

PURCHASE ORDER – GENERAL TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 These general terms and conditions (the “**Terms and Conditions**”) apply to each agreement by Purchase Order for the supply of goods, services, materials and/or equipment to AHS. However, in the event AHS and the Supplier have entered into an agreement in writing in respect of the products detailed in the Purchase Order, the terms of that agreement shall govern.
- 1.2 In the event of a conflict or contradiction between the Terms and Conditions referenced herein and any other terms or conditions attached to the Purchase Order, the most stringent terms and conditions applicable to the Supplier’s performance shall govern.

2. ACCEPTANCE OF TERMS

- 2.1 ANY OF THE SUPPLIER’S ACCEPTANCE OF AN ORDER FROM AHS FOR THE SUPPLY OF PRODUCT(S) OR THE SHIPMENT OF ANY PRODUCTS OR COMMENCEMENT OF PERFORMANCE OF ANY SERVICES BY THE SUPPLIER SHALL CONSTITUTE THE SUPPLIER’S AGREEMENT TO A BINDING CONTRACT AND THE SUPPLIER’S UNCONDITIONAL ACCEPTANCE BY THE SUPPLIER OF ALL OF THE FOLLOWING TERMS AND CONDITIONS, EXCEPT AS MAY OTHERWISE BE SPECIFICALLY AGREED TO IN WRITING BY AHS.

3. DEFINITIONS

- 3.1 “**Acceptance**” means:
- (a) with respect to those Products that require testing to ensure proper performance, written verification by AHS of its inspection and acceptance of the Products; and
 - (a) with respect to those Products that do not require testing to ensure proper performance, written verification by AHS of its receipt of the Products. However, in the event a Supplier provides to AHS a skid which contain multiple products, including the Products, Acceptance shall only occur when AHS has unpacked the skid and provided written verification to the Supplier of its receipt of each product contained in the skid.
- 3.2 “**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions collectively refer to these Terms and Conditions, and the Purchase Order, and “**Article**”, “**Section**”, “**Subsection**”, “**Paragraph**”, “**Subparagraph**” and “**Schedule**” followed by a number or letter refer to the specified article, section, subsection, paragraph, subparagraph or schedule, as the case may be, of this Agreement.
- 3.3 “**AHS**” means the Alberta Health Service.
- 3.4 “**Business Day**” means any day other than a day which is a Saturday, Sunday or statutory holiday in the Province of Alberta.

- 3.5 **“Commencement Date”** means the commencement date set forth in the Purchase Order.
- 3.6 **“Confidential Information”** means any non-public information that AHS designates as confidential or that, under the circumstances of its disclosure, should reasonably be considered to be confidential and includes:
- (a) any AHS related information, material, documents, data, media, trade secrets in whatever form and whether given directly or indirectly to the Supplier, in writing or orally or by inspection of processes and including but not limited to information, knowledge or data of an intellectual, technical, scientific, commercial or industrial nature, or of a financial, cost, pricing, security or marketing nature relating to the business, operations or property of AHS, including these terms and conditions; and
 - (b) all personal information as defined in the FOIPP and health information as defined in the HIA, collected, used, stored, disclosed to or observed by the Supplier or Supplier’s Staff.
- 3.7 **“Consumables”** means those Products which are expended upon use.
- 3.8 **“Delivery Locations”** means those locations which AHS specifies from time to time as the locations to which Products are to be delivered by the Supplier, and **“Delivery Location”** means any one of them.
- 3.9 **“Drugs”** has the meaning given to it in the *Food and Drugs Act* (Canada).
- 3.10 **“Equipment”** means Products which are non-expendable upon use.
- 3.11 **“FOIPP”** means Freedom of Information and Protection of Privacy Act (Alberta).
- 3.12 **“Force Majeure”** means circumstances and conditions beyond the control of the party affected which render it impossible for that party to fulfill its obligations under this Agreement or which will delay that fulfillment. Force Majeure shall include, but not be limited to, war, acts of God, a foreign enemy, civil war, earthquake, flood, fire or other natural physical disaster, strikes, change in government policy or legislation or other matters similar in nature or severity to the herein mentioned. Without limiting the generality of the foregoing, an event of Force Majeure does not include financial hardship, a change in legislation, regulation or government policy or the administration thereof making the performance of the parties obligations hereunder more difficult or a pandemic or similar form of epidemic.
- 3.13 **“GST”** means goods and services tax within the meaning of the *Excise Tax Act* (Canada).
- 3.14 **“Health Canada”** means the federal department responsible for helping Canadians maintain and improve their health through the administration of the *Canada Health Act*, the regulation of health-related products and the dissemination of health-related information;
- 3.15 **“HIA”** means the *Health Information Act* (Alberta).

- 3.16 **“Hazardous Substances”** means any substance, waste, product, material or good identified, defined or designated as a hazardous substance or declared to be a contaminant, pollutant, dangerous substance, toxic substance, deleterious substance, waste, special waste, hazardous waste or dangerous good or similar term in or pursuant to any applicable laws or regulations relating to environment, natural resources, safety or health matters.
- 3.17 **“Inspection Period”** means a minimum of period of sixty (60) days, or such longer period as the parties may in writing agree, from the date of delivery and/or installation of the Product(s), as applicable.
- 3.18 **“IPC Standards”** means the following standards, as shall be amended or replaced from time to time:
- (a) the Alberta Health and Wellness Infection Prevention and Control standards, which, at the Commencement Date, include:
 - (i) Standards for Infection Prevention and Control Accountability and Reporting (January 2008);
 - (ii) Standards for Cleaning, Disinfection and Sterilization of Reusable Medical Devices for all Health Care Facilities and Settings (January 2008) (the “Sterilization Standards”);
 - (iii) Standards for Single-Use Medical Devices (January 2008);
 - (iv) Standards for Prevention and Management of Methicillin-Resistant Staphylococcus aureus (January 2008); and
 - (v) Infection Prevention and Control Information Sheet, Manufacturer/Distributor Reprocessing Information (June 16, 2008).all of which can be located at:
<http://www.health.alberta.ca/newsroom/pub-infection-prevention.html>
 - (b) the Alberta Health and Wellness letter to Regulatory Body Registrars dated April 17, 2008, which specifies that: "Reusable medical devices may only be distributed or imported by a body that holds an Establishment License issued by Health Canada."

which can be located at:

www.hc-sc.gc.ca/dhp-mps/legislation/md-im_e.html
- 3.19 **“Medical Devices”** has the meaning given to it in the Medical Devices Regulations under the *Food and Drugs Act* (Canada).
- 3.20 **“Product”** and **“Products”** means the goods and/or services, whether tangible or intangible, purchased by AHS pursuant to a Purchase Order including all intellectual

property rights purchased, licensed, or otherwise acquired from the Supplier by AHS, and any installation, training, maintenance, construction, labour or other service provided to AHS in connection therewith.

