1. INCORPORATION INTO PURCHASE ORDER

These purchase order terms and conditions (“Terms”) are incorporated into any purchase order for any products (and related services) (collectively, “Equipment”), 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 and 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 purchased Equipment 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

The Supplier shall deliver the Equipment to the destination(s) and to the attention of, as specified in the Purchase Order or Master Agreement, or such other destination as the Purchaser may subsequently inform the Supplier in writing from time to time. 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. The Supplier must notify the Purchaser of delivery particulars in advance of delivery as required by the Purchaser, and, without limiting the particulars required, shall provide the following: delivery date, mode of shipment, name of shipping/courier company, courier tracking or identification number and special instructions regarding handling, uncrating, and assembly. Large volume shipments, which are shipments larger than one (1) standard drop skid, must be made through special arrangements with the Purchaser. Prior to the delivery date(s) specified, if any, the Supplier shall send the information to the Purchaser.

Delivery shall not be complete and title shall not pass to the Purchaser, until Equipment has been received that complies with the terms and conditions of this Purchase Order. All risk of damage to or loss of the Equipment until completion of delivery shall be borne by the Supplier. Acceptance of Equipment shall neither bind the Purchaser to accept future shipments, nor deprive the Purchaser of the right to return Equipment 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 Equipment, for the off-site disposal of the crating and packaging of the Equipment when requested by the Purchaser. The Supplier shall contact the Purchaser within two (2) days of delivery of the Equipment 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. SHIPMENT

The Supplier shall suitably pack, mark and ship 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 appropriate for the Equipment being purchased, 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 Equipment resulting directly or indirectly from any failure by the Supplier to comply with this section.

6. INSPECTION

The Purchaser shall have the right to inspect and test the Equipment at any time during manufacture or prior to shipment and to final inspection within a reasonable time after arrival at the ultimate destination. The Supplier must specify, in writing, any installation and/or special test tools and/or components and/or kit requirements for the proper use and maintenance of the Equipment. The Purchaser shall be notified of such requirements before the Equipment is shipped. 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.
7. ACCEPTANCE TESTING

The Purchaser shall have a period of thirty (30) days ("Acceptance Testing Period") following clinical installation of the Equipment ("Clinical Installation") in which to test the Equipment to verify whether it is functioning properly and meets the specifications and Purchaser's requirements ("Acceptance Testing"). Clinical Installation shall be deemed to be completed at the time that: (a) the Equipment (including all accessories documentation) is received and installed in full; (b) Purchaser personnel are trained in the operation of the Equipment in accordance with Section 12; and (c) the Supplier has notified the Purchaser of (a) and (b). Within two (2) days of completion of Acceptance Testing, the Purchaser shall either notify the Supplier in writing of either the successful completion of Acceptance Testing, or the Purchaser’s disapproval of the Equipment (setting out the extent to which the Equipment does not operate in accordance with the specifications and the Purchaser’s requirements). Notwithstanding any provision to the contrary, the Acceptance Testing will be deemed to be successful on the date the Purchaser first successfully uses the Equipment outside the test environment in the Purchaser's operations, or if the Purchaser does not provide written notice of its disapproval within two (2) days of the end of the Acceptance Testing Period.

Payment may be withheld until the successful completion of Acceptance Testing. If any problems with the Equipment remain unresolved at the end of the Acceptance Testing Period, the Purchaser may: (x) require the Supplier to remove and return the Equipment for a full refund of money paid against this Purchase Order, or (y) request that the Supplier replace the Equipment or remedy the issues raised in the Acceptance Testing within a reasonable period of time determined by the Purchaser, and resubmit the Equipment for another round of Acceptance Testing in accordance with this Section 7.

8. REJECTED EQUIPMENT

The Supplier shall be responsible for the removal or replacement of any rejected Equipment at its own expense. Equipment rejected by the Purchaser shall be at the Supplier's risk for damage or loss. The payment for the Equipment shall in no way impair the Purchaser’s right to reject certain Equipment or to avail itself of any other remedies to which the Purchaser may be entitled.

9. 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.

