

Hamilton Health Sciences Corporation (HHSC) Standard Purchasing Terms and Conditions

1. Scope of Agreement

1.1 The terms and conditions set forth herein (the "Standard Purchasing Terms and Conditions") shall apply to all products, whether tangible or intangible, including all intellectual property rights, sold, leased, licensed, or otherwise provided by the seller (the "Supplier") to HHSC (the "Hospital") and any installation, training, maintenance, construction, labour, and other services provided to the Hospital (all such products and services are collectively referred to as "Products").

1.2 Any purchase orders, invoices, or other documents relating to the supply of Products are referred to herein as "Contracts". Contracts and the Hospital's Standard Purchasing Terms and Conditions are referred to collectively as the "Agreement". In the event of any conflict between the Hospital's Standard Purchasing Terms and Conditions and the terms and conditions contained in any Contract, the Hospital's Standard Purchasing Terms and Conditions shall prevail, unless such Contract refers specifically to the Hospital's Standard Purchasing Terms and Conditions and specifies that in event of conflict such Contract shall prevail.

1.3 The Hospital is a medical/clinical research centre affiliated with McMaster University and should be afforded all educational discounts offered by the Supplier.

2. Price and Payments

2.1 In consideration of the Products being delivered by the Supplier, all prices stipulated in this Agreement or quoted by the Supplier shall be fixed and firm for the duration of the Agreement term.

2.2 All prices, fees, honorariums and other amounts quoted, invoiced or otherwise stated by the Supplier shall include:

i) all duties, taxes and levies however designated that may be levied or imposed in connection with the supply of the Products, except that Harmonized Sales Tax (HST) will be shown as extra; and

ii) All other costs and charges of any kind including any transportation or handling costs. Delivery shall not be deemed to be complete until products and or services have been fully received by the Hospital.

2.3 The Hospital shall be entitled to withhold and to deduct from any amount payable to the Supplier, any amounts that are required to remit to any taxing authority on account of withholding tax in respect of any Products and any amount so remitted shall be considered as having been paid to the Supplier.

2.4 Payment is subject to the approval of HHSC before any payment is released and payment shall be made net sixty (60) days upon receipt of invoice. The Hospital may at its discretion accept any discount terms, which may be offered by the Supplier.

3. Acceptance

3.1 The Hospital shall have a period of sixty (60) days, or such longer period as the parties may agree, from date of installation of the Products, or where installation is not done by the Supplier, from date of delivery to the Hospital (the "Acceptance Period") to conduct such test and testing as the Hospital in its sole discretion deems appropriate to determine whether any or all of the Products are suitable for its purposes. On or before the end of the Acceptance Period, the Hospital shall i) notify the Supplier that the Products are accepted, ii) notify the Supplier that the Products or any part of them are rejected; or iii) request the Supplier to rectify specified defects in which case, the Acceptance Period shall be extended for an additional twenty (20) days, provided that any time spent by the Supplier correcting any such defects shall not count as part of the Acceptance Period, and provided that in no event shall any Products be deemed to have been accepted by the Hospital until payment is made in full.

3.2 Schematics, operating instructions, maintenance and training manuals, and Materials Health and Safety Data Sheets (WHIMS data sheets) are considered essential and integral to the Products, and the Hospital reserves the right to withhold acceptance until any or all of the foregoing are received by the Hospital.

3.3 Acceptance of any part of an order shall not bind the Hospital to accept further shipments, nor deprive the Hospital of the right to return Products already received.

4. Warranty

4.1 As a corporation, the Supplier warrants that it has the necessary corporate power and authority, and has taken all necessary corporate action to execute and deliver the Agreement and perform its obligations thereunder.

4.2 Supplier warrants that it has the rights and title to the Products free and clear of all charges, liens and encumbrances in favour of any party, or has obtained the rights necessary to supply the Products to the Hospital.

4.3 Supplier warrants that in the course or providing any Products it shall comply with all applicable requirements whether imposed by law or pursuant to collective agreements or other contracts, including without limitation, any applicable requirements to use workmen from various unions in order to carry out any tasks involved in the Products and, without limiting the generality of the foregoing, the Supplier shall give all required notices and orders of all authorized having jurisdiction, including those related to the preservation of public health, the environment, construction, safety or noise control, and shall obtain all permits, licenses, and certificates and pay all fees specifically required for the supply on any Products.

