers and directors from and against all losses, costs, charges, damages, suits, claims, expenses (including legal costs on a substantial indemnity basis) and demands of every nature whatsoever, whether or not well-founded, arising out of or by reason of the Goods delivered or work performed pursuant to this Purchase Order, performance or purported performance of the terms and conditions of this Purchase Order by the Supplier or the Supplier's employees, subcontractors, agents, officers and directors, including without limitation those made or sustained in respect of:

- (a) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;
- (b) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property;
- (c) allegations that the operation or use of any Goods, or any part thereof, infringes any third party's copyright, trade secret, patent, or any other intellectual property right;
- (d) any breach or alleged breach by the Supplier of any of its obligations, warranties, or representations in the Purchase Order;
- (e) any and all Goods supplied by the Supplier pursuant to the Purchase Order, the use thereof or any alleged defect(s) therein, including, without limitation, any alleged inaccuracy or improper statement or claim or direction on the label or packaging thereof and all services performed under this Purchase Order;
- (f) the Supplier's manufacturing or other operations; or
- (g) the sale or transportation of any Goods by the Supplier.

No such claim or action shall be settled or compromised by the Supplier without the Purchaser's prior written consent.

15. MEDICAL ALERTS AND SAFETY NOTIFICATIONS

If a medical alert, recall, safety notification, advisory or warning is issued or communicated, at any time, by the Supplier or manufacturer of the goods or a Canadian recognized reporting agency involving any of the goods, or is posted on a government or authorized web site, including but not limited to the Health Canada Web site, the Supplier shall:

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- a) communicate the medical alert, recall, safety notification, advisory or warning by registered mail, email and by facsimile to the Purchaser;
- b) follow any applicable protocols and requirements authorized by a Governmental Authority; and
- c) take all steps necessary to remedy the situation at no cost to the Purchaser and in a way that is acceptable to the Purchaser acting reasonably.

The Supplier shall also:

- i) inform the Purchaser of any possible design defect or malfunction condition occurring anywhere in the world with the goods, or goods similar to the goods supplied under this Purchase Order, at its earliest possible opportunity, but in no event, more than five (5) days after the Supplier becomes aware of the existence of such a defect or malfunctioning condition; and
- ii) communicate the situation set out in Section 15 (i) by registered mail, email and by facsimile to the Purchaser.

16. CONFIDENTIALITY

All information which the Supplier receives or acquires from the Purchaser either in writing, orally or through observation of the Purchaser's operation, or in the course of the Supplier's fulfilling its obligations hereunder, shall be held by the Supplier in confidence at all times and the Supplier shall not use the information unless required by this Purchase Order. Accordingly, the Supplier shall ensure that all recipients of the said information, including the Supplier's own employees, subcontractors, agents, officers and directors assume obligations identical in principle with those which the Supplier assumes under this section.

In the event the Supplier is required by any applicable law to make disclosure of any such information, the Supplier shall consult with the Purchaser in advance to the extent reasonably practicable as to the contents and timing of such disclosure in order for the other party to have the opportunity to prevent the disclosure of such confidential information or to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, the Supplier shall produce only that portion of the confidential information that it is ordered to disclose. In the event that any confidential information is disclosed pursuant to the foregoing, it shall not lose its confidential status through such disclosure.

17. FIPPA

The Supplier acknowledges that the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA") applies to and governs all records in the custody or control of Ontario hospitals, and that FIPPA may require the disclosure of such records to third parties pursuant to its provisions. Furthermore, the Supplier agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Purchaser within 7 Days of being directed to do so by the Purchaser for any reason including an access request or privacy issue;

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- (c) not to access any Personal Information unless the Purchaser determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Goods;
- (d) to restrict access to Personal Information to those of its directors, officers, governors, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing and installing the Goods and who have been specifically authorized by the Purchaser to have such access for the purpose of providing and installing the Goods;
- (e) that any confidential information supplied to the Purchaser may be disclosed by the Purchaser where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding.

18. PUBLICITY

The Supplier shall not, in any of its advertising or otherwise, indicate that it has supplied or may in the future supply goods to the Purchaser or use the Purchaser's name for the purpose of advertising or solicitation of business, without the prior written consent of the Purchaser. No acquisition or use of the Goods by the Purchaser shall be construed as an endorsement or approval of such Goods. The Supplier shall not use any intellectual property of any Purchaser, including but not limited to, logos, registered trade-marks, or trade names of any Purchaser, without the prior written approval of the Purchaser.

19. NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the terms and conditions, or to exercise any rights or remedies provided in this Purchase Order or by law, or to properly notify the Supplier in the event of breach, or the acceptance of or payment for any goods or approval of design, shall not release the Supplier of any warranties or obligations of this Purchase Order.

20. INSURANCE

The Supplier shall maintain insurance covering public liability, bodily injury and property damage, product and completed operations liability and contractual liability in amounts that are reasonable given the nature of the Supplier's operations. Upon request, the Supplier shall provide a certificate setting out the insurance coverage referred to in this section.

21. GOVERNING LAW

This Purchase Order shall be construed under and governed by the laws of the Province of Ontario, Canada, except that the United Nations Convention on Contracts for the International Sale of Goods (or any laws importing that convention) shall not apply.

22. ASSIGNMENT

The Supplier shall not assign, subcontract or otherwise transfer this Purchase Order, in whole or in part, by operation of law or otherwise, without the express written consent of the Purchaser.

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The Supplier agrees that the Purchaser may assign, subcontract and transfer its rights and remedies under this Purchase Order, in whole or in part.

23. SURVIVAL

In addition to the length of survival of any provision which may be explicitly stated in this Purchase Order, all of the indemnifications and confidentiality obligations made by the Supplier and set out in this Purchase Order shall survive the expiry or termination of this Purchase Order, as shall all other provisions of this Purchase Order which, by their nature, might reasonably be expected to survive.