10. WARRANTY, GUARANTEE, COMPLIANCE

The Supplier also warrants that the Equipment shall be new, unless stated in the Purchase Order, shall comply with all federal, provincial and local laws, regulations and orders applicable to the manufacture, sale, packaging, storage, labeling and delivery of the Equipment and to the performance of the work, that the Supplier has absolute title to the Equipment, and that the use of the Equipment 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 Supplier warrants that the Equipment 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, a period commencing at Clinical Installation and ending three (3) years from the date of
successful completion of Acceptance Testing (collectively, the “Warranty Period”). During the
Warranty Period:

a) defective Equipment and parts shall be repaired or replaced at the Supplier’s expense
   (including labour charges to repair or replace the Equipment).

b) the Supplier’s response to Equipment malfunctions shall be within two (2) hours by
   telephone, and twelve (12) hours on-site if the malfunction cannot be resolved over
   the telephone; and

c) if a malfunction cannot be resolved within twenty-four (24) hours of the initial
   telephone call, a loaner system or component of equal or superior performance,
   satisfactory to the Purchaser, shall be provided immediately or made available within
   forty-eight (48) hours of the initial telephone call at no charge to the Purchaser --
   which loaner system shall be replaced once the Equipment malfunction is remedied.

The warranties set out herein shall apply notwithstanding any inspection, testing,
acceptance of, or payment for the Equipment. The foregoing is in addition to any warranty or service guarantee
given by the Supplier to the Purchaser or implied by law.

11. RIGHT TO RETURN AFTER ACCEPTANCE

The Purchaser reserves the right to return the Equipment, should it fail more than three (3)
times during the Warranty Period, for a full refund, or request a new replacement of the same
type of Equipment to be delivered, with a full warranty (including parts and labour) at no cost to
the Purchaser. Failures that result from user negligence or unfamiliarity with the system shall
not constitute Equipment failure in this regard.

12. TRAINING

The Supplier shall provide the following training for at least two (2) individuals specified by the
Purchaser:

a) Training on the proper servicing of the Equipment, including technical training
   (“Service Training”).

b) Training on the operation and use of the Equipment; and

   c) Training for the cleaning, disinfecting and sterilizing of Equipment that is not intended
to be single-use or any single-use Equipment received unsterile which requires
sterilization prior to use.

All training shall be provided directly by the Supplier’s staff and at the Purchaser’s premises
unless otherwise agreed by the parties in writing. There shall be no third party training unless
otherwise agreed by the parties in writing. After the training on the Equipment has been completed, the Purchaser reserves the right to request additional follow-up training for a period of twelve (12) months commencing after the completion of the Clinical Installation or after the delivery of the Equipment if there is no Clinical Installation. The Purchaser shall have the right to videotape all such training sessions; provided, however, that such taped sessions shall be used solely by the Purchaser to train its staff. The cost of all the training, excluding travel and accommodation for the Purchaser’s staff to attend training course(s) at the Supplier’s facilities, shall be borne by the Supplier. The payment of any training travel and accommodation costs shall be mutually agreed to by the parties. The Purchaser reserves the right to have different types of training provided to different individuals.

13. CLEANING, DISINFECTING AND STERILIZATION

For any Equipment that is not intended to be single-use, or any single-use Equipment received unsterile which requires sterilization prior to use, prior to the delivery of the Equipment, the Supplier shall submit to the Manager/Director of the Medical Device Reprocessing Service department/centre of the Purchaser:

   a) a letter from a senior official of a quality, safety, regulatory or compliance department or unit of the manufacturer of the Equipment clearly stating the recommended validation process parameters for the specific Equipment and/or a scientific validation report that deals with the efficacy of the cleaning, disinfecting and sterilization of the Equipment, as applicable;

   b) reprocessing instructions: step-by-step instructions on the cleaning, disinfection, maintenance, sterilization, reprocessing, disassembly and reassembly of the specific Equipment;

   c) for Equipment sets containing multiple instruments: a picture of the Equipment set contents and a catalogued list of the individual pieces of the Equipment sets; and

   d) for containerized Equipment sets: a letter and/or a scientific validation report stating Equipment consisting of multiple instruments can be sterilized as a set in the container provided and a catalogued list of the individual pieces of the containerized Equipment sets.