4.4 Supplier warrants that for a period of twelve (12) months (the "Warranty Period") following the acceptance by the Hospital of any Products:

- i) the Products shall be free from any defects in design, materials or workmanship;
- ii) in the event of Product failure within 20 consecutive working days of operation following acceptance, the Supplier will repair such defects at no cost to the Hospital, and the warranty period shall commence anew;
- iii) the Products shall perform in accordance with all written specifications applicable to such Products and shall meet or exceed all relevant standards, including any standards set by either the Federal or Provincial Ministries of Health and/or other recognized organizations;
- iv) the Products shall be of merchantable quality and will be fit for the purpose for which the Hospital has made known to the Supplier that they will be used;
- v) the Products shall be performed in a professional and workman like manner in accordance with standards generally accepted in the industry; and
- vi) the Products will have received all applicable approvals of the Canadian Standards Association or any other similar organization pertinent to the Products.

4.5 In the event that during the Warranty Period, the Hospital notifies the Supplier of any breach of any of the foregoing warranties, the Supplier shall exercise its best efforts, at no expense to the Hospital, to remedy such breach as quickly as possible, including providing additional or alternate Products to ensure that the Hospital's operations are not disturbed by such breach.

In the event, that despite using its best efforts, the Supplier is unable to correct the breach, the Hospital shall be entitled, at its option, to return the affected Products including Products that are used in conjunction with such affected Products and receive a refund of all amounts paid, or require the Supplier to replace the affected Products with another Product providing equivalent function and performance. The remedies stated herein are in addition to any other remedy which the Hospital may have in law or in equity.

4.6 In the event of a Medical Alert, Consumer Alert, Product Discontinuation or Product Recall (the "Alert"), issued by the manufacturer of the Products sold to the Hospital or by any other recognized reporting agency, the Supplier will immediately advise the Hospital of the Alert and take all steps to minimize the Hospital's risks and remedy the situation at the Supplier's expense. The Supplier shall communicate the Alert by the most expedient method based on the severity of the Alert to the Hospital. Alerts are to be emailed to recallsandalerts@hhsc.ca

4.7 Supplier acknowledges that the Hospital is and will be relying on the Supplier's representation set forth and in the Contracts, and hereby warrants that such representations are true as the date thereof and as of the date of the Contract.

5. New Technology

5.1 In the event of new technology that improves patient care using evidence based outcome criteria as a measure, is introduced during the term of this Agreement from a competitive supplier, HHSC will give the Supplier first opportunity to supply comparable technology within six (6) months of notification to the Supplier. If, in the judgment of either party, it is agreed that the Supplier's technology is not comparable, HHSC reserves the right to modify this Agreement to allow the Hospital to purchase Products incorporating the new technology and to reduce the anticipated annual base of business.

5.2 Software, firmware or hardware changes to the Products which are corrective in nature and are initiated due to errors or as a result of any action taken pursuant to Alerts shall be delivered and installed at no charge, as long as the Product is still being used or the Hospital still requires the Product. Any additional hardware required due to a Supplier initiated update will be provided by the Supplier at no charge.

5.3 Notwithstanding anything other than the provisions set out in the Agreement, in the event that new Product or hardware enhancements of equivalent baseline configuration for any Product purchased is introduced by the Supplier, and available for sale prior to installation and after the Agreement has been finalized, and a purchase order issued, the Hospital shall be notified and the Hospital will be able to replace the applicable Product, at its sole discretion and at no additional cost, with the new Product. The new Product shall be subject to Acceptance Testing in accordance with the Agreement and all other terms and

conditions of this Agreement shall apply unless otherwise agreed to. These replacement provisions shall include all sub-components as well.

6. Supplier Representatives

If the Supplier has representatives that would, at any time, be present on the sites of any of the Hospitals who are party to this Agreement, the following conditions apply:

6.1 The Hospitals are critical care health facilities and as such may, from time to time, require that all representatives of the Supplier complete a Health Certificate as determined by the Hospital.

6.2 The Supplier and its representatives, agents or employees shall be familiarized with the Hospital's environmental Health and Safety policies and shall comply with such policies as notified by the Hospital from time to time. The Supplier and its representatives, agents or employees shall comply with the requirements of the Workplace Safety Insurance Board (or other similar body) regulations and all applicable health, safety and environmental legislation, and shall provide the Hospital with satisfactory evidence of compliance.

7. Confidentiality

7.1 Supplier acknowledges that any information concerning the business and affairs of the Hospital or its agents, employees, patients, and clients of which the Supplier, its agents or employees become aware in the course of providing any such Products shall be treated as confidential. The Supplier agrees to take such measures to protect such information, as it would be reasonably expected to take to protect its own confidential information.

7.2 Supplier agrees that the terms of any Agreement it may have with the Hospital is confidential and may only be divulged with the Hospital's express written consent.

7.3 Supplier may not, in any of its advertising or otherwise, indicate that it has or may supply Products to the Hospital without the express written consent of the Hospital. No acquisition or use of Products by the Hospital shall be construed as an endorsement or approval of such Products.

8. Indemnity

8.1 Supplier agrees to indemnify, and undertakes to defend and hold harmless the Hospital, its officers, employees and agents from and against all liability, loss, damage, or expense, including reasonable counsel fees resulting from any action, claim or demand alleging that the supply, use or copying of any Products infringes any patent, copyright or other proprietary right or trade secret of any person, provided that the Hospital provides notice to the Supplier of any such claim and cooperates with Supplier, at Supplier's expense, in the defence of statement of such a claim.

8.2 Supplier agrees to indemnify defend and hold harmless the Hospital from any and all claims, demands, actions, losses and expenses (including, without limitation, interest, penalties and reasonable legal fees) arising out of bodily injury, property damage or any other damage directly that may be caused by the representatives of the Supplier or sub-contractor or by the failure of Product caused by improper or inadequate service covered in this Agreement.

8.3 Supplier agrees to indemnify, and undertakes to defend and hold harmless the Hospital, its officers, employees and agents from and against all liability, loss, damage or expense, including reasonable counsel fees resulting from any action, claim or demand arising as a result of the negligence or misconduct of Supplier, its affiliates or their employees, officers or agents.

8.4 Supplier agrees to indemnify the Hospital for any damage caused to the Hospital property by Supplier, its agents, sub-contractors and employees in the course of providing or installing a Product.

9. Termination

9.1 The Hospital shall be entitled to terminate any or all Contracts:

Immediately upon written notice to the Supplier if the Supplier becomes insolvent or voluntarily bankrupt, or if an involuntarily petition in bankruptcy against the Supplier is not dismissed within ninety (90) calendar days of filing, or if a receiver-manager or other liquidating officer is appointed for all of the Supplier's business, or if the Supplier makes an assignment for the benefit of the creditors or ceases to carry on business in the normal course, at any time with or without cause, by giving the Supplier forty five (45) calendar days written notice, or immediately upon written notice to the Supplier if the Supplier neglects or fails to perform any material term of obligation set forth in the Hospital's Standard Purchasing Terms And Conditions or in any Contract and such failure has not been cured following five (5) calendar days of written notice thereof.

10. Arbitration

10.1 All matters in dispute arising under this Agreement shall be finally settled by arbitration in accordance with the provisions of this article.

10.2 It shall be a condition precedent to right of either party, the Supplier or the Hospital to submitting any matter to arbitration pursuant to the provisions hereof, that such party shall have given written notification of its intention to do so to the other party and that such notice shall state the particulars of the dispute. Within ten (10) days of the giving of such notice, the Supplier and the Hospital shall by mutual agreement appoint an arbitrator, and the arbitrator so appointed shall

proceed to determine the matter provided herein. The arbitrator shall fix a time, which shall be no later than ten (10) days following his appointment, and a place in Hamilton, Ontario, for the purpose of hearing evidence and representation of the parties.

10.3 Except where inconsistent with the provision hereof, the Arbitration Act (Ontario) shall apply to all arbitration proceedings hereunder. The Hospital and the Supplier shall cooperate with the arbitrator and shall provide him with all the information in their possession or under their control or relevant to the matter being determined. Within ten (10) days after the conclusion of the arbitration hearing, and after the evidence and representation that each party may submit, the arbitrator shall make an award and reduce the same to writing and deliver one copy thereof to each party. The cost of the arbitration shall be paid as specified in the award. If the arbitrator fails to comply with any of the periods prescribed herein, either party may terminate his appointment.

10.4 If the parties are unable to agree on an arbitrator or the appointment of an arbitrator is terminated, then either party shall be entitled to apply to a Judge of the Supreme Court of Ontario to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter mutatis in accordance to the provisions above.

10.5 The parties agree that any award or decision by an arbitrator appointed under this article is binding upon them and may be enforced in the same manner as a judgment or order to the same effect pursuant to Section 13 of the Arbitration Act (Ontario) and that no appeal shall lie there from and that either party may obtain an order under Section 7 of the Arbitration Act (Ontario) staying any legal proceedings other than the arbitration made hereunder.

11. Supplier's Insurance

11.1 The Supplier hereby agrees to put in effect and maintain insurance for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000 per occurrence, products and completed operations aggregate. The policy is to include the following:
 - the Indemnified Parties as well as McMaster University (as applicable if the Supplier is delivering Products to McMaster University Medical Centre during the term of the Agreement) as additional insureds with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract;
 - contractual liability coverage;
 - cross-liability clause;
 - employers liability coverage (or compliance with the paragraph below entitled "Proof of WSIA Coverage" is required);
 - thirty (30) day written notice of cancellation, termination or material change;
 - tenants legal liability coverage (if applicable and with applicable sub-limits);
 - non-owned automobile coverage with blanket contractual coverage for hired automobiles
- (b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than \$2,000,000 per claim and in the annual aggregate; and
- (c) pollution and environmental liability insurance, insuring liability for services exposed to pollution or harmful materials, in the amount of not less than \$2,000,000 per claim and in the annual aggregate.

11.2 Proof of Insurance: The Supplier shall provide the Hospital with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage, before the execution of the Contract by the Hospital, and renewal replacements on or before the expiry of any such insurance. The Supplier shall ensure that each of its sub-contractors obtains all the necessary and appropriate insurance that a prudent person in the business of the sub-contractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the sub-contractor's obligations under the sub-contract for the provision of the Products.

11.3 Additional Insurance: It shall be the sole responsibility of the Supplier to determine what additional insurance coverage, if any, shall be necessary and advisable for its own protection and/or to fulfill its obligations under the Contract. Any such additional insurance shall be provided and maintained by the Supplier at its own expense.

11.4 Proof of WSIA Coverage: If the Supplier is subject to the Workplace Safety and Insurance Act ("WSIA"), it shall submit a valid clearance certificate of WSIA coverage to the Hospital prior to the execution of the Contract by the Hospital. In addition, the Supplier shall, from time to time at the request of the Hospital, provide additional WSIA clearance certificates. The Supplier covenants and agrees to pay when due, and to ensure that each of its sub-contractors pay when due, all amounts required to be paid by its sub-contractors, from time to time during the term of the Agreement, under the WSIA, failing which the Hospital shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Supplier

or its sub-contractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Contract together with all costs incurred by the Hospital in connection therewith.

12. General

12.1 Governing Law: This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.

12.2 Assignment: Supplier shall not assign, sub-contract or transfer this Agreement or any part hereof without the prior written consent of the Hospital.

12.3 Sever Ability: Should any provision of the Agreement be found to be invalid, that portion shall be deemed severed and the remainder of the Agreement shall remain in full force and effect.

12.4 Currency: Unless otherwise indicated, all dollar amounts referred to in all the Hospital Agreements are in Canadian funds.

12.5 Time of Essence: In all the Hospital Agreements, time shall be of the essence, in all respects.

12.6 Further Assurances: The parties agree to do or cause to be done all acts or things required implementing and carrying into effect this Agreement to its full extent.

12.7 Consent to Breach not Waived: No provision of this Agreement shall be deemed to be waived and no breach shall be deemed to be excused unless such waiver or consent is in writing and signed by the party said to have waived or consented. No consent by either party to, or waiver of a breach of any provision by other party shall constitute consent to, or waiver of, any different or subsequent breach.

12.8 Successors and Assigns: This Agreement shall endure to the benefit of and be binding upon the representative successors and assigns, if any, of the parties hereto, except that nothing contained in this clause shall be constructed to permit any attempted assignment which would be deemed unauthorized or void, pursuant to any provision of the Agreement.

12.9 Independent Parties: The Hospital is an independent contractor in relation to the Supplier, and is not Supplier's agent, partner, franchise, joint venture or employee and neither party may represent itself otherwise.

12.10 Notices: Any notice, document or other communication required or permitted to be given shall be in writing and shall be sufficiently given if sent by prepaid mail, if delivered personally, or if sent by facsimile transmission to the address of each of the parties, in the case of the Hospital, directed to: The Vice President Finance and to the Director of Corporate Purchasing Services. Each of the parties hereto shall be entitled to specify a different address by giving notice in accordance with the hereof to the other.