

PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order terms and conditions apply to each Purchase Order placed by a Purchaser for the supply and delivery of the Goods and/or Services by the Supplier. Each Purchase Order is subject to and conditional upon the Supplier's agreement to be bound by the Purchase Order including these Purchase Order terms and conditions.

Definitions

"Affiliate" The Ottawa Hospital is affiliated with the University of Ottawa Heart Institute ("**UOHI**"), The Ottawa Hospital Foundation ("**TOHF**"), the Ottawa Hospital Research Institute ("**OHRI**") and the Eastern Ontario Regional Laboratory Association ("**EORLA**").

"Agreement" means the agreement between the Supplier and the Purchaser for the purchase and sale of Goods and/or Services.

"Business Day" means any day except Saturday, Sunday or a statutory holiday observed in the Province of Ontario.

"Delivery Date" means the date of delivery for Goods or performance of Services as specified in writing by the Purchaser.

"Delivery Point" means the location identified by the Purchaser in the Purchase Order to which the Supplier is to deliver and unload the Goods and/or perform the Services, or such other delivery area or point which is specified in writing by the Purchaser.

"Goods" means the goods or equipment, including perishable goods, that are required to be delivered by the Supplier pursuant to and described in a Purchase Order, and includes all materials, component parts, packaging and labelling of such goods or equipment and everything necessary to provide such goods or equipment and all deliverables associated with such goods or equipment.

"Governmental Authority" means any federal, provincial, territorial, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

"HST" means any harmonized sales tax or goods and services tax imposed under the Part IX of the *Excise Tax Act* (Canada) or other law of any Canadian Governmental Authority imposing any other sales tax, value-added tax, or similar Tax.

"Law" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, order, writ, judgment, injunction, decree, stipulation, award, or determination or other requirement or rule of law of any Governmental Authority.

"Perishable Goods" means any goods that require refrigeration and/or dry ice for storage.

"Purchaser" means The Ottawa Hospital or any of its Affiliates which issued the Purchase Order.

"Purchase Order" means the commercial document issued by the Purchaser to the Supplier offering to purchase Goods and/or Services, to which these Purchase Order terms and conditions are attached or incorporated by reference.

"Purchase Order terms and conditions" means these terms and conditions.

"Services" means any services to be provided by the Supplier to the Purchaser pursuant and described in a Purchase Order and includes everything necessary to provide such services and all deliverables associated with such services.

"Supplier" means the person or entity, or entities named in Purchase Order to supply the Goods, Services, or both to the Purchaser.

“Taxes” all taxes, surtaxes, duties, levies, imposts, fees, assessments, reassessments, withholdings, dues and other charges of any nature, imposed or collected by any Governmental Authority, whether disputed or not, including federal, provincial, territorial, state, municipal and local, foreign and other income, franchise, capital, real property, personal property, withholding, payroll, health, transfer, value added, alternative, or add on minimum tax including HST, sales, use, consumption, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, education, business, school, local improvement, development and occupation taxes, duties, levies, imposts, fees, assessments and withholdings and Canada pension plan and Québec pension plan contributions, employment insurance premiums and all other taxes and similar governmental charges, levies or assessments of any kind whatsoever imposed by any Governmental Authority including any installment payments, interest, penalties or other additions associated therewith, whether or not disputed.

AGREEMENT

This Purchase Order, together with all documents, drawings, and specifications referred to in this Purchase Order and attached to these Purchase Order terms and conditions shall constitute the complete and entire agreement between the Supplier and the Purchaser in respect of the applicable Goods or Services.

The Purchaser shall not be bound by any terms and conditions in any of the Supplier’s forms or documents (the **“Supplier’s Terms”**) unless expressly agreed to by the Purchaser in writing, in which case, despite anything to the contrary in the Supplier’s Terms, these Purchase Order terms and conditions shall take precedence. For greater clarity, in the event of any ambiguities, conflicts, or inconsistencies between or among any of the provisions of these Purchase Order terms and conditions and the provisions of the Supplier’s Terms, the provisions of these Purchase Order terms and conditions shall govern and take precedence over the Supplier’s Terms, to the extent of the ambiguity, conflict, or inconsistency.

Any of the Supplier’s written acceptance or written acknowledgement of this Purchase Order, or shipment of any Goods or the commencement of any Services pursuant to this Purchase Order, shall constitute unqualified acceptance of these Purchase Order terms and conditions. The Purchaser’s failure to object to provisions contained in any of the Supplier’s forms or documents or acceptance of the Goods or Services shall not be construed as being a waiver or modification by the Purchaser of these Purchase Order terms and conditions. The Purchaser may insist upon strict compliance with these Purchase Order terms and conditions despite any previous custom, practice, or course of dealing to the contrary.

In the event that there is a separate agreement in respect of the Goods or Services for which this Purchase Order has been issued, this Purchase Order will be subject to that agreement in respect of the Goods or Services, as applicable. In the event of any conflict or inconsistency between that agreement and this Purchase Order, including the Purchase Order terms and conditions, then the separate agreement shall prevail to the extent of such conflict or inconsistency.

CHANGES, TERMINATION, CANCELLATION

The Purchaser reserves the right, upon written notice to the Supplier at any time prior to the Delivery Date, to make any changes to this Purchase Order including, without limitation, changes in drawings and specifications, additions or deletions from the quantities, or termination, without cause, of all or part of this Purchase Order.

If any such change causes any increase or decrease in the cost of, or the time required for, the Supplier's performance of any part of this Purchase Order, an equitable adjustment shall be made in the price or Delivery Date or both, and this Purchase Order must be modified in writing accordingly, upon mutual agreement.

Any dispute or claim arising with respect to such change shall be asserted by the Supplier within thirty (30) days of the notification of change from the Purchaser, and the Purchaser may at its sole discretion terminate this Purchase Order if an agreement on an equitable adjustment cannot be made.

The Purchaser shall have the right at any time to cancel, in whole or in part, any order for Goods or Services made pursuant to this Purchase Order upon prior notice to the Supplier. There shall be no cost, expense, liability, damage, penalty, or other claim against the Purchaser for cancellation of an order if the Purchaser has cancelled such order at any time prior to the shipment of such Goods or prior to the delivery of the Services.

