

Purchase Order Terms and Conditions

1.0 INTRODUCTION:

Healthcare Materials Management Services (hereafter referred to as HMMS) with offices located at 188 Stronach Crescent, London, Ontario is a joint venture between the London Health Sciences Centre (LHSC) and St. Joseph's Health Care, London (St. Joseph's), created to integrate and consolidate the functions of Purchasing, Contract Management, Accounts Payable and Inventory Management. HMMS also provides services to other organizations (Affiliates) including other joint ventures of LHSC & St. Joseph's. HMMS has the authority to negotiate and sign contracts on behalf of LHSC, St. Joseph's.

2.0 TERMS AND CONDITIONS:

Unless otherwise provided in the Purchase Order or by separate agreement the following Terms and Conditions apply to the purchase of all equipment, goods and services, including the repair or evaluation of medical or non-medical equipment or devices, for which a Purchase Order is issued by HMMS.

3.0 AFFILIATES:

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

4.0 INVOICES:

Unless otherwise instructed, all invoices for payment shall be directed to:
Healthcare Materials Management Services
188 Stronach Crescent
London, Ontario, N5V 3A1

5.0 PAYMENT TERMS:

Payment terms are 2% Net 15 Days, or net 60 days unless otherwise negotiated.

6.0 ELECTRONIC COMMERCE:

The Supplier agrees to work with HMMS to provide full E-Commerce functionality and connectivity with HMMS to process all business transactions, which will include, but not be limited to: purchase order (850), order acknowledgement (855), e invoice (810), e catalogue (832) and advance ship notice (856). HMMS 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 HMMS agree to develop strategies and timelines for implementation to the mutual acceptance of both parties.

7.0 DELIVERY:

In the event of failure by the Supplier to deliver the goods and/or services in accordance with the specified delivery date(s) listed on the Purchase Order, HMMS may cancel the Purchase Order without penalty.

8.0 FREIGHT CHARGES:

All orders will be shipped prepaid (without charge to HMMS), F.O.B. HMMS/Hospital site as specified in the Purchase Order or as otherwise negotiated.

9.0 SHIPMENTS:

- 9.1. All items shall be securely and properly packed for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers. The containers will remain the property of HMMS unless otherwise stated. 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.
- 9.2. Current Material Safety Data Sheets (MSDS) must be provided for all products covered by Workplace Hazardous Materials Information Systems Regulations (WHMIS).
- 9.3. Packing slips, must accompany each shipment.
- 9.4. Purchase Order numbers must be shown on all shipping documents, packing slips, invoices and labels, etc.
- 9.5. Goods must be packaged and transported in accordance with the laws of the Province of Ontario and Canada.
- 9.6. All perishable goods must be packaged to withstand 72 hours in transit.
- 9.7. HMMS will not be held liable for consequential costs arising from the improper consignment of goods.
- 9.8. It is the Supplier's responsibility to declare the full value of the order on their carrier's Bill of Lading.

10.0 SHIPMENTS FROM OUTSIDE CANADA:

- 10.1. HMMS Customs Broker is:
Livingston International Inc.
212 Metcalfe Street, East
Strathroy, ON N7G 1P8
Phone: 1-888-338-1270
Fax: 1-519-246-9801
Email (Team 74): CST49974@livingstonintl.com
Website: www.livingstonintl.com
- 10.2. Must be shipped via courier. No postal shipments will be accepted.
- 10.3. All documents must reference the Purchase Order number, and needs to contain the Harmonization Code (HS Code) for each item on the order.
- 10.4. Commercial documents must accompany all shipments to Canada, to include a fully completed Canada customs invoice or commercial invoice. Mandatory fields include country of origin, currency of sale, price paid or payable, complete description of the goods purchased, consignee, and exporter. For goods of U.S. origin a full completed NAFTA certificate must accompany the shipment, or if a blanket certificate is available, this must be provided (to be held on file). Duty being applied to those goods that would otherwise be duty free under NAFTA may be charged back to the Supplier if the required NAFTA documentation is not provided.
- 10.5. Shipping terms must be indicated on all documents.
- 10.6. Supplier must include their Federal Tax ID # on all documents.
- 10.7. On all documentation for repairs, indicate if the item(s) are under warranty and the value of the repairs.
- 10.8. In the event that an incorrect description or incomplete or inaccurate description result in an AMP (Administrative Monetary Penalty) being applied by Canada customs, the amount of this penalty may be charged back to the Supplier.

11.0 TERMS RELATED TO PURCHASED PRODUCTS OR EQUIPMENT:

- 11.1. 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 HMMS. All transportation and coordination arrangements will be the responsibility of the Supplier. Delivery of

equipment will be coordinated so that items will be delivered direct to the installation site or as specified by HMMS.