14. MANUALS AND BULLETINS

The following manuals/materials must be provided at no charge and shipped with the Equipment, unless otherwise specified in the Purchase Order:

   a) Two (2) complete sets of operator/user manuals, including software manuals as applicable and any other printed or electronic media available for user education (e.g. videos, CD-ROMS); and

   b) Two (2) complete sets of service manuals including but not limited to, electrical/mechanical/pneumatic schematics manuals, parts lists, pricing lists or schedules, software manuals and troubleshooting guides as applicable.
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The Supplier shall forward to the Purchaser, any service bulletins, clinical user bulletins, or similar type of or related bulletin including, but not limited to, on-line technical resources that relate to the Equipment, as long as the Equipment is still being used or the Purchaser still requires the Equipment, at no additional cost to the Purchaser.

15. SERVICE SUPPORT/REPLACEMENT PARTS

The Supplier shall:

a) ensure that full service support and parts are available for a period of seven (7) years following the last date of production of the Equipment and related accessories;
b) ensure that parts required to make the Equipment operational are delivered to the Purchaser within twenty-four (24) hours after a request has been made by the Purchaser for additional parts;
c) provide full access to telephone technical support and on-line technical support, at no charge, as long as the Equipment remains in use by the Purchaser; and
d) subject to (a) above, provide the Purchaser with a one (1) year written notification of the Equipment parts that are no longer being made available.

16. SERVICE RECORDS

The Supplier will submit to the Purchaser a detailed service report for any service work performed on the Equipment. The service report shall include the problem(s) identified, parts serviced or replaced, materials used, any costs associated with this service and appropriate technical values prior to and post repair calibration or certification. The labor and parts costs shall be itemized separately. The Supplier will notify the Purchaser of any service visits made on-site.

17. UPGRADES

Software, firmware or hardware changes to the Equipment that are corrective in nature and are initiated due to errors or as a result of any action taken pursuant to Section 23, Medical Alerts and Safety Notifications, shall be delivered and installed at no charge, as long as the Equipment is still being used or the Purchaser still requires the Equipment. Software, firmware or hardware changes, which solely enhance existing features, shall also be provided at no charge. The Supplier shall notify the Purchaser in writing of any software, firmware or hardware changes or enhancements as soon as they become available.

18. ELECTRICAL EQUIPMENT

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

Any Equipment or parts thereof that is defined as a “device” under Food and Drugs Act (Canada) and/or as a “medical device” under the Food and Drugs Act (Canada), Medical Devices Regulations shall be licensed with Health Canada, Therapeutic Products Directorate, Medical Devices Bureau, unless it is exempted under the Food and Drugs Act (Canada), Medical Devices Regulations. The Supplier shall have a medical device establishment license under the Food and Drugs Act (Canada), Medical Devices Regulations unless it is exempted under the Food and Drugs Act (Canada), Medical Devices Regulations. At the time of purchase, the Supplier shall provide satisfactory evidence as applicable:

a) that the Equipment is validly licensed with Health Canada, Therapeutic Products Directorate, Medical Devices Bureau;
b) that the Supplier has a valid medical device establishment license with Health Canada, Health Products and Food Branch Inspectorate; or
c) that there is an exemption for either the medical device license or the medical device establishment license.

20. LATEX

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

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

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

21. 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 obtain from the Purchaser and show on the relevant commercial documents: the Purchase Order Number or the department name of the Purchaser purchasing the Equipment. Equipment 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.

22. 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 Equipment 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 Equipment, 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 Equipment 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 Equipment by the Supplier.

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

23. 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 Equipment or a Canadian recognized reporting agency involving any of the Equipment, delivered to the Purchaser or is posted on a government or authorized web site, including but not limited to the Health Canada Web site, the Supplier shall:

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:
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i) inform the Purchaser of any possible design defect or malfunction condition occurring anywhere in the world with the Equipment, or equipment similar to the Equipment 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 23 (i) by registered mail, email and by facsimile to the Purchaser.

24. 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.

25. 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;

(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 Equipment;

(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 Equipment and who have been specifically authorized by the Purchaser to have such access for the purpose of providing and installing the Equipment;
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.

26. PUBLICITY

The Supplier shall not, in any of its advertising or otherwise, indicate that it has supplied or may in the future supply Equipment 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.

27. 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 Equipment or approval of design, shall not release the Supplier of any warranties or obligations of this Purchase Order.

28. 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.

29. 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.

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

31. 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.