- 3.21 **“Purchase Order”** means any individual purchase order or other form of requisition, in written or electronic form, issued by AHS to the Supplier in respect of the supply of Product(s) by the Supplier to AHS, as the same may be amended or supplemented from time to time.
- 3.22 **“Software”** means any software licensed or sold to AHS under the terms of a Purchase Order, and includes any software which is incidental to the supply of any equipment or services forming the Product.
- 3.23 **“Specifications”** means those specifications, standards and performance requirements for a Product:
- (a) set forth in this Agreement;
 - (b) provided to AHS in connection with the purchase of the Products or, if not provided, the Supplier’s or manufacturer’s published literature on the Commencement Date;
 - (c) set forth in the Supplier’s or manufacturer’s published literature on the Commencement Date; and
 - (d) required by applicable law.
- 3.24 **“Staff”** means the Supplier’s employees, officers, directors, shareholders, representatives and agents.
- 3.25 **“Supplier”** has the meaning given to that term in the applicable Purchase Order.
- 3.26 **“Termination for Convenience”** has the meaning ascribed to that term in Section 24 of these Terms and Conditions.

4. AGREEMENT

- 4.1 The Purchase Order shall constitute the entire contract with reference to the subject matter and shall not be altered, amended, varied, supplemented or cancelled without the prior written approval of both AHS and the Supplier.

5. SHIPPING

- 5.1 Unless otherwise agreed in writing, the Supplier shall be solely responsible for, and shall prepay, all freight costs, packing costs and insurance costs relating to the delivery of the Products to the Delivery Locations. The Supplier shall pack and protect all Products in accordance with best practices, having regard to methods of carriage and handling and to weather conditions likely applicable to the transportation and delivery to the Delivery Locations.

- 5.2 The Supplier shall comply with all applicable laws, and all corporate and industry standards respecting the safe and proper handling, transportation, cartage and delivery of the Products and, in the event of any conflict amongst any of them, the most stringent provision shall apply.
- 5.3 The applicable Purchase Order number or product code number, lot number, description, expiry date and quantity of contents are to appear on all packages, shipping documents and invoices. An itemized packing slip must be included with all deliveries and shall be securely fastened to the outside of any shipping container. In the event an itemized packing slip is not contained with a delivery, AHS' count will be accepted as final and conclusive. Goods imported to Canada and shipped directly to AHS shall include in the Canadian Customs form sent with the shipment the full description of the contents of the shipment, including, if applicable, the nature of any Product and its attachments and accessories. The Supplier shall provide an Exporter's Certificate of Origin with the documents provided to the freight carrier.
- 5.4 The Supplier shall provide AHS with all relevant information concerning the safe and proper mode of employment, handling, use and implementation of the Products and AHS shall have the full right to duplicate and use such information, including schematics, drawings, technical documentation, operating instructions, manuals and other information as AHS deems appropriate. The Supplier shall provide AHS with copies of the information in hard copy and, if available, in electronic format.
- 5.5 The Supplier shall inform AHS of any Product containing Hazardous Substances. Each shipment of Products containing any Hazardous Substances shall be labelled as such and shall identify each Hazardous Substance contained therein and shall contain instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by AHS' non-technical personnel and sufficiently specific to identify all action which the user must take concerning the Hazardous Substance.
- 5.6 AHS shall not be liable for payment of any goods delivered in excess of the quantities ordered, and the Supplier shall pick up such over-shipments within twenty-four (24) hours following AHS' notification of such over-shipment. All goods held by AHS under this subsection 5.6 shall be held at the Supplier's risk.

6. TITLE

- 6.1 Subject always to Section 7 of these Terms and Conditions, title, ownership and risk of loss of or damage to the Products will pass to AHS upon Acceptance. AHS shall have the right to inspect all Products supplied to determine whether the Products appear to be in accordance with the requirements of this Agreement.

7. REJECTION OF PRODUCTS

- 7.1 AHS shall have until the expiry of the Inspection Period to conduct testing of the Products as AHS deems appropriate. AHS may reject any and all defective Products or Products which fail to comply with the Specifications. On or before the expiry of the Inspection Period, AHS may notify the Supplier if any of the Products are defective or fail to conform to the Specifications or otherwise do not comply with the terms hereof.

AHS may request the Supplier to rectify any defects. If AHS requests the Supplier to rectify defects the Inspection Period shall be extended until twenty (20) days after the date upon which the Supplier has rectified the defects. If, upon expiry of the Inspection Period, including any extension thereof on account of rectification of defects, Acceptance has not occurred, AHS shall return the Products to the Supplier at the Supplier's sole expense and risk.

7.2 Acceptance shall not prejudice any rights of AHS under the Purchase Order or in law in respect of defective Product, regardless of any verification of Acceptance or other document executed by AHS.

7.3 The Supplier shall refund to AHS any money paid for returned Products or, upon request from AHS, credit that amount to the account of AHS within thirty (30) days of the date upon which AHS notifies the Supplier of its refusal to accept the Products. The refund or credit for Products returned under this Section 7 shall not be subject to any re-stocking charge.