- 11.2. All equipment and products delivered will be inspected and tested by the receiving hospital, Affiliate or HMMS as soon as possible after delivery and if found unsatisfactory will be returned to the Supplier for full and immediate credit.
- 11.3. There will be no restocking charges for any goods shipped incorrectly by the Supplier and returned to the Supplier. All such returns will be shipped back to the Supplier at no charge to HMMS, LHSC, St. Joseph's or the Affiliates. It will be the responsibility of the Supplier to correct any discrepancies in either the goods delivered or the quantity of goods delivered within two business days of notification.
- 11.4. All medical and surgical supplies must be HPB/FDA approved for hospital use. Throughout the term of the Purchase Order the Supplier must ensure it obtains, maintains and supplies as requested, appropriate license numbers and licenses required by the Therapeutic Products Directorate under Health Canada. The Supplier is also required to advise HMMS 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 penalty.
- 11.5. As required by the Ontario Electrical Safety Code all electrical equipment must be marked as certified or approved for its intended use in Ontario or Canada by a certifying organization accredited under the Standards Council of Canada Act. Suppliers will be responsible for obtaining the necessary approvals before delivery of the equipment unless written authorization is given by HMMS. Suppliers will also be responsible for any costs incurred in obtaining said approvals.
- 11.6. The Supplier will work with the hospital or Affiliate end user department to deliver the necessary in-service and educational training to ensure a seamless introduction of products and equipment.
- 11.7. 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 HMMS of the alternative product for consideration. HMMS will reserve the right to include or exclude these latex free products in the Purchase Order.
- 11.8. In the event that the Supplier cannot provide supplies due to a backorder or other unusual situation beyond the control of the Supplier, HMMS agrees to contact the Supplier to develop a mutually acceptable course of action in order to replace the backordered or unavailable product with another acceptable product at the same cost.

12.0 CONSIGNMENT INVENTORY:

- 12.1. HMMS will issue a Purchase Order to the Supplier for product(s) consigned to a hospital. Each item in the consignment must have an HMMS item number associated with it. A change to the original Purchase Order must be made whenever there are deletions or additions to the consigned inventory. This initial Purchase Order will not be invoiced by the Supplier.
- 12.2. The consignment must arrive through Receiving and the packing slip is kept in Receiving.
- 12.3. Replacement items are reordered on a separate Purchase Order as the product(s) are used.
- 12.4. The sales representative of the Supplier will not remove, add, or borrow product(s) from consigned inventory without receiving the appropriate documentation from HMMS or the applicable hospital department.

13.0 TERMS RELATED TO PURCHASED SERVICES:

- 13.1. 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.
- 13.2. The legal relationship between HMMS and the Supplier or the Supplier and any Affiliate, as the case may be, shall be that of an independent contractor and purchaser of services. Nothing in the Purchase Order shall be construed so as to render the relationship between HMMS and the Supplier or the Supplier and any Affiliate to be that of an employer and employee, principal and agent, partnership or joint venture. As an independent contractor, the Supplier acknowledges that the Supplier is responsible for and shall remit to the appropriate government agencies any tax or

any other amounts as required by provincial or federal legislation. For greater certainty, any fee paid to the Supplier hereunder shall be made without withholdings for Income Tax, Canada Pension, Employer Health Tax and other like deductions but excluding the Harmonized Sales Tax. Any taxes or any such withholdings levied now or hereafter by any government authority shall be on the sole account of the Supplier.

- 13.3. Unless authorized in writing by HMMS, LSHC, St. Joseph's or any Affiliate, as the case may be, the Supplier shall not have the right or authority to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of HMMS, LSHC, St. Joseph's or any Affiliate or to bind HMMS, LSHC, St. Joseph's or any Affiliate in any manner whatsoever.
- 13.4. The Supplier shall be solely responsible for all expenses incurred by the Supplier in connection with the services to be provided except those expenses provided for in the Purchase Order.

14.0 SITE RULES FOR CONTRACTORS:

- 14.1. Contractors and sub trades are required to comply with all applicable Federal, Provincial and Municipal Acts and Regulations including, but not limited to; Occupational Health & Safety Act, Workplace Safety and Insurance Act and the Environmental Protection Act.
- 14.2. In addition, contractors are expected to be familiar with LHSC, St. Joseph's and HMMS Affiliates policies and procedures for Project safety, Facility Infrastructure and Accountability, Waste Management, Emergency Codes, Infection Control and any other related work requirements that may be given.
- 14.3. