

PURCHASE ORDER TERMS AND CONDITIONS (PTC-01)

1. COMPLETE AGREEMENT

This Purchase Order, together with all documents, drawings and specifications referred to in this Purchase Order and the Contact Schedule attached to these Purchase Order Terms and Conditions shall, when accepted by the Supplier, constitute the entire contract between the Supplier and Purchaser, and shall not be altered, amended or supplemented without the Purchaser's prior written approval. All Purchaser contact information and addresses shall be listed in the Contact Schedule. The Purchaser shall not be bound by any terms or conditions in any of the Supplier's forms or documents. Either the Supplier's written acceptance of this Purchase Order, or the shipment of any article, or the commencement of any work pursuant to this Purchase Order shall constitute unqualified acceptance and no contrary or additional terms or conditions shall apply. The Purchaser may insist upon strict compliance with these terms and conditions despite any previous custom, practice or course of dealing to the contrary. Any reference to goods in this Purchase Order includes perishable goods.

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 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 taxes, fees and duties of federal, provincial and local government except any applicable taxes which shall be shown as extra. 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 shall be the latter.

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 inform the Supplier in writing from time to time, on the delivery date(s) specified, if any. Delivery shall not be complete and title shall not pass to the Purchaser, until the goods have been received which complies with the terms and conditions of this Purchase Order. All risk of damage or loss until completion of delivery shall be on the Supplier. Acceptance of goods shall not 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 disposal off-site 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 disposal off-site is not possible and disposal on-site 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 the transportation and the delivery of perishable goods it is the responsibility of the Supplier to:

- 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) inform the Supplier's buyer contact for the Purchaser, immediately upon departure of the perishable goods from the Supplier's warehouse, by facsimile, telephone or email 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 commercial documents with tracking number forwarded via email or facsimile to the customs broker. The customs broker's contact information can be found at the web site referred to in this paragraph (e);
- f) make three (3) delivery attempts to deliver all perishable goods within a period of twenty-four (24) hours from the 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.

In the event that the perishable goods arrive at the Purchaser, in the Purchaser's sole discretion in a less than satisfactory state, the Supplier shall, on notice:

- i) make arrangements to have the perishable goods returned to the Supplier at no expense to the Purchaser;
- ii) reissue and replace the spoiled perishable goods for the Purchaser within a timeframe agreeable to the Purchaser at no additional expense; and
- iii) follow the above noted process in reissuing the perishable goods. When shipping re-issued or replacement perishable goods, the Canada Customs documentation must clearly indicate that the perishable goods are no charge replacement and the value must be shown.

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. The Purchaser may, at any time after delivery, reject unordered, defective or non-conforming goods. The Supplier shall be responsible for removal or replacement of the said rejected goods at its own expense. Goods rejected by the Purchaser 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.

8. 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.

9. OWNERSHIP

Ownership of any documents, including specifications or drawings, supplied by the Purchaser, or produced by the Supplier upon request of the Purchaser, shall rest with the Purchaser at all times.

10. 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 no specific term, the period of two (2) years from completed delivery. Defective goods and or parts shall be replaced at the Supplier's expense for the applicable 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, and that the use of the goods by the Purchaser shall not infringe on any other entities' rights. The warranties 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.

11. 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.

12. 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.

13. LATEX

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

- a) that 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.

14. 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 all that are accessible of the following: 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.

15. 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, damages, suits, claims

and demands of every nature whatsoever 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 property damage, personal injury (including death) and infringement of any intellectual property right, including but not limited to copyright, trademark, patent or trade secret. This indemnity shall survive the delivery of the goods.

16. MEDICAL ALERTS AND SAFETY NOTIFICATIONS

In the event that 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 recognized reporting agency involving any of the goods or posted on the Health Canada Web site, the Supplier shall:

- a) communicate the medical alert, recall, safety notification, advisory or warning by registered mail and by facsimile to the appropriate location(s) as listed on the Contact Schedule;
- b) follow any Health Canada protocols and requirements; and c) take all steps necessary to remedy the situation at no cost to the Purchaser.

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 16 (i) to the Purchaser in the same manner as set out in Section 16 (a) above.

17. 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.

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.

19. 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 Conventions on Contracts for the International Sale of Goods* shall not apply.

20. 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.

CONTACT SCHEDULE

Medical Alerts & Safety Notifications (Section 16):

University Health Network

Medical Engineering
200 Elizabeth Street, NCSB 3C 438
Toronto, ON M5G 2C4
Phone: (416) 340-3633
Facsimile: (416) 340-4955

Mount Sinai Hospital

Biomedical Engineering
600 University Avenue, Room 139
Toronto, ON M5G 1X5
Phone: (416) 586-4800 x8217
Facsimile: (416) 586-8788

Sunnybrook Health Sciences Centre/ and Holland Orthopaedic & Arthritic Centre

Biomedical Engineering
2075 Bayview Avenue, DG24
Toronto, ON M4G 3M5
Phone: (416) 480-6100 x4413
Facsimile: (416) 480-6866

Sunnybrook Health Sciences Centre

Manager of Purchasing Plexxus
2075 Bayview Avenue, H454
Toronto, ON M4N 3M5
Phone: (416) 480-6100 x1062
Facsimile: (416) 480-5746

Women's College Hospital and

Biomedical Engineering
76 Grenville Street
Toronto, ON M5S 1B2
Phone: (416) 323-6400 x6029
Facsimile: (416) 323-6016

Women's College Hospital

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2075 Bayview Avenue, H454
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