8. RETURN OF PRODUCTS

8.1 Products delivered in error, unauthorized late deliveries, unordered Products, defective Products and Products not in accordance with the Specifications will be returned to the Supplier at the Supplier's sole expense and risk. If the Supplier does not provide return instructions within a reasonable time after being requested to do so, AHS may dispose of those Products, as it deems appropriate, at the Supplier's sole expense and risk and AHS shall have no liability or responsibility to the Supplier whatsoever in that regard. Return of Products shall not prejudice any other right or remedy available to AHS with respect to those Products.

9. CUSTOM PACKAGING

9.1 In the event a Product has custom packaging as required by AHS, the Supplier shall not, unless specifically authorized by AHS in writing, maintain an inventory of that Product greater than the typical three (3) month order of that Product by AHS.

10. WARRANTY

10.1 Unless agreed to in writing between the Supplier and AHS, the Supplier, at its expense (including without limitation the expense of removal, packing, transportation and reinstallation) shall promptly either repair or replace any Products furnished to AHS which, within twelve (12) months after Acceptance, shall fail to conform to the Specifications or to the requirements of this Agreement. Products that are repaired or replaced by the Supplier pursuant to this warranty shall be warranted, according to the terms hereof, for an additional twelve (12) months from the date of the repair or replacement. The Supplier shall at all times be liable for and shall reimburse AHS for repairs made by AHS to correct a failure to meet the warranty herein where the Supplier has been given notice of the failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing. Should any component of a system supplied by the Supplier fail to function, causing a dysfunction in that system, the warranty period for that system shall be extended for a period equal to the time that the

dysfunction existed. Any AHS repair work to the Products shall not void or diminish any Product warranty, provided that in the event AHS damages the Product in conducting such repairs, the Supplier shall not be responsible to repair such damage.

The above warranties are in addition to all other warranties as may be express or implied at law or in equity. In the event this Agreement provides for a warranty more favourable to AHS, the more favourable warranty shall apply.

11. THIRD PARTY WARRANTIES

11.1 The Supplier, if a distributor of the Products, hereby assigns to AHS such assignable rights as the Supplier may have under any and all manufacturers' and other warranties provided with respect to the Products.

12. PAYMENT

12.1 All Product invoices that are mailed to AHS shall be sent to the address detailed in the Purchase Order.

12.2 Invoices may only be submitted to AHS' accounts payable department after Acceptance. AHS shall pay all non-disputed invoiced amounts within forty-five (45) days of receipt of invoice in proper form, or in such other time period as agreed to by the parties in writing.

12.3 Subject to the provisions of the *Excise Tax Act* (Canada), as amended, the Supplier shall not charge AHS GST in respect of the Products on the basis that the Products received hereby are being received and shall continue to be received by AHS, which is on the Alberta Government's "Goods and Services Tax-Free" entity list. In the event AHS' GST exempt status changes such that it becomes subject to the payment of GST, the Supplier may thereafter amend its invoices to charge the applicable GST.

12.4 All amounts invoiced to AHS by the Supplier shall accord with AHS' policies, as may be amended from time to time, and shall separately identify all duties, taxes and levies, where applicable, which are levied or imposed in connection with the supply of the Products. The Supplier shall not be entitled to receive, and shall not invoice AHS for, any fees, costs, charges or out-of-pocket expenses, including any transportation or handling charges, unless they have been pre-approved by AHS in writing. All invoices shall be sent in duplicate unless otherwise agreed to in writing between the parties hereto. Unless otherwise directed by AHS, each of the Supplier's invoices shall comply with the following:

- (a) each invoice shall include:
 - (i) the AHS Purchase Order number, if any; and
 - (ii) the prices for Products covered by the invoice;
- (b) invoices related to a period of time or a point in time shall be rendered within fourteen (14) days of the end of the period of time or the occurrence of the point in time, as the case may be;

- (c) all charges and credits are to be shown on the invoice;
- (d) invoices shall not be rendered prior to the date that the applicable Products have been delivered to the Delivery Locations.

Delays in receiving invoices, errors or omissions shall be considered just cause for withholding payment without loss of cash discount privileges.

13. RECALL OF PRODUCT

13.1 In the event of a medical alert, consumer alert or other form of Product recall issued by the Supplier, the manufacturer of the Product or by any qualified authority, including without limitation, Health Canada, the Supplier:

- (a) will immediately advise the safety alerts coordinator of AHS in writing (at the address specified in Section 29 of these Terms and Conditions) and take all reasonable steps to minimize AHS' risk and to remedy the situation, all at the Supplier's sole cost and expense;
- (b) upon AHS' request, will provide AHS with all technical data in the Supplier's possession or control relating to the reason for the Product recall and any proposed solution of the Supplier to the issue identified in the Product recall;
- (c) upon AHS' request, will accept return by AHS of all recalled Products for full refund;
- (d) if AHS determines, in its sole discretion, that it must obtain the Product or a product similar to the Product from an alternative supplier, will immediately reimburse AHS for any additional costs incurred by AHS in obtaining such products, which costs shall include, without limitation, any price for a Product or similar product paid by AHS in excess of the price of any such recalled Product set forth in the Purchase Order and any costs associated with obtaining any other item that is necessary for the use of the replacement product; and
- (e) will be responsible for and will pay all expenses incurred with respect to any of the foregoing, including labour, return freight, insurance and packaging.

This Section 13 shall survive the expiry or early termination of the Purchase Order.