Except as described above, the Supplier shall not make any change to the Purchase Order, including but not limited to changes in price, quantity, or Delivery Date, without the express agreement of the Purchaser delivered in writing. The Purchaser shall have the right at any time to cancel, in whole or in part, at no cost to the Purchaser, any order for Goods or Services made pursuant to this Purchase Order if the Supplier asserts any such change to the Purchase Order without notifying the Purchaser and obtaining written acceptance from the Purchaser.

DELIVERY OF GOODS AND SERVICES

- a) The Supplier agrees to supply and deliver the Goods to the Purchaser and perform the Services, as applicable, on the terms and conditions set out in this Purchase Order.
- b) The Supplier shall, at its sole expense, pack, load, deliver, and unload the Goods to the Delivery Point and in accordance with the delivery terms, dates, invoicing, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to the Supplier by the Purchaser in writing.
- c) No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging, or similar charges unless provided for in the applicable Purchase Order or otherwise agreed in writing by the Purchaser.
- d) Provided that the Purchaser provides reasonable notice to the Supplier, the Purchaser may from time-to-time change delivery dates or temporarily suspend scheduled deliveries.
- e) Time is of the essence with respect to delivery of the Goods and performance of the Services. The Supplier shall ensure that the Goods are delivered to the Delivery Point on the Delivery Date, and the Services are performed by the applicable Delivery Date. The Supplier must immediately notify the Purchaser if the Supplier is likely to be unable to meet a Delivery Date and the reasons therefor.
- f) At any time prior to the Delivery Date, the Purchaser may, upon notice to the Supplier, cancel or change, without penalty, a Purchase Order or scheduling, or any portion thereof, for any reason, including, without limitation, for the convenience of the Purchaser or due to failure of the Supplier to comply with this Purchase Order, unless otherwise noted.
- g) **Proof of Delivery (POD)**: At any time upon request by the Purchaser, the Supplier shall provide, at no expense to the Purchaser, a proof of delivery document for all Goods and/or Services that have been supplied by the Supplier to the Purchaser and any necessary details regarding the receipt of such

Goods and/or Services.

- h) **Order Discrepancies:** The Supplier agrees that signature of a packing slip, delivery bill, or other written documentation does not constitute acceptance by Purchaser or serve as confirmation that any particular Goods and/or Services have been supplied by the Supplier to the Purchaser.
- i. Without limiting Purchaser's rights under other sections of this Purchase Order, the Supplier agrees to fulfill order discrepancies identified by the Purchaser (such as missing or defective Goods listed on the PO, under shipments, over shipments, wrong Supplier, etc.) **within five (5) Business Days of Purchaser noting such discrepancy.**
 - ii. At Purchaser's discretion, failure to resolve order discrepancies following delivery (such as missing or defective Goods, under shipments, over shipments, or other discrepancy) will result in termination of the Purchase Order and refusal of any additional shipment from Seller at no cost or liability to the Purchaser.
 - iii. Return of Goods of any over shipments of Goods to the Supplier will be reimbursed and paid in full by the Supplier.
- i) In the event of failure by the Supplier to deliver the Goods and/or Services in accordance with the specified delivery quantities and Delivery Date(s) listed on the Purchase Order, the Purchaser may cancel the Purchase Order without cost, expense, liability, damage, penalty, or other claim against the Purchaser.

BACK ORDERS

No Goods shall be back-ordered for more than thirty (30) days except with the prior written consent of the Purchaser, and where any Goods are not available for shipment within that time, the Supplier shall so notify the Purchaser, and the Purchaser may cancel the Purchase Order without cost, expense, liability, damages, penalty, or other claim against the Purchaser. In the event that the Supplier back-orders Goods, causing the Purchaser to purchase substitute, replacement, or equivalent goods from a third party at a higher price, the Supplier shall reimburse the Purchaser for the difference between the Purchase Order purchase price and the alternate price paid.

ELECTRONIC COMMERCE

The Supplier agrees to work with the Purchaser to provide full E-Commerce functionality and connectivity with the Purchaser to process all business transactions, which will include, but not be limited to: purchase order (EDI 850), order acknowledgement (EDI 855), e invoice (EDI 810), e catalogue (EDI 832) and advance ship notice (EDI 856). The Purchaser prefers to use the Global Healthcare Exchange (GHX) and will work with the Supplier to test and activate this connection. Should the Supplier not currently have any of the above capabilities, the Supplier and the Purchaser agree to develop strategies and timelines for implementation to the mutual acceptance of both parties.

CONSIGNMENT INVENTORY

The Purchaser will issue a Purchase Order to the Supplier for Goods consigned to a hospital, this Purchase Order will not be invoiced by the Supplier. Each product in the consignment must have a Purchaser item number associated with it. Additions or changes to the consignment will require a change to the original Purchase Order and will not be billed until consumption. The consignment must arrive through Receiving, pursuant to these Purchase Order terms and conditions, and the packing slip is kept in Receiving. Replacement items are reordered on a separate Purchase Order as the product(s) are consumed. The sales representative of the Supplier will not remove, add, or borrow product(s) from

consigned inventory without receiving the appropriate approvals from the Purchaser or the applicable hospital department.

FREIGHT CHARGES

Unless expressly agreed to by the Purchaser in writing, the Goods shall be shipped in a manner that does not result in any charge payable by the Purchaser on delivery, and in the event of any such charge, the Supplier shall forthwith reimburse the Purchaser for such charge.

RISK AND TITLE

The Supplier is responsible for moving the goods from origin until the final destination and unloading at the Delivery Point as specified in the Purchase Order. All risks of damage to or loss of the Goods until delivery of the Goods to the Purchaser will be assumed by the Supplier. Thereafter, risk and title to the Goods pass to the Purchaser on delivery of the Goods to the Delivery Point. The Purchaser has no obligation to obtain insurance while Goods are in transit from the Supplier to the Delivery Point.

The Purchaser will ensure that rules of good storage management are applied to accepted deliveries, including any deliveries waiting to be returned to the Supplier. Acceptance of the delivery of the Goods, or any part thereof, will not bind the Purchaser to accept future shipments of the Goods, if any.

SHIPMENTS

All Goods shall be securely and properly packed for shipment by the Supplier according to accepted standard commercial practice, requirements of common carriers and any other requirements set out in the Purchase Order, without extra charge for packing materials or containers. The containers will remain the property of The Ottawa Hospital unless otherwise stated in the Purchase Order. Where materials are shipped in refillable containers which may require a rental charge, this rental charge must be shown separately and not be included in the unit cost of the item in the Purchase Order.

- a) **Packing slips must accompany each shipment and include the PO number.**
Each packing slip shall list all Goods delivered in the shipment, including item number, description, quantity, unit of measure, PO number, lot/serial number, etc.
- b) **Purchase Order numbers must be shown on all shipping documents, packing slips, invoices, and labels, etc.**
- c) Goods must be packaged and transported in accordance with applicable Laws.
- d) The Ottawa Hospital will not be held liable for consequential costs arising from the improper consignment of the Goods.
- e) It is the Supplier's responsibility to declare the full value of the order on their carrier's Bill of Lading.
- f) Any costs, expenses, damages, liabilities, or penalties resulting from non-compliance with these terms or any negligence by the Supplier shall be the sole responsibility of the Supplier.
- g) **Minimum Order:** If the Supplier has a minimum order requirement for any single shipment, the Supplier must communicate such minimum order requirement to the Purchaser in writing.
- h) **Hazardous Goods:** Current Material Safety Data Sheets (MSDS) must be provided for all products covered by Workplace Hazardous Materials Information Systems Regulations (WHMIS).
- i) **Perishable Goods:** All Perishable Goods must be packaged to withstand not less than 72 hours in transit, or such greater amount of time as is necessary based on the Goods. In the transportation and delivery of Perishable Goods, the Supplier shall:
 - i. Ensure the Perishable Goods, packing slip, and carrier manifest are clearly marked as perishable and with an expiry date if applicable;

- ii. use dry ice for the Perishable Goods as applicable;
 - iii. provide the carrier with the necessary instructions for transportation;
 - iv. notify the Purchaser immediately upon the shipment of the Perishable Goods from the Supplier's warehouse of the following information: waybill tracking number and expected date and time of arrival at the destination;
 - v. take all steps necessary to ensure that if the Perishable Goods go through customs that they do so on an expedited basis, including issuing a pre alert to the Purchaser's customs broker and fully completing a Canada Customs Invoice or commercial invoice by using the instructions referred to below for completing the Canada Customs Invoice.
 - vi. The Canada Customs Invoice or commercial invoice must contain the Purchase Order number and non-generic description of the Perishable Goods. A pre alert consists of a copy of the commercial documents with tracking number forwarded via email to the customs broker listed below. The Canada Customs Invoice forms and instructions can be located at https://www.cbsa.asfc.gc.ca/publications/forms/formulaires/menu_eng.html.
 - vii. make three (3) delivery attempts to deliver all Perishable Goods within a period of 24 hours from the time the Perishable Goods are first available for delivery, subject to the carrier's policy; and
 - viii. ensure that the Perishable Goods are accepted by the receiving department responsible for the Perishable Goods and request that the carrier endeavour to ensure that the Perishable Goods are off loaded from the carrier's vehicle and kept separate from nonperishable Goods also being off loaded to prevent co-mingling.
 - ix. In the event that the Perishable Goods arrive at the Purchaser in a spoiled state, as determined in the Purchaser's sole discretion, the Supplier shall, on notice to the Purchaser, make arrangements to have the Perishable Goods returned to the Supplier at no cost to the Purchaser; reissue and replace the Perishable Goods for the Purchaser within a timeframe agreeable to the Purchaser at no additional cost; and reissue the Perishable Goods in accordance with this subsection. When shipping re-issued or replacement Perishable Goods, any Canada Customs documentation, including, if applicable, any Canada Customs Invoice, shall clearly indicate that the Perishable Goods are a no-charge replacement, and its value shall be shown.
- j) **Pallets:** The Supplier shall deliver the Goods to the Purchaser's Delivery Point and site(s) with Pallet specifications: **40" wide X 48" long and 48" in height.**
- i. Four-way entry, solidly constructed from hardwood lumber, and must have a minimum of five boards on the bottom and seven on top.
 - ii. Pallets with protruding nails cannot be used for product shipments, and
 - iii. Pallets must be free of contaminates such as oil and dirt.
- k) **Disposal of Packaging:** The Supplier shall be responsible, at its expense, for the disposal off-site of the crating and packaging of the Goods, as and when requested by the Purchaser. Following the delivery and or installation of Goods or Services, the Supplier shall keep the Delivery Point in a clean and safe condition, and, upon completion of un-packaging or installation, the Supplier shall remove all tools, equipment, surplus materials, packaging and debris and shall leave the Delivery Point in a clean and safe condition satisfactory to the Purchaser.
- Purchaser may perform any required clean-up or disposal at Purchaser's discretion and in such case, the Supplier shall be liable for the Purchaser's actual, reasonable, and substantiated costs, including labour (charged at a rate of \$100 per hour, representing the Purchaser's internal resource cost),

together with any third-party or additional expenses reasonably incurred by the Purchaser. The Purchaser may deduct such amounts from any amounts payable to the Supplier or recover them as a debt due.

SHIPMENTS FROM OUTSIDE CANADA

In respect of any Goods shipped to the Purchaser from outside Canada (“**Imported Goods**”), the Supplier shall fully and satisfactorily complete all commercial customs documents, including but not limited to commercial invoices, Canada Customs Invoices, and bills of lading, as applicable, in accordance with the Canada Border Services Agency (“CBSA”) requirements, and submit the documents required to the Purchaser’s broker (listed below) within the prescribed deadlines.

Where any of the Imported Goods are eligible for duty free entry into Canada according to any applicable trade agreement, the Supplier shall ensure that the Imported Goods are accompanied by all necessary documentation, certificates, or other similar instruments establishing their origin. Where the Imported Goods that are subject to tariffs may be eligible for remissions or other tariffs relief, the Supplier shall provide, on the Purchaser’s request and in a timely manner, such documents and information as are in its possession, as are necessary for the completion of a remission or other relief application, and as may reasonably be shared with the Purchaser and relevant governmental authorities. At any time within four years of the shipment of an Imported Good, if the Supplier finds an **error** in any document or information provided by it to the CBSA in respect of that Imported Good, it shall forthwith inform the Purchaser for further action. If the CBSA initiates an **inquiry**, whether or not in the context of a formal investigation, because of an allegation of incomplete, inaccurate, or missing information on a commercial customs document, or other errors or omissions in respect of required documentation, the Supplier shall, in respect of such error or inquiry, cooperate fully with the Purchaser. The Supplier shall save the Purchaser harmless in respect of any costs associated with the error or inquiry and any corrective measures, including legal costs, reassessed duties or taxes, or penalties. To that end, and in respect of any such CBSA proceeding, the Purchaser will, from time to time, send the Supplier a separate itemized invoice. The Supplier shall pay each invoice no later than 60 days after the date of issuance. In any event, where any such invoice remains outstanding, the Purchaser may, at its discretion, deduct the amounts owed under this provision from any payment owing to the Supplier.

Customs:

The Ottawa Hospital’s customs broker for clearance is:

Thompson Ahern International.

6299 Airport Rd, Suite 506,

Mississauga, ON L4V 1N3

Tel: 905-677-3471 ext no. 5491/5436 Fax: 905-677-3584

a) **Supplier shall Send the following documents for Customs Clearance:**

Packing slip, Commercial Invoice and Carrier Tracking no./waybill via email to: prealerts@taco.ca and pars@taco.ca.

b) All shipments of Goods by the Supplier shall be shipped via courier. No postal shipments will be accepted by the Purchaser.

c) **All documents, including shipping documents, must reference the Purchase Order number.**

- d) The Supplier must include their Federal Tax ID # on all documents.
- e) The Supplier shall follow all instructions of the Purchaser and cooperate with the Purchaser's customs broker as directed (including providing requested shipping documentation) with respect to all Goods that originate from source or suppliers based outside Canada.

RECEIVING

Purchaser does not receive deliveries outside of receiving departments hours of operations, as the flow of goods is coordinated in the Business Day operations staffing patterns of the Purchaser. If the Delivery Point is the Purchaser's receiving dock, then the following applies:

- a) Goods must be delivered at the appropriate receiving dock of The Ottawa Hospital (General, Civic or Riverside Campus) as indicated in the shipping address Delivery Point in the Purchase Order.
- b) **Business hours for receiving are Monday to Friday from 7:00 am to 3:00 pm.**
- c) Where a delivery is scheduled for a day which is not a Business Day, the Supplier must plan to reschedule delivery to the first Business Day thereafter.
- d) The Ottawa Hospital receiving dock is standard industry height. Drivers are required to offload their own trailers.
- e) Drivers must possess a valid license to operate The Ottawa Hospital's electric powered jacks. A non-electric pallet jack can be provided if the driver doesn't possess a valid license.
- f) Supplier's delivery (using a carrier or otherwise) of Goods at a Delivery Point, including the Purchaser's receiving area, without informing Purchaser or receiving a POD signature may result in a dispute for lost Goods.
- g) Supplier (including Supplier's carrier) must supply offloading equipment. Purchaser equipment will not be supplied for use by Supplier, Supplier's carrier, or any other non-Purchaser personnel.
- h) **The Ottawa Hospital's receiving dock contact information:**
General Campus: 613-798-5555 ext.72017
Civic Campus: 613-798-5555 ext.13528
Riverside Campus: 613-798-5555 ext.82298
General E-mail: MaterialMgmtLeaders@toh.ca

INSPECTION, ACCEPTANCE, REJECTION

- a) All shipments of Goods and performance of Services shall be subject to the Purchaser's right of inspection at any reasonable time following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection the Purchaser shall either accept the Goods or Services or reject them.
- b) The Purchaser shall have the right to inspect and test the Goods at any time during manufacture or prior to shipment and to perform a final inspection within a reasonable time after arrival at the Delivery Point.
- c) The Purchaser's personnel and/or authorized representative shall be allowed reasonable access to the Supplier's plant(s), and to those of the Supplier's suppliers, for the purpose of inspection and observation of progress towards completion of an order. Goods shall not be deemed accepted until after a satisfactory final inspection.
- d) For Goods that require installation, configuration, calibration, performance testing and clinical acceptance, Goods shall not be deemed to be accepted until after installation, configuration, calibration, performance testing and clinical acceptance has been completed, all to the Purchaser's satisfaction.

- e) The Purchaser may, at any time after delivery, reject unordered, defective, damaged, or non-conforming Goods. The Supplier shall be responsible for removal or replacement of the said rejected Goods at its own expense. Goods rejected and returned by the Purchaser shall be at the Supplier's risk for damage or loss. The making or failure to make any inspection to, or payment for, or acceptance of the Goods, shall in no way impair the Purchaser's right to reject certain Goods or to avail itself of any other remedies to which the Purchaser may be entitled.
- f) The Purchaser reserves the right to withhold payment for rejected Goods until the Purchaser is satisfied that the Goods have been replaced and meet the Purchaser's requirements, all to the Purchaser's satisfaction.

SUPPLIER REPRESENTATION, WARRANTY AND COVENANT

The Supplier represents, warrants, and covenants that the Goods and/or Services shall conform to the description and applicable specifications, drawings, samples, or other description furnished or specified by the Purchaser, including in the Purchase Order; shall be of good merchantable quality; of good material and workmanship; free from any deficiencies or defects; and fit and sufficient for the purposes intended. Upon the direction of the Purchaser, defective, deficient, unfit, inadequate, insufficient or otherwise unacceptable Goods and /or parts shall be replaced, and defective, deficient, unfit, inadequate, insufficient or otherwise unacceptable performed Services shall be corrected, by the Supplier at its sole expense for the applicable period. The Supplier also represents, warrants and covenants in respect of the Goods and/or Services: they shall be new; they shall be performed in a safe, diligent, competent and professional manner by properly trained and experienced personnel and in accordance with industry standards and best practices and documented requirements; they shall be free and clear of all liens and encumbrances (and the Supplier shall provide at the Purchaser's request any waivers from the Supplier or other person entitled to assert or register any lien or other encumbrance therewith and shall promptly discharge any of any lien or encumbrance registered on any Purchaser property which relates to the provision or performance of the Goods or Services by or on behalf of the Supplier); that the Supplier has absolute title to them and hereby conveys such title; that their use by the Purchaser shall not infringe, or cause another product to infringe any other person's rights, including any intellectual property right or any contractual right of any third party; and that the Supplier shall devote the necessary time and attention to the performance of the Services specified in the Purchase Order with the requisite skill, care and ability and agrees that it is essential that the Goods and Services be delivered within or at the time stated in Purchase Order. The representations, warranties and covenants shall apply notwithstanding any inspection, testing, acceptance of, or payment for the Goods or Services by the Purchaser.

WARRANTIES

Warranties on all Goods and/or Services shall be for the period of time set out in the Purchase Order, and failing a specific term, the period of two (2) years from completed delivery (the "**Warranty Period**"). The foregoing warranty is in addition to any warranty or service guarantee given by the Supplier to the Purchaser or expressed or implied by law.

ELECTRICAL GOODS

All Goods purchased pursuant to this Purchase Order that are determined by the Purchaser to be electrical goods shall be authorized or approved in accordance with the Ontario Electrical Safety Code and the Electrical Safety Authority by the applicable certification organization, accredited with the Standards Council of Canada Act (Canada), and shall bear the applicable certification organization mark which

identifies goods certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the Goods at the Purchaser's facilities.

MEDICAL GOODS

With respect to all Goods purchased pursuant to this Purchase Order that are determined by the Purchaser to be medical goods, the Supplier and the Goods shall have received all applicable licensing under and shall be in compliance with the *Food and Drugs Act (Canada)* and its regulations.

MEDICAL DEVICES

All Goods that are defined as a Device or a Medical Device under *Food and Drugs Act (Canada)*, *Medical Devices Regulations*, shall be licensed with Health Canada, unless it is exempted under the *Food and Drugs Act (Canada)*, *Medical Devices Regulations*. The Supplier shall have a Medical Device Establishment License under the *Food and Drugs Act (Canada)*, *Medical Devices Regulations*, unless it is exempted under the *Food and Drugs Act (Canada)*, *Medical Devices Regulations*.

At the time of purchase, the Supplier shall provide satisfactory evidence as applicable:

- a) That the equipment has an active Health Canada license.
- b) That the Supplier has a valid Medical Device Establishment License with Health Canada; or
- c) That an exemption applies for either a), b) or both.

The Purchaser reserves the right to terminate a Purchase Order for Goods not conforming to medical device regulations and licensing by Health Canada.

LATEX

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

- a) The Goods contain any latex.
- b) The packaging of the Goods contains any latex; and
- c) The Goods indicate on the smallest unit packaging if there is latex in the Goods or if it's latex-free.

The Purchaser reserves the right to request additional information in regard to latex. The Supplier must disclose the latex content of each item on the Purchase Order. If there is a latex free product available, the Supplier must advise the Purchaser of the alternative product for consideration. The Purchaser will reserve the right to include or exclude these latex free products in the Purchase Order.

MEDICAL ALERTS AND SAFETY NOTIFICATIONS

In the event that any alert, recall, safety notification, advisory, or warning is issued or communicated, at any time, by the Supplier or the manufacturer of the Goods or a Canadian recognized reporting agency involving any of the Goods or is posted on a government or authorized website, including but not limited to the Health Canada website, the Supplier shall promptly communicate the alert, recall, safety notification, advisory, or warning to the Purchaser. The communication shall be directed electronically to:

Alert & Recall Coordinator, Biomedical Engineering Department

The Ottawa Hospital – General campus, 501 Smyth Road, Ottawa, ON K1H 8L6

E-mail: Recalls-alerts@ottawahospital.on.ca

GOODS THAT ARE EQUIPMENT

In respect of any Goods which are equipment, the following shall apply:

- a) **Medical Device Licenses:** Throughout the term of the Purchase Order the Supplier must ensure it obtains, maintains, and supplies active medical device licenses and establishment licenses as required by Health Canada. The Supplier is also required to promptly advise the Purchaser of any changes in status relating to the licensing of any medical devices supplied under the Purchase Order. Failure to comply with this provision will result in cancellation of the Purchase Order without cost, expense, liability, damage, penalty or other claim to the Purchaser.
- b) **Installation:** Any equipment on the Purchase Order will be provided on a Supplier furnish basis. The Supplier will have complete responsibility for the equipment until it is installed and operable. Any special installation preparation and requirements must be submitted in advance to the Purchaser.
- c) **Transportation:** All transportation and coordination arrangements in respect of the equipment will be the responsibility of the Supplier.
- d) **Delivery Coordination:** Delivery of equipment will be coordinated so that items will be delivered direct to the installation site or as specified by the Purchaser in writing.
- e) **Testing and Inspection:** All equipment delivered will be inspected and tested by the Purchaser as soon as reasonably possible after delivery and if found unsatisfactory will be returned to the Supplier for full and immediate credit.
- f) **No Restocking:** There will be no restocking charges for any equipment shipped incorrectly by the Supplier and returned to the Supplier. All such returns will be shipped back to the Supplier at no charge to the Purchaser.
- g) **Discrepancies:** It will be the responsibility of the Supplier to either correct any discrepancies or provide a rectification plan for any discrepancies in either the equipment delivered, or the quantity of equipment delivered within two Business Days of notification by the Purchaser. If the Supplier fails to either correct the discrepancies or provide a satisfactory rectification plan within the required period of time, the Purchaser may immediately terminate the Purchase Order.
- h) **Rejection of Equipment:** The Purchaser reserves the right to return the equipment, should it fail more than three (3) times during the Warranty Period, for a full refund or request a new replacement of the same type of equipment to be delivered, with a full warranty (including parts and labour) at no cost to the Purchaser. Failures that result from the Purchaser's negligence or unfamiliarity with the system shall not constitute equipment failure in this regard.
- i) **Service, Clinical and Sterilization Training:** The Supplier will work with the Purchaser to deliver the necessary in-service and educational clinical training to ensure a seamless introduction of the equipment. The Supplier shall provide the following training for at least two (2) individuals specified by the Purchaser:
 - i. Service training which shall include technical training. At the option of the Purchaser, the service training shall take place within ninety (90) days of the delivery of the equipment or after the expiry of the Warranty Period, unless otherwise agreed to.
 - ii. Clinical training on the equipment regarding operation of the equipment; and
 - iii. Sterilization training for the cleaning, disinfecting, and sterilizing of the equipment that is not intended to be single use equipment that is received unsterile, and which requires sterilization prior to use.
- j) **Ongoing Service/Support:** Any and all software, firmware, or hardware changes to the equipment which are corrective in nature and are initiated due to errors or as a result of any Medical Alerts and Safety Notifications actions, shall be delivered and installed at no charge. The Supplier shall notify the Purchaser in writing of any software, firmware, or hardware changes, which solely

enhance existing features, which shall also be provided at no charge within two (2) years of completed delivery.

- k) Any and all necessary service keys will be provided to the Purchaser at no-charge so long as the equipment remains in use by the Purchaser.
- l) The Supplier shall ensure that full-service support and parts must be available for a period of seven (7) years following the last date of production of the equipment and related accessories and provide the Purchaser with a one (1) year written notification of the equipment parts that are no longer being made available.
- m) The Supplier shall provide full access to telephone technical support and online technical support, at no charge, so long as the equipment remains in use by the Purchaser.
- n) The Supplier will submit a detailed service report for any service work performed on the equipment, detailing the problem and the resolution.

STATUS OF SUPPLIER

The Supplier is an independent contractor engaged by the Purchaser to supply the Goods and/or Services to the Purchaser. Nothing in the Agreement is intended to create a partnership, a joint venture or an agency between the Purchaser and the Supplier. The Supplier must not represent itself as an agent or representative of the Purchaser to anyone. Neither the Supplier nor any of its personnel is engaged as an employee of the Purchaser. The Supplier is responsible for all deductions and remittances required by Law in relation to its employees.

AMENDMENT

To be effective, any amendment to the Purchase Order must be done in writing by the Purchaser and the authorized representative of the Supplier.

PRICES, PAYMENTS

Unless otherwise expressly stated in the Purchase Order, all prices specified shall be fixed, and in the currency indicated on the Purchase Order and shall include all applicable Taxes, all charges, and expenses of the Supplier, as well as freight and insurance to destination including packing, boxing, cartage. The time specified for payment of invoices, or for accepting any payment of discounts offered, shall run only from the date that invoices satisfactory to the Purchaser are furnished to the Purchaser, or satisfactory receipt of the Goods and/or Services by the Purchaser, whichever shall be the later. Where a Purchase Order indicates that the Purchaser shall also be responsible for expenses, then the Purchaser shall reimburse the Supplier for reasonable expenses as actually incurred and without any mark-up, provided that such expenses must be pre-approved by the Purchaser, comply with any policies of the Purchaser and the Supplier shall provide copies of receipts.

AFFILIATES

Upon request, prices charged on the Purchase Order may be extended to any current or future Affiliate of The Ottawa Hospital, upon mutual agreement between the Supplier and the Purchaser.

INVOICING INSTRUCTIONS

Invoices must be submitted in the Supplier's name and must only apply to the Purchase Order. The Supplier must submit invoices for each delivery or shipment under this Purchase Order. Each invoice must indicate whether it covers partial or final delivery.

Invoices must show:

- a) The date, the name and address of the Supplier.
- b) The Supplier address for payment remittance or detailed payment instructions.
- c) The name and address of the Purchaser client department, contact person, item or reference numbers, deliverable, and description of the Goods and/or Services.
- d) **Purchase Order or Agreement number (invoices will not be processed without a valid number).**
- e) Details of expenditures (item, quantity, unit of measure, unit price, fixed time rates, and level of effort), in accordance with the pricing of the Agreement, and exclusive of applicable Taxes.
- f) Breakdown of cost claimed with supporting timesheets (including actual time worked x applicable fixed time rate)
- g) If applicable, the method of shipment together with the date and part or reference numbers, shipment charges and any other additional charges.
- h) If HST is found to be applicable and payable by the Purchaser to the Supplier, such HST shall be listed in the invoice as a separate line item and the invoice shall contain the Supplier's HST registration number or other information necessary for the Purchaser to claim any rebate or credit (such as an input tax credit or public service body rebate) with respect to such HST.
- i) Be in Canadian dollars.

By submitting an invoice, the Supplier certifies that the invoice is consistent with the Goods and/or Services supplied and is in accordance with the Agreement and/or Purchase Order.

All invoices for payment must be submitted on official company letterhead or invoice template via E-mail to: tohaccountspayable@toh.ca.

PAYMENT TERMS

The Purchaser's standard payment period is 30 days. The payment period is measured from the date an invoice is in acceptable form to the Purchaser and content is received in accordance with Purchase Order, or the date the Goods and/or Services are delivered and/or commenced in acceptable condition as required in the Purchase Order. If the content of the invoice and its substantiating documentation is not in accordance with the Purchase Order or the Goods and/or Services are not delivered and/or performed in acceptable condition, the Purchaser will notify the Supplier, and the 30-day payment period begins upon receipt of the revised invoice or the replacement of correct Goods and/or Services.

PAYMENT

The Supplier accepts to be paid using one of the following payment instrument(s):

- a) Direct Deposit (Canada and USA)
- b) Electronic Data Interchange (EDI)
- c) Wire Transfer (International Only)

TAXES

- a) **General:** The Purchaser will not be responsible for any Taxes imposed by any non-Canadian Governmental Authority in relation to this Agreement and to the extent such Taxes are found to be exigible, the Supplier will be responsible for the payment of such Taxes, which will be treated by the parties as having been included in the other amounts payable under this Agreement such that the Purchaser will have no further payment responsibilities with respect to such Taxes.

- b) **HST.** All amounts payable under this Agreement are exclusive of any applicable HST, which will be payable in addition to such amounts. It is the sole responsibility of the Supplier to determine whether to charge applicable HST and to determine the correct rate to charge in accordance with applicable legislation and in accordance with the invoice instructions section of the Purchase Order. The Supplier will remit to the appropriate Governmental Authority any amounts of applicable HST paid or due.
- c) **Residency.** The Supplier is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) or *Excise Tax Act* (Canada).

CONFIDENTIALITY

All information which the Supplier receives or acquires from the Purchaser either in writing, orally or through observation of the Purchaser's operation, or in course of the Supplier fulfilling its obligations hereunder, shall be held by the Supplier in confidence at all times and the Supplier shall not use the information unless required by this Purchase Order and shall return or destroy the information when no longer required by this Purchase Order, or upon request by the Purchaser. Accordingly, the Supplier shall ensure that all recipients of the said information, including the Supplier's own employees, subcontractors, agents, representatives, licensors, officers, and directors comply with the obligations under this section. The foregoing obligations of confidentiality and non-disclosure do not apply to information (except personal information or personal health information) that:

- a) is or becomes publicly available other than through breach of these terms and conditions;
- b) is subsequently lawfully obtained by the Supplier from a lawful third party without breach of this Purchase Order by the Supplier or its employees, subcontractors, agents, representatives, licensors, officers or directors;
- c) was known to the Supplier prior to disclosure to the Supplier by the Purchaser as shown by documentation sufficient to establish such knowledge; or
- d) is required by applicable Law to be disclosed, provided that the Supplier provides prompt notice to the Purchaser of such requirement to disclose.

PROTECTION & NON-DISCLOSURE OF PERSONAL HEALTH INFORMATION (PHI)

The Supplier agrees to receive PHI from the Purchaser in accordance with the requirements of s. 17, or in the case of health information network providers, s. 10(4), of the *Personal Health Information Protection Act, 2004* (Ontario) ("PHIPA") and its related regulations as part of the Supplier's provision of the Services to and on behalf of the Purchaser, and not on the Supplier's behalf or for the Supplier's own purposes. The Supplier will only use, directly or indirectly, PHI with the Purchaser's prior written consent and will only use as much PHI as is reasonably necessary to perform its obligations under Purchase Order. The Supplier will not disclose PHI, or any information, to any affiliated or unaffiliated third party without the prior written consent of the Purchaser. The Supplier will employ appropriate safeguards to prevent theft, loss, and unauthorized access, copying, modification, use, disclosure, or disposal of PHI, including ensuring access to such PHI is restricted to employees and representatives of the Supplier who have been specifically authorized to have such access. In the event of any unauthorized access (including inadvertent) the Supplier shall immediately notify the Purchaser and seek direction for the return/destruction of any such PHI. Without limiting the generality of the foregoing, no PHI shall be removed or transferred from the Purchaser's premises without prior written authorization. The Supplier shall ensure that its employees and representatives comply with the Supplier's obligations under this section. The Supplier will maintain privacy policies in accordance with applicable Laws and these policies will be made available for inspection on request.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FIPPA)

The Supplier and the Purchaser acknowledge and agree that the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA") applies to and governs certain information covered by FIPPA. The Purchaser will maintain the confidentiality of this information in accordance with the provisions of FIPPA. However, the Supplier acknowledges and agrees that FIPPA may also require the disclosure of such information to third parties.

PUBLICITY

The Supplier shall not, in any of its advertising or otherwise, indicate that it has supplied or may in the future supply Goods to the Purchaser or use the Purchaser's name for the purpose of advertising or solicitation of business without the prior written consent of the Purchaser.

NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the Purchase Order terms and conditions, or to exercise any rights or remedies provided in this Purchase Order or by Law, or to properly notify the Supplier in the event of breach, or the acceptance of or payment for any Goods or approval of design, shall not constitute a waiver by the Purchaser of any of its rights under this Purchase Order nor release the Supplier of any warranties or obligations of this Purchase Order.

INTELLECTUAL PROPERTY

Ownership of any material supplied by the Purchaser, or any material or work product being produced by the Supplier upon the request of the Purchaser or as is contemplated in this Purchase Order, including all associated intellectual property rights therein shall rest with the Purchaser at all times. To the extent the Supplier acquires any such rights, the Supplier assigns and shall assign to the Purchaser; and shall take any future steps reasonably required to effect such assignment from the Supplier, its employees, agents, and subcontractors.

Where a Good and/or Service includes provision to the Purchaser of pre-existing Supplier materials, the Supplier hereby grants to the Purchaser a perpetual, irrevocable (subject to payment of applicable license fees), non-exclusive license to use such pre-existing Supplier materials for its normal and intended purposes subject to any use limitations specified in the Purchase Order. For further certainty, any third party proprietary information to which the Supplier is provided access by the Purchaser, or as contained in any Purchaser-provided materials, may not be used by the Supplier except as required to supply the Goods or Services, the Supplier shall supply the Purchaser with any software in both object code and documented source code form, and any license to pre-existing components embedded in such deliverable shall include the right to modify such software.

Where Goods constitute pre-existing software:

- a) the Supplier shall retain copyright and all other intellectual rights in its pre-existing software, with the Purchaser only receiving a license as provided for herein;
- b) ownership of any patches, updates or enhancements created by the Supplier as part of its normal development and not based on specific Purchaser provided requirements, and any bug fixes and maintenance updates developed to correct defects or errors in the software, shall be licensed to the Purchaser as part of the software license set out in this provision and ownership of such bug fixes and maintenance updates shall not be transferred to the Purchaser;

- c) the Purchaser shall not reverse engineer, disassemble or modify any such pre-existing software that is provided in object code form only. Each party agrees to comply with applicable export control Laws, including Canadian export control requirements that apply to U.S. origin goods and technology.

INSURANCE

The Supplier shall maintain insurance covering public liability, bodily injury and property damage, product and completed operations liability and contractual liability in amounts satisfactory to and with a company approved by the Purchaser. Such policy shall contain a cross-liability clause; an endorsement adding the Purchaser as an additional insured; and an endorsement stating that the policies shall not be cancelled, allowed to expire or materially changed without thirty (30) days prior written notice to the Purchaser. Upon request, the Supplier shall provide a certificate of liability insurance setting out the insurance coverage referred to in this section.

INDEMNIFICATION

The Supplier shall be responsible for and shall defend, save harmless and indemnify the Purchaser and its employees, subcontractors, agents, representatives, officers and directors from and against all losses, costs, damages, suites, claims and demands of every nature whatsoever arising out of or by reason of the Goods delivered or Services performed pursuant to this Purchase Order, performance or purported performance of the Purchase Order terms and conditions by the Supplier or the Supplier's employees, subcontractors, agents, representatives, officers and directors, including without limitation those made or sustained in respect of property damage, personal injury (including death) and infringement by the Services performed and/or the Goods supplied, or receipt, possession or use by the Purchaser for their intended purpose, of any third party intellectual property right, including but not limited to copyrights, trademarks, patents and trade secrets. In the event of infringement, the Supplier shall also promptly modify the Goods or Services such that they are no longer infringing but without adversely affecting their functionality, performance or compatibility or shall obtain a license for the Purchaser to support the permitted use.

ASSIGNMENT

The Supplier must not assign, subcontract or otherwise transfer the Purchase Order, in whole or in part, by operation of law or otherwise without first obtaining the written consent of the Purchaser. Any assignment made without that consent is void and will have no effect. The assignment will be effective upon execution of an assignment agreement signed by the Purchaser, the Supplier and the assignee. Assignment of the Purchase Order does not relieve the Supplier from any obligation under the Purchase Order, and it does not impose liability upon the Purchaser.

COMPLIANCE WITH APPLICABLE LAWS

The Supplier must comply with all Laws applicable to the Purchase Order, including without limitation all Laws applicable to the manufacture, sale, packaging, storage, labeling and delivery of the Goods and to the performance of the Services. The Supplier must provide evidence of compliance with such Laws to the Purchaser at such times as the Purchaser may reasonably request. The Supplier must obtain and maintain its own cost of all permits, licenses, regulatory approvals, and certificates required to supply the Goods and/or Services. If requested by the Purchaser, the Supplier must provide a copy of any required permit, license, regulatory approvals, or certificate. The Supplier shall indemnify the Purchaser for any liability imposed on the Purchaser resulting from any non-compliance by the Supplier.

GOVERNING LAW

This Purchase Order shall be construed under and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, except that the United Nations Conventions on Contracts for the International Sale of Goods shall not apply.

SURVIVAL

In addition to the length of survival of any provision which may be explicitly stated in the Purchase Order, all of the indemnifications and confidentiality obligations, made by the Supplier and set out in this Purchase Order, shall survive the expiry or termination of this Purchase Order, as shall all other provisions of this Purchase Order which, by their nature, might reasonably be expected to survive.

COMPLIANCE WITH ACCESSIBILITY STANDARDS

- a) The Supplier agrees that it shall comply with all Laws in respect of accessibility when carrying out the Purchase Order. Without in anyway limiting the scope of the foregoing sentence, the Supplier agrees that the Goods and/or Services provided hereunder shall comply with the applicable accessibility standards under the *Accessibility for Ontarians with Disability Act, 2005* (the "AODA") and its regulations. If requested by the Purchaser, acting reasonably, the Supplier shall provide evidence of the policies, procedures and training practices that it has implemented to comply with the foregoing.
- b) The Supplier shall comply, and shall ensure that its personnel read and comply, with all Purchaser policies in respect of the AODA and its regulations, as may be applicable to the Goods and/or Services.

VENDOR CODE OF BUSINESS CONDUCT

All policies and procedures of the Purchaser, including policies the Purchaser may introduce and implement from time to time, regarding conduct in connection with the business and affairs, as issued and amended from time to time during the term of the Purchase Order, shall, insofar as the same be required by the Purchaser, be applicable to the Supplier and persons for which it is responsible.

The Ottawa Hospital has introduced a COVID-19 Immunization Policy that is aligned with regional, provincial, and federal recommendations regarding infection prevention and screening, the policy requires all contractors working on-site at The Ottawa Hospital to be fully vaccinated, (apart from approved medical exemptions) and be compliant with The Ottawa Hospital's COVID-19 Immunization Policy.

Policies can be found at the following link: <https://www.ottawahospital.on.ca/en/about-us/business-ottawa-hospital/>.

RIGHT TO AUDIT

The Purchaser or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Purchase Order, have access to and the right to examine any and all books, documents, papers and records of the Supplier which are directly pertinent to the Services to be performed under this Purchase Order by the Supplier, including any supporting documentation with respect to invoiced charges. The Purchaser shall give the Supplier reasonable advance notice of intended audits. The Supplier further agrees that the Purchaser's right to audit shall apply to any and all

subcontractor agreements in which the Supplier has a contractual relationship for the Services to be performed under the Purchase Order.

MOST FAVOURED CUSTOMER

The Supplier shall ensure that the Purchaser receives pricing for any Goods and/or Services provided under the Purchase Order at least as favorable as pricing offered by the Supplier to its most favored comparable customer for like quantities/performance of the same or substantially similar Goods and/or Services.

FORCE MAJEURE

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement due solely to an event beyond reasonable control such as acts of God, war, fires, floods, strikes, etc., but shall not include shortages or delays relating to Goods or Services. An event shall not be considered beyond one's reasonable control if a reasonable businessperson applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event.