

Purchase Order – Terms and Conditions

1. General

These general terms & conditions (“Terms”) apply to each purchase order (“Purchase Order”) issued by Provincial Health Services Authority (“PHSA”) acting on its own and/or on behalf of any BC Health Authority (each a “Purchaser”), to a supplier (“Supplier”) for the supply of products and/or services (herein referred to as “Products”).

2. Acceptance of terms

Upon Supplier’s acceptance of the Purchase Order, Supplier will deliver to the Purchaser a copy of the Purchase Order signed by an authorized signatory of the Supplier. Delivery of a signed Purchase Order constitutes Supplier’s acceptance of the Purchase Order, including these Terms, except as may otherwise be expressly agreed to in writing by the Purchaser. If Supplier fails to deliver a signed copy of the Purchase Order to the Purchaser, but proceeds to supply the Products to the Purchaser, such supply will be deemed to be Supplier’s acceptance of the Purchase Order, including these Terms.

3. Precedence of Terms and Conditions

To the extent of a conflict between these Terms and any existing valid contractual agreement between the parties relating to the subject matter of the Purchase Order (such agreement a “Contract”), the Contract will take precedence over these Terms. If no previous agreements, offers, quotations or proposals between the parties relating to the subject matter of the Purchase Order, either oral or written, exist between the parties, then these Terms will govern the relationship between the parties relating to the subject matter of the Purchase Order.

4. Time

The Supplier will supply the Products and Services according to the timetable or dates specified in the Purchase Order, if any, or in a timely manner, with the understanding and agreement that time is of the essence.

5. Shipping instructions

No charge will be paid for the preparation, shipping, handling or importation of products to or performance of services in Canada including, but not limited to customs duties, tariffs and brokerage fees, unless prior agreement and associated charges are identified in the Purchase Order.

Products must be shipped complete and include all manuals, operating and maintenance instructions (if applicable) in English. A packing slip detailing the following information must accompany all shipments of Products: (a) the Supplier’s full legal name and address; (b) the Purchase Order number; and (c) a description of the Products and quantity shipped.

6. Loss or damage in transit

Unless otherwise specified in writing by Purchaser, the risk of loss or damage to any of the Products will remain with the Supplier until the Products are delivered to Purchaser at the specified delivery location.

7. Warranty

7.1 The Supplier confirms it is aware of the intended use of the Products and warrants and guarantees that the Products supplied or provided, at the time of delivery will: (a) be fit for their intended use in a health care environment; (b) be free from defects and/or imperfections; (c) be free and clear of all charges, liens, claims or encumbrances; (d) not infringe any intellectual property rights; (e) comply with all requirements specified in the Purchase Order ; and (f) comply with all applicable laws, codes, statutes, by-laws, rules and regulations of any federal, provincial, municipal or other competent authority.

7.2 As a condition of acceptance by Purchaser, all Products will be subject to inspection by Purchaser: (a) at the place specified for delivery; or (b) as may be specified in writing by Purchaser, at the Supplier’s or other premises, and, if rejected by Purchaser in its sole discretion because the Products do not comply

with the specified quality or standards the Products will, as directed by Purchaser, be removed and/or replaced and/or provided anew to the satisfaction of Purchaser and at the Supplier's expense.

7.3 Acceptance of the Products by Purchaser, including verification at any time of the quality or standard of the Products or any payment for the Products, will not be interpreted to mean that Purchaser has in any way accepted Products that do not comply with the specified quality requirements or standards or that the Supplier is in any way relieved from its obligation to comply with such specified quality or standards.

7.4 The Supplier agrees to repair, replace and install and/or provided anew, at its own expense, any defective Products or part thereof if the Products as delivered or provided fail to comply with the requirements of the Purchase Order at any time during the one (1) year period following the date of delivery, provided that Purchaser may at its election remedy such defects at the Supplier's expense if, in Purchaser's sole opinion, acting reasonably, failure to do so would risk further loss to Purchaser.

8. Invoicing and payment

8.1 The Supplier will submit original invoices for Products as directed in the Purchase Order. Invoices must indicate the Purchase Order number, the Supplier's full legal name and address, the name of the Purchaser facility to which the products have been delivered or provided, a description of the Products and quantity supplied (that matches the description, quantity and unit of measure set out in the packing slip for the Products invoiced) and complete purchase price calculations. The purchase price will be deemed to include all freight and transportation charges except as shown as separate line items as extra or additional on the Purchase Order. GST and PST must be shown separately on all invoices. All funds are in Canadian dollars.

8.2 Purchaser will pay invoices within 60 days of receipt, except if Purchaser reasonably disputes any

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invoice, Purchaser will notify the Supplier in writing within 30 days of the date of receipt of the invoice, and the dispute will be resolved in accordance with section 15 of the Terms.

9. Licenses and permits

The Supplier will, during the term of this Agreement, at its own expense, obtain and maintain all licenses, certificates, permits, and authorizations necessary and required to supply the Products, including without limitation all licenses required by Health Canada, under the Food and Drugs Act and medical devices regulations, and will provide copies of such licenses, certificates, permits, and authorizations to Purchaser upon request. These Terms and/or any Purchase Order does not operate as a permit, license, approval or other statutory authority which the Supplier may be required to obtain, whether from the Purchaser or otherwise, in order to provide the products and/or services.

10. Records

The Supplier will establish and maintain records for all Products manufactured or produced or provided for a Purchaser for a period of no less than seven years from the date of manufacture or production or delivery (or such longer period as Purchaser may require), and on request make them available to Purchaser.

11. Cancellation

11.1 Purchaser may at any time by written notice to the Supplier cancel the Purchase Order with respect to Products that, as of the date of cancellation, have not been delivered or provided. If, at the date of such cancellation, Supplier has delivered or provided any Products under the Purchase Order, Supplier's liability for the performed portion of this Purchase Order shall not be terminated.

11.2 If Purchaser cancels the Purchase Order under section 11.1, Purchaser will pay all reasonable costs the Supplier has incurred or has irrevocably

committed to incur with respect to the cancelled Products. Such payment will in no event exceed the purchase price under the purchase Order with respect to the cancelled Products, and will be reduced by any refunds or salvage available to the Supplier plus the aggregate amount, if any, previously paid by Purchaser on account of the cancelled Products.

11.3 If the Supplier becomes insolvent, is in breach of any provision under these Terms, or has made any representation or warranty which is untrue or incorrect, the Purchaser may, at its option, terminate the Purchase Order with immediate effect.

12. Safety

If the provision or delivery of Products under this Purchase Order includes any inspection, installation or other work at a Purchaser facility by the Supplier or representative of the Supplier, all such activity will be performed and undertaken in strict compliance with all applicable safety laws and regulations, including regulations of the WorkSafeBC, and also in strict compliance with any safety procedures and policies published and issued by Purchaser for use at such facility, and the Supplier will, at its own expense, carry full workers' compensation board ("WorkSafeBC") coverage for itself and all workers, employees, servants and others engaged in performing the work.

13. Insurance

13.1 The Supplier will, at its own expense and without limiting its liabilities herein, insure its operations under a contract of comprehensive or commercial general liability, with an insurer licensed in British Columbia, in an amount of not less than \$2,000,000 per occurrence insuring against bodily injury, personal injury and property damage, including liability assumed under this Purchase Order. Such insurance will extend to and include:

- (a) product and completed operations liability;
- (b) owner's and contractor's protective liability;

- (c) broad form all risks property damage liability;
- (d) non-owned automobile liability;
- (e) blanket written contractual liability;
- (f) personal injury liability;
- (g) contingent employer's liability;
- (h) employees (and, if applicable, volunteers) as additional insureds; and
- (i) tenant's legal liabilities, if applicable. All insurance other than automobile insurance will be stated to be primary insurance and will not require the insuring of or contribution to any loss by any insurer of the Purchasers or any of them, and will contain a breach of warranty clause whereby a breach of condition by the Supplier will not eliminate or reduce coverage for the Purchasers. At the request of the Purchaser at any time and from time to time, the Supplier will provide the Purchasers with evidence of such insurance coverage in the form of a Certificate of Insurance satisfactory to the Purchasers. The Supplier will similarly file with the Purchasers evidence of each renewal of insurance coverage at least ten days prior to the expiry of any insurance coverage required by these Terms. If written on a layered basis, such policy will provide that upper layers insurers' coverage responds (including in respect of any defence obligation under any liability policy) in case of exhaustion of any underlying insurance, or in the case of insolvency of any underlying insurer.

Such policy of insurance will contain:

- an endorsement showing that such policy will not be terminated, cancelled or materially altered in any manner unless the Purchasers receive 30 days prior notice of such termination, cancellation or alteration;
- a cross-liability clause showing that each of the named insured and additional insured will be entitled to indemnity from the insurer in respect of liability to any one or more of the insured or additional insured and a waiver of subrogation

clause against the Purchasers and the additional insured; and

- an endorsement adding the Purchasers and their directors, officers and employees as additional insured.

13.2 Vehicle Insurance

The Supplier will maintain automobile liability insurance on all vehicles (owned, leased, rented or borrowed) the Supplier uses in the performance of this Agreement in an amount of not less than \$2,000,000 per occurrence.

14. Indemnity

The Supplier will defend, indemnify and hold harmless the Purchaser and each of them and their directors, officers, employees, servants and agents from and against any and all losses, claims, demands, damages, actions, causes of action, costs and expenses (including legal expenses on a solicitor and own client basis) any Purchaser may sustain or incur at any time, either before or after the expiration or termination of these Terms or any Contract related to this Purchase Order, arising directly or indirectly by reason of:

- (a) any defect or malfunction and/or any deficiency in any Products ;
- (b) any breach of these Terms or any Contract related to this Purchase Order the by the Supplier, or any agent, employee, director, officer or subcontractor of the Supplier; or
- (c) the acts or omissions of the Supplier or any agent, employee, director, officer or subcontractor of the Supplier including any injury to or death of any person (including any employee of the Supplier) or any damage to any and all persons or property, whether deliberate, accidental or through negligence except to the extent that any such claim arises solely from the negligence of the Purchasers. The Supplier will defend, indemnify and hold harmless the Purchasers and each of them and their directors, officers, employees, servants and agents from and against any damages or compensation

payable to any employee of the Supplier or his or her legal representatives in respect of any injury, loss or death suffered by such employee arising out of or in connection with the observance or performance of these Terms or any Contract related to this Purchase Order including any claim made against the Purchasers pursuant to the provisions of the Occupier's Liability Act R.S.B.C. 1966, c.337, unless caused solely by the negligence of the Purchaser.

15. Dispute resolution

The parties will make good faith efforts to resolve any dispute related to the Purchase Order by amicable negotiations. All claims, disputes or issues in dispute between the parties that are not resolved within fifteen business days by negotiation will be decided by arbitration, which will be governed by the British Columbia International Commercial Arbitration Centre in accordance with its "Domestic Commercial Arbitration Rules of Procedure" ("BCIAC Rules") and the award of the arbitrator including any award as to costs will be final and binding on the parties and will be the sole and exclusive remedy regarding any and all claims and counterclaims presented and may not be reviewed by or appealed to any court except for enforcement. Location of the arbitration will be determined by the Purchaser. The Supplier and the Purchaser will continue the performance of their respective obligations under this Purchase Order during the resolution of any dispute including during any period of arbitration, unless or until this Purchase Order is terminated or expired in accordance with its terms. The Purchaser may, at its discretion, withhold any payments to the Supplier until the conclusion of the arbitration.

16. Assignment

The Supplier may not assign the Purchase Order, or the proceeds thereof, in whole or in part without Purchaser's prior written consent. Nor will the Supplier enter into any subcontract for any or all of the Products without the prior written consent of the Purchaser.

17. Applicable law

The Terms and the Purchase Order will be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada.

18. PHSA Liability and Responsibility

PHSA, in acting as agent for the Purchaser, will not be liable or responsible in any way to the Supplier under this Purchase Order. As agent, PHSA may act on behalf of and exercise all rights of the Purchaser under this Purchase Order, including termination rights.

If:

(a) Vancouver Coastal Health Authority (VCHA) is a Purchaser, it may also be acting as agent for Providence Health Care Society (PHCS); and

(b) Vancouver Island Health Authority (VIHA) is a Purchaser, it may also be acting as agent for St. Joseph's General Hospital (SJGH),
and when acting as agent:

(a) for PHCS, the Supplier will sell and deliver such Products directly to PHCS, notwithstanding that VCHA may issue the Purchase Order; and

(b) for SJGH, the Supplier will sell and deliver such Products directly to SGJH, notwithstanding that VIHA, may issue the Purchaser Order.

The Supplier will, at the direction of VCHA or VIHA, assign to PHCS or SJGH, as applicable, the warranties and indemnities provided for herein for such Products.

19. Freedom of Information and Protection of Privacy Act ("FIPPA")

The Supplier acknowledges that it is bound by the FIPPA, that the Purchaser is a public body, and that all information or materials obtained from or supplied by the Supplier are subject to the provisions of the Freedom of Information and Protection of Privacy Act of British Columbia, including orders and decisions made by the Office of the Information & Privacy Commissioner for British Columbia.

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20. Confidentiality

"Confidential Information" means any and all information supplied to, obtained by or which comes to the knowledge of a party as a result of this Purchase Order with respect to the Supplier or the Purchaser including but not limited to data, trade secrets, know-how, processes, formulas, standards, product specifications, marketing plans and techniques, cost figures, access or security codes, systems software applications, software/system source and object codes, documentation, program files, flow charts, drawings and operational procedures except that Confidential Information does not include the Terms of this Purchase Order and information which the receiving party can prove is information which is in the public domain at the date of disclosure, is received without obligation of confidence from a third party who is in lawful possession of such information free of any obligation of confidence and is not otherwise prohibited from transmitting such information to the recipient by contractual, legal or fiduciary obligation.

The Supplier will not disclose or permit the disclosure of any Confidential Information of the Purchaser to any third party or use any Confidential Information of the Purchaser for any purpose other than the performance of the obligations under the Purchase Order. The Supplier may disclose Confidential Information of the Purchaser only to those of its officers, employees, directors, agents and advisors who require it for the purposes of fulfilling the obligations of the Purchase Order and the Supplier will cause each recipient of Confidential Information of the Purchaser to assume and comply with obligations of confidentiality equal to the obligations which the Supplier has assumed under the Terms and this Purchase Order. The Supplier is obligated to notify the Purchaser immediately if the Supplier breaches its obligations under this section.

The Supplier will not use the name of the Purchaser in any advertising or publications except with the prior written consent of the Purchaser.

21. Unforeseeable Delays

If any Purchaser or the Supplier fails to perform any term of these Terms and such failure is due to an Unforeseeable Delay Event, that failure will not be deemed to be a default under these Terms. The party affected by an Unforeseeable Delay Event will notify the other party as soon as reasonably possible and will take all reasonable steps to minimize the extent and duration of the Unforeseeable Delay Event and its effect on performance under the Purchase Order. The time within which anything must be done under the Purchase Order will be extended as required to reflect the effects of the Unforeseeable Delay Event. If the Unforeseeable Delay Event requires suspension or curtailment of all or any of a party's obligations under the Purchase Order, that party will suspend or curtail its operations in a safe and orderly manner.

"Unforeseeable Delay Event" means any cause beyond the control of a party that is not caused by its default or act or omission and not avoidable by the exercise of reasonable effort or foresight by that party, including a decrease in average quarterly census of patients, explosion, fire, casualty or accidents, epidemics, cyclones, earthquakes, floods, droughts, war, terrorism, civil commotion, blockade or embargo, but excluding insufficient financial resources, increases in commodity prices, inability to obtain labour, equipment or materials, or Labour Disputes.

22. Relationship

The Supplier is an independent provider of Products and nothing in the Purchase Order or Terms is intended to create an employment relationship between the Purchaser and the Supplier or any of its employees, contractors or agents.

23. Notices

All legal notices, requests, demands and other communications required or permitted to be given under this Purchase Order for any Purchaser under this Purchase Order will be in writing and sent to:

**Provincial Health Services Authority
Attn: Chief Procurement Officer, PHSA Procurement
1795 Willingdon Avenue
Burnaby, British Columbia
V5C 6E3**

24. Severability

Any provision of these Terms and/or any Purchaser Order which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

25. Several Liability of Purchasers

The liability of each Purchaser under these Terms and/or any Purchase Order is several and not joint.

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