14. NO PROHIBITION

14.1 Nothing in a Purchase Order shall prohibit AHS from:

- (a) supplying Products purchased by AHS under the terms of this Agreement to other health care entities in Alberta at no cost to such other health care entities; or
- (b) reselling, at no profit to AHS, the Products to any persons or health care entities living or operating within Alberta.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SUPPLIER

15.1 The Supplier hereby represents and warrants to and covenants with AHS as follows:

- (a) the Supplier has all necessary power and authority to enter into the Purchase Order;
- (b) the Purchase Order is enforceable against the Supplier in accordance with its terms;
- (c) the execution, delivery and performance of the Purchase Order will not violate, nor be in conflict with, nor constitute a default under, any contract, agreement or undertaking (whether verbal or written) to which the Supplier is a party, or by which it is bound or under any judgment, decree, order or law applicable to the Supplier;
- (d) the Supplier has all right and title to the Products, free and clear of any charges, liens, encumbrances, security interests and other interests and, upon Acceptance, AHS shall have title to the Products free and clear of any charges, liens, security interests, encumbrances or other interests;
- (e) to the extent that the AHS will require use of the intellectual property rights of any third party in connection with the Products, the Supplier, at its sole expense, has obtained from the third party all necessary licenses, consents or assignments of those intellectual property rights for the benefit of AHS;
- (f) the Products comply with, and the Supplier in the performance of this Agreement shall comply with, all applicable laws, ordinances, rules and regulations, including without limitation, all laws governing occupational health and safety and protection of the environment;
- (g) the Supplier possesses all permits, licences, authorizations and regulatory approvals necessary in connection with the sale of the Products to AHS;
- (h) the Product is licensed for use and sale in Canada;
- (i) the Products will be new and will conform with the Specifications and with all written specifications, drawings, and other descriptions of the manufacturer thereof and will be of merchantable quality, fit and sufficient for the purposes for which they are intended, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily any operating conditions specified in the Purchase Order;
- (j) the Products have received all applicable approvals for the Canadian Standards Association, Underwriters' Laboratories of Canada, Health Canada, and any other organization that licenses or certifies the Products;

- (k) the Products are free of Hazardous Substances, except for those Products which the Supplier has informed AHS contain Hazardous Substances in accordance with Section 5.5;
- (l) the Supplier, its agents and representatives have not offered gratuities (in the form of entertainment, gifts or otherwise) to any officer, director, employee or contractor of AHS, or any other person connected to AHS, with a view toward securing this Agreement or securing favourable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of, this Agreement, nor has the Supplier directly or indirectly, paid any fee for the solicitation, negotiation or obtaining of this Agreement to any person other than an employee of the Supplier acting in the normal course of the employee's duties;
- (m) to the extent the Products include services, the services will:
 - (i) be performed in a conscientious, professional and worker-like manner, with reasonable skill, care and diligence, in accordance with industry standards; and
 - (ii) be formed by employees, contractors or agents who are qualified and competent and have the appropriate skills and experience to perform the duties assigned to them.
- (n) in respect of Drugs and Medical Devices only:
 - (i) the Drugs and Medical Devices are authorized for sale in Canada under the *Food and Drugs Act* (Canada);
 - (ii) each Drug forming part of the Products, if any, has a valid drug identification number;
 - (iii) the Drugs and Medical Devices are duly licensed in accordance with the *Food and Drugs Act* (Canada) and related regulations, and a copy of the license has been provided to AHS or, alternatively, the Supplier has produced evidence of its license in another manner acceptable to AHS, such as through the web-based database maintained by Health Canada and any limitations or qualifications on the license have been conveyed in writing to AHS; and
 - (iv) the import, sale, advertising, labelling, manufacturing and distribution of the Drugs and Medical Devices, and any other activities related to the Drugs and Medical Devices, comply in all respects with the *Food and Drugs Act* (Canada) and related regulations and any other applicable laws,
- (o) in respect of Software only:
 - (i) the Supplier has all necessary right to sell the Software to AHS or to grant a license in the Software to AHS;

- (ii) the Supplier has the necessary intellectual property rights and interests required to perform its obligations hereunder and to provide AHS with all rights or licenses that AHS requires hereunder;
- (iii) the Software does not contain any back door, time bomb, drop-dead device or other software routine designed to disable the software automatically, with the passage of time or under the positive control of any person other than AHS;
- (iv) the Software shall be free from any computer code or programming instructions that are constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, the data files or hardware without the consent or intent of the computer user, including self-replicating and self-propagating programming instructions commonly called “viruses” and “worms”;
- (v) any compact disks or any other computer storage media on which the Software is supplied will be free from defects in design, material and workmanship under normal use, and will perform in compliance with published specifications; and
- (vi) the Software will be compatible with the information systems of AHS, as identified by AHS and the Supplier;
- (p) if the Product is food, the Supplier is approved and compliant under the Canadian Food Inspection Agency’s Food Safety Enhancement Program and the Hazard Analysis Critical Control Points system, and shall provide its approval number in respect of those programs to AHS upon request;
- (q) the Supplier shall comply with, and take all such steps and do all such things as may be necessary to ensure that its employees comply with, the IPC Standards.

The above representations and warranties are in addition to all other warranties as may be express or implied at law or equity. The representations shall be true and correct during the entire term of the Purchase Order and shall survive the expiry or early termination of the Purchase Order until all of the obligations of the Supplier hereunder have been fulfilled.

16. INDEMNITY

16.1 Notwithstanding any other provision of the Agreement to the contrary, the Supplier shall:

- (a) be liable to AHS and its affiliates, officers, directors, members, agents, employees, licensees and invitees (in this Section “**Others**”) for; and
- (b) indemnify and hold harmless AHS and all Others from and against,

any and all liabilities, obligations, losses, claims, proceedings, demands, suits or actions, fines, penalties, costs, damages and expenses whatsoever (including legal fees on a solicitor-client full indemnity basis) which may be brought or made against AHS or

Others, or which AHS or Others may sustain, pay or incur as a result of or in connection with:

- (c) any breach or non-observance by the Supplier of any covenant, representation, warranty, agreement, term or condition applicable to the Supplier under the Purchase Order including, without limitation, any breach or non-observance of any applicable law;
- (d) injury to or death of any persons (including without limitation employees of AHS, the Supplier and the Supplier's suppliers) or from damage to or loss of any property (including without limitation the property of AHS) to the extent arising, directly or indirectly, out of the performance or failure to perform by the Supplier of its obligations under the Purchase Order or out of any act or omission of the Supplier or its suppliers whatsoever;
- (e) contamination, pollution, or public or private nuisance arising, directly or indirectly, out of the performance or failure to perform by the Supplier of its obligations under the Purchase Order or out of any act or omission of the Supplier or its suppliers whatsoever; and
- (f) any proceeding, suit, action, claim or demand alleging the violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use, sale or licensing of Software, goods, materials, equipment, methods, processes, designs or information furnished by the Supplier or its suppliers,

except to the extent arising out of the gross negligence or wilful misconduct of the party claiming indemnity.

16.2 In the event that any indemnity provisions in this Agreement are contrary to applicable law, the indemnity obligations hereunder shall be construed to apply to the fullest extent allowed by applicable law.

16.3 This Section 16 shall survive the expiry or early termination of the Purchase Order.

17. CONSEQUENTIAL LOSS

17.1 In no event shall either party be liable to the other party for any special, indirect, incidental, remote or consequential loss or damage, loss of profit, punitive damages or exemplary damages, regardless of cause, whether in contract, warranty or tort, including negligence.

18. NO RELIANCE

18.1 AHS shall not be liable for any loss, liability, cost or claim suffered or incurred by the Supplier as a result of the Supplier's reliance in any way upon any information or data supplied to the Supplier by AHS unless specifically contained in the Purchase Order. The Supplier shall be solely responsible for checking, verifying and validating the

accuracy, sufficiency and completeness of any information or data supplied to the Supplier by AHS, unless specifically contained in the Purchase Order.

19. INSURANCE

19.1 The Supplier, at its sole cost, shall obtain and maintain in force until two (2) years after the completion of its obligations under the Purchase Order (including any warranty period) insurance of the following types, with limits not less than those set forth below:

- (a) Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over the Supplier's employees, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. The Supplier shall not utilize occupation accident or health insurance policies, or the equivalent, in lieu of mandatory Workers Compensation Insurance, or otherwise attempt to opt out of the statutory Worker's Compensation system;
- (b) Commercial General Liability Insurance with a minimum combined single limit of liability of \$5,000,000 for each occurrence covering death, bodily injury, property damage, personal injury, advertising injury, products and completed operations liability including Broad Form Products liability and completed operations with a Products Recall extension. Such policy shall have a general aggregate limit of not less than \$10,000,000;
- (c) Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles, with a minimum Combined Single limit of liability for death, bodily injury and property damage of \$2,000,000 per occurrence;
- (d) errors and omissions liability insurance with a minimum combined single limit of liability of \$5,000,000 per occurrence, if the Supplier provides training, clinical or otherwise, in connection with the Product;
- (e) if the Supplier will utilize tools or equipment in the performance of its services under this Agreement, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and their contents, and vehicles for which the Supplier is responsible, throughout the course of the performance of its obligations under this Agreement;
- (f) if the Supplier performs any operation using or involving Hazardous Substances in connection with the Product, Hazardous Substances (pollution) liability insurance covering death, bodily injury and property damage of \$5,000,000 for each occurrence and, in the aggregate;
- (g) if the Supplier transports or hauls Hazardous Substances in connection with the Product, insurance covering death, bodily injury and property damage arising from transporting or hauling Hazardous Substances with limits of no less than \$5,000,000 for each occurrence and, in the aggregate;

- (h) if the Supplier performs any insulation or construction services in connection with the Product, Builder's All Risk insurance covering the risk of loss to property that is in the course of construction or which has been delivered to the site for incorporation into the work of the Supplier.
- 19.2 The Supplier hereby releases AHS, its affiliates and their respective officers, directors, agents, employees, licensees and invitees, and shall cause the Supplier's insurers to waive any rights of subrogation against the released parties, for losses or claims for death, bodily injury, property damage or other insurance claims arising out of the Supplier's performance of this Agreement. The foregoing insurance shall provide a severability clause to the effect that a breach by one insured will not adversely affect the coverage of the other insureds.
- 19.3 Certificates of Insurance satisfactory in form to AHS shall be supplied to AHS evidencing that the above insurance is in force, that not less than thirty (30) days written notice will be given AHS prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation and severability clauses are in force. The Supplier shall also provide with the Certificates of Insurance executed copies of any additional insured endorsements required in the Purchase Order.
- 19.4 The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self insurance which may be maintained by AHS. The fact that the Supplier has obtained the insurance required in this Section 19 shall in no manner limit or qualify the Supplier's other obligations or liabilities set forth in this Agreement.

20. CONFIDENTIALITY

- 20.1 Except with AHS' consent, which consent may be arbitrarily withheld, the Supplier shall:
- (a) hold, and shall cause its Staff to hold, all Confidential Information in strict confidence;
 - (b) not use the Confidential Information other than for the performance of its obligations under the Purchase Order;
 - (c) not disclose the Confidential Information to anyone other than any of its Staff and then only to the extent that the Confidential Information is directly required to be disclosed in order for the Supplier to properly perform its obligations pursuant to this Agreement;
 - (d) except as otherwise permitted under this Section 20, not disclose the Confidential Information to any third party;
 - (e) implement reasonable physical, technical and administrative measures to protect the privacy and security, availability and integrity of the Confidential Information;
 - (f) ensure that its Staff are aware of their obligations with respect to Confidential Information;

- (g) only collect, access, use, and disclose the minimum Confidential Information necessary to perform the Supplier's obligations contemplated by this Agreement; and
 - (h) not send, transmit or access any Confidential Information outside of Canada.
- 20.2 Except for any health information as defined in the HIA, and personal information as defined in FOIPP, the obligations of confidentiality set out in this Section 20 do not apply to any Confidential Information which:
- (a) is known to the public through no act of the Supplier at the time of the acquisition thereof by the Supplier; or
 - (b) after the acquisition thereof by the Supplier, becomes known to the public through no act of the Supplier.
- 20.3 Notwithstanding the provisions of subsections 20.1 and 20.2, the Supplier shall at all times comply with the applicable provisions of all privacy laws (including without limitation, the HIA and FOIPP), regulations and policies and directives issued by Alberta's Office of the Information and Privacy Commissioner relating to privacy and information security which are now, or at anytime in the future become, applicable to the Supplier or to the Confidential Information.
- 20.4 The Parties acknowledge that for the purposes of the HIA and FOIPP, the Confidential Information remains under the ownership and control of AHS.
- 20.5 The Supplier shall not publicize the existence or scope of the Purchase Order without AHS' written consents.
- 20.6 The Supplier shall return to AHS or destroy all Confidential Information, including all copies thereof, immediately after the Supplier no longer needs the Confidential Information to perform its obligations pursuant to the Purchase Order.
- 20.7 The Supplier shall not disclose Confidential Information pursuant to any non-Canadian law, rule, order, or document and shall promptly notify AHS if it receives any such request or orders. The Supplier shall cooperate with AHS as reasonably necessary to help AHS obtain a protective order or other appropriate remedy.
- 20.8 The Supplier shall immediately notify AHS of: i) any release or disclosure of Confidential Information that is contrary to the provisions of this Agreement, ii) any request to access any of the Confidential Information, or iii) any notice of an investigation from any private or public body. The Supplier shall cooperate with AHS' investigation or response to such situations.
- 20.9 The Supplier acknowledges that its failure to comply with the provisions of this Section 20 may cause irreparable harm to AHS entitling AHS to seek immediate injunctive relief, in addition to any other remedies to which it may be entitled.

This Section 20 shall survive the expiry or early termination of the Purchase Order.

21. INTELLECTUAL PROPERTY

21.1 If, as a result of any proceeding, suit or action, the sale or use of any Product is enjoined by court order, or, should any Products be the subject of a claim of infringement of a patent, copyright, proprietary information, trade secret or other property right, the Supplier shall at its expense, at AHS' option either:

- (a) procure for AHS the right to continue using the Product;
- (b) replace or modify the Product with functionally-equivalent goods (subject to AHS' approval and satisfaction in its sole and arbitrary discretion), provided that any such modification or replacement is of equal quality and provides equal performance to the infringing Product; or
- (c) return to AHS the purchase price for any Product that AHS is unable to make use of due to the infringement claim and reimburse AHS for any associated costs and expenses.

22. WORK PRODUCT

22.1 Unless otherwise agreed to in writing by the parties:

- (a) title to all working papers, materials, reports, and work-in-progress created, discovered, developed or performed by the Supplier during the course of providing the Products (in this Section the "**Work Product**") shall vest in AHS. The Supplier shall promptly disclose to AHS all Work Product intellectual property as and when created. The Supplier conveys and assigns to AHS, free and clear of all charges, liens, encumbrances, security interests or other interests, all right, title and interest (including any copyright) in all Work Product and shall execute or cause to be executed any additional documents required to evidence same, including unconditional and irrevocable waivers of all moral rights.
- (b) AHS shall have the benefit and ownership of all right, title and interest in and to any enhancements, improvements or modifications to the Products as may be developed by AHS or any of its employees, agents or representatives. The Supplier shall promptly disclose to AHS all such developments as and when created.

23. TERMINATION FOR CAUSE

23.1 In the event that:

- (a) either party defaults or fails to perform in accordance with the terms and conditions of the Purchase Order, and if such default or failure to perform continues for fourteen (14) days after written notice from the non-defaulting party to the defaulting party to remedy the default or perform as required, the non-defaulting party, without prejudice to any other right or remedy, may terminate the Purchase Order on notice to the defaulting party;
- (b) the Supplier or any of its affiliates become insolvent or bankrupt or any proceeding in bankruptcy, receivership or liquidation is initiated against the Supplier or any of its affiliates and is not dismissed within thirty (30) days or if the Supplier or any of its affiliates makes an assignment for the benefit of its creditors or files a petition or other proceedings in bankruptcy or for protection from its creditors or if a receiver or trustee in bankruptcy is appointed over all or any of its assets or business, AHS may in its sole and unfettered discretion, by written notice to the Supplier, terminate the Purchase Order without prejudice to any other rights or remedies to which AHS may be entitled;
- (c) a medical alert, consumer alert or other form of product recall is issued by the manufacturer of the Product or by any qualified authority, including without limitation, Health Canada which results in a Product being unusable or requiring a change in AHS' clinical procedures, AHS may in its sole and unfettered discretion, by written notice to the Supplier, terminate the Purchase Order without prejudice to any other rights or remedies to which AHS may be entitled;
- (d) it is found that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Supplier, or any agent or representative of the Supplier to any officer, director, employee or contractor of AHS, or any other person connected to AHS, with a view toward securing the Purchase Order or securing favourable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of, the Purchase Order or that the Supplier, directly or indirectly, paid a fee for the solicitation, negotiation or obtaining of this Agreement to any person other than one or more of the Supplier's employees acting in the normal course of their employment, AHS may in its sole and unfettered discretion, by written notice to the Supplier, terminate the Purchase Order without prejudice to any other rights or remedies to which AHS may be entitled.

23.2 Upon termination of this Agreement pursuant to this Section 23:

- (a) the Supplier shall deliver or assign to AHS any work in progress that AHS may require;
- (b) AHS shall pay the Supplier the portion of the price for all Products that have been accepted by AHS prior to the effective date of termination, as determined by AHS acting reasonably, subject to any right of setoff available to AHS;

23.3 If AHS purports to terminate the Purchase Order by virtue of a default by the Supplier, and it is later determined that the Supplier was not in default, the parties agree that the termination shall then be considered a termination for convenience pursuant to Section 24.

24. TERMINATION FOR CONVENIENCE

24.1 AHS shall have the right to terminate this Agreement for its convenience for any reason on a minimum of thirty (30) days advance written notice to the Supplier. On the date of termination stated in the notice, the Supplier:

- (a) shall discontinue all Product delivery and related services pursuant to the Purchase Order;
- (b) shall place no additional orders with its suppliers in relation to the Purchase Order;
- (c) shall preserve and protect materials on hand purchased for or committed to the Purchase Order, work in progress and completed work both in the Supplier's and its supplier's facilities, pending AHS' instructions, and shall dispose of same in accordance with AHS' instructions;
- (d) immediately take all possible action to mitigate any loss incurred by it as a result of the termination and take all other action as reasonably required by AHS in relation to the termination.

24.2 Any termination payment to the Supplier or refund to AHS as a result of termination of the Purchase Order for convenience shall be promptly and mutually agreed to by AHS and the Supplier, based on

- (a) that portion of the price for the Product accrued due prior to the date of the cancellation in accordance with the terms of this Agreement, subject to any right of set-off available to AHS; and
- (b) subject to section 24.4(c) below, reasonable and necessary expenses directly resulting from the termination, all as substantiated by documentation satisfactory to and verified by AHS.

24.3 In the event the parties are unable to agree as to the termination payment or refund within sixty (60) days of delivery of the termination notice, the matter shall be determined through arbitration in accordance with the *Arbitration Act* (Alberta).

24.4 Notwithstanding anything to the contrary herein contained:

- (a) the Supplier shall, at AHS' option, continue to deliver the Products to AHS until the date of termination;

- (b) in no event shall the Supplier have on hand an amount of Products committed to AHS greater than AHS' average thirty (30) day requirements of that Product from the Supplier; and
- (c) in the event AHS terminates the Purchase Order pursuant to the terms of this provision, AHS shall not be obligated to make any termination payment to the Supplier on account of the Supplier's inventory of the Product(s) on hand; provided that, if the Supplier is maintaining an inventory of a Product that is custom packaged, AHS shall purchase from the Supplier its inventory of that Product to the extent that the inventory is not in excess of AHS' average ninety (90) day requirements of that Product from the Supplier.

24.5 The parties hereto acknowledge that AHS entered into this Agreement in reliance upon, and on the understanding that, it has the right to terminate this Agreement at its convenience as set out herein.

25. SURVIVAL

25.1 Termination of this Agreement shall not affect the validity of any provisions which are, expressly or by implication, to survive or to take effect on or after such termination.

26. DISPUTE RESOLUTION

26.1 In the event of a dispute between AHS and the Supplier in respect of any matter pertaining to the Purchase Order, the following provisions shall apply:

- (a) upon written request of either party, senior managers from each of the parties will meet for the purpose of resolving the dispute. The meeting shall occur within five (5) Business Days of the giving of the written request to meet. At the meeting the parties will discuss the problem and negotiate in good faith without the necessity of any formal proceedings. If neither party has requested a meeting to resolve the dispute or the meeting does not resolve the dispute, either party may refer the dispute to binding arbitration in accordance with Section 26.1(d) hereof;
- (b) notwithstanding the existence of a dispute, the Supplier will continue to perform its obligations under the Purchase Order, subject to its rights of termination under the Purchase Order;
- (c) notwithstanding anything contained herein, a decision by AHS to terminate the Purchase Order shall be excluded from arbitration;
- (d) all disputes between the parties arising out of or concerning the Purchase Order, including without limitation, any dispute as to interpretation, any alleged breach or the right of a party to exercise any right or remedy, that has not been settled by informal dispute resolution, shall be resolved by binding arbitration in accordance with the following provisions:
 - (i) the arbitration process shall be commenced by one party to the dispute providing a written notice to the other party to the effect that the notifying

party wishes to have the dispute resolved by binding arbitration. The arbitration shall be conducted in the City of Calgary by a single arbitrator, with suitable expertise, to be agreed upon by the parties. If the parties cannot agree on an arbitrator within ten (10) days of the written notice, either party may apply to a judge of the Court of Queens Bench to appoint an arbitrator in accordance with the *Arbitration Act* (Alberta), with written notice to the other party;

- (ii) the arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties make some or all of their submissions in writing or in any other manner which the arbitrator considers appropriate. The parties intend to limit live testimony and cross-examinations except to the extent necessary to ensure a fair hearing on material issues;
 - (iii) the arbitrator shall be directed to issue a written decision within thirty (30) days of the arbitration. The arbitrator shall be directed to issue a written decision containing a brief statement of each dispute, the decision of the arbitrator with respect to the dispute, the reasons for the decision and an apportionment of costs for the arbitration process. The arbitrator's decisions in the dispute shall be final and binding, with no recourse to appeal; and
 - (iv) the parties agree that the arbitration shall be conducted in strict confidence and that there shall be no disclosure to any person (other than as necessary to carry out the arbitration) of the existence of the dispute or any aspect of the dispute;
- (e) nothing contained herein will preclude a party from initiating court proceedings for the limited purpose of seeking urgent injunctive relief.

27. FORCE MAJEURE

- 27.1 Neither party shall be liable for failure to perform any of its obligations under the Purchase Order, if and to the extent its performance is prevented, hindered or delayed by a Force Majeure event. The occurrence of a Force Majeure event shall not release the affected party from its obligations under the Purchase Order, but shall merely suspend the performance of any obligation so prevented, hindered or delayed during the period of continuance of the Force Majeure event.
- 27.2 In every case the party alleging a circumstance of Force Majeure event shall take reasonable action and undertake reasonably necessary measures to mitigate the effects of the Force Majeure and to resume, as soon as reasonably possible, the performance of those of its obligations under the Purchase Order affected by the Force Majeure event.
- 27.3 If an event of Force Majeure results in the Supplier being unable to perform its obligations under the Purchase Order for more than thirty (30) days, AHS shall have the

right to terminate the Purchase Order in the same manner as if the Purchase Order was terminated for cause and, at its option, procure the Product elsewhere.

28. RIGHT TO SETOFF

AHS, without waiver or limitation of any of its rights or remedies, and without liability for interest, shall be entitled from time to time to deduct from any amounts due or owing by AHS to the Supplier in connection with the Purchase Agreement, any and all amounts owed by the Supplier to AHS:

- (a) for any matter which may be in dispute between the parties until the dispute is settled;
- (b) for any claims or liabilities which may be the basis of a claim made by a third party against AHS; or
- (c) for any default or deemed default by the Supplier of any of its obligations under the Purchase Agreement.

29. NOTICES

29.1 When any notice is required or permitted to be given under any provision of this Agreement, such notice shall be made in writing and signed by or on behalf of the party giving such notice to the following addresses:

Alberta Health Services

Contracting, Procurement & Supply Management
Suite 400, East Tower
14310 – 111 Avenue
Edmonton, Alberta Canada T5M 3Z7
Attention: Senior Vice President - Contracting, Procurement & Supply Management,
Fax Number: 780-342-0114

with a copy to:

Legal Services
10301 Southport Lane SW
Calgary, Alberta Canada T2W 1S7
Attention: General Counsel
Fax Number: 403-943-0907

Supplier

At the address detailed in its invoice or failing which, at their corporate head office.

or to such other address or facsimile number as a party may from time to time direct in writing.

In the event the notice pertains to Product safety, notice shall also be given to:

ALBERTA HEALTH SERVICES
3691 - 106 Avenue SE, 1204
Calgary, Alberta, Canada T2C 5B6

Attention: Safety Alerts Coordinator
Phone: 403-955-9903
Fax: 403-955-9981

or such other address or facsimile number as AHS may from time to time direct in writing.

Any notice delivered before 4:00 p.m. local time on a Business Day shall be deemed to have been received on the date of delivery and any notice delivered after 4:00 p.m. local time on a Business Day, or delivered on a day other than a Business Day, shall be deemed to have been received on the next Business Day. Any notice sent by facsimile before 4:00 p.m. local time on a Business Day shall be deemed to have been received when the sender receives the answer back confirming receipt by the recipient; provided, however, that any facsimile received after 4:00 p.m. local time on a Business Day or received on a day other than a Business Day shall be deemed to have been received on the next Business Day. No notice will be deemed to have been received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery or facsimile transmission only shall be effective.

30. GENERAL

- 30.1 Unless otherwise indicated, all dollar amounts referred to in the Purchase Order are in Canadian funds.
- 30.2 Time shall be of the essence of the Purchase Order.
- 30.3 Wherever the singular, plural, masculine, feminine or neuter is used throughout the Purchase Order the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the facts or context so requires.
- 30.4 The Purchase Order shall be governed by and construed in accordance with the laws of the province of Alberta and the applicable laws of Canada. The courts having jurisdiction in the province of Alberta shall have exclusive jurisdiction in relation to any legal proceedings arising in connection with the Purchase Order.

The *United Nations Convention on Contracts for the International Sale of Goods* does not apply to the Purchase Order and shall be disclaimed and excluded from any contracts placed by the Supplier with its sub-suppliers.

- 30.5 Transmitting devices (i.e., cellular phones, walkie-talkies, etc.) shall not be used near patient areas.

- 30.6 The Supplier is expected to fully comply with Workplace Hazardous Materials Information System (WHMIS) legislation and to co-operate with any AHS request for Product data and related requirements. Material Safety Data Sheets (MSDS) must accompany all first shipments of Products to the any AHS site.
- 30.7 The Supplier shall abide by and ensure that all of its employees and/or subcontractors and their employees abide by all policies, rules and regulations published from time to time by AHS and provided to the Supplier including those related to the use of, and access to, AHS property.
- 30.8 The Supplier shall act as an independent contractor and not as an agent or employee of AHS and shall not subcontract performance of any portion of the Purchase Order without the prior written consent of AHS.
- 30.9 Each party agrees to do all acts and things and execute all deeds, instruments, transfers and other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.
- 30.10 On request by AHS, the Supplier shall provide AHS with any further information in relation to the Products as AHS may reasonably request.
- 30.11 No remedy conferred upon a party is intended to be exclusive of any other remedy available to that party but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute.
- 30.12 In the event any provision, or any part or portion of any provision of the Purchase Order, including these Terms and Conditions, shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.
- 30.13 The making or failure to make any inspection of, or payment for, the Products covered by the Purchase Order shall in no way impair AHS' right to reject nonconforming or defective Products, nor be deemed to constitute Acceptance by AHS of the Products, nor affect in any way the Supplier's obligations under the Purchase Order nor the Supplier's liability for Products that are defective or fail to meet the Specifications or from any consequences resulting therefrom, notwithstanding AHS' opportunity to inspect the goods or services, AHS' knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor AHS' earlier failure to reject any Product.
- 30.14 No waiver by AHS of any provision of the Purchase Order shall be deemed to constitute a waiver of any other provision of the Purchase Order, nor shall such waiver be binding unless executed in writing by AHS. No failure on the part of AHS to exercise, and no delay by AHS in exercising any right under the Purchase Order, including these Terms and Conditions, shall operate as a waiver of such right, nor shall any single or partial exercise by AHS of any such right preclude any other or further exercise of such right or the exercise of any other right.

- 30.15 No portion of the Purchase Order shall be assigned, subcontracted or delegated by the Supplier without AHS' prior written consent. Any unauthorized assignment, subcontracting or delegation shall be void. Notwithstanding any permitted assignment, subcontracting or delegation, the Supplier shall remain liable for the performance of the Supplier's obligations under the Purchase Order unless otherwise agreed to in writing by AHS. The Purchase Order may be freely assigned by AHS without the written consent of the Supplier.
- 30.16 The Purchase Order shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 30.17 The Purchase Order, including these Terms and Conditions, constitutes the entire agreement between the Supplier and AHS with respect to the subject matter and contains all of the representations, undertakings and agreements of the Supplier and AHS. The Purchase Order, including these Terms and Conditions, supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether verbal or written, of the Supplier and AHS with respect to the subject matter of the Purchase Order. The Supplier and AHS acknowledge and agree that there are no general or specific warranties, representations or other agreements by or between the Supplier and AHS in connection with the entering into of the Purchase Order or the subject matter of the Purchase Order, except as specifically set forth in the Purchase Order, including these Terms and Conditions. For greater certainty, but without limiting the generality of the foregoing, the Supplier's terms and conditions, if any, are of no force and effect and shall not be applicable in the interpretation of the Purchase Order.
- 30.18 The Purchase Order may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date of the Purchase Order. The Purchase Order shall be considered properly executed by a party if executed by that party and transmitted by facsimile or transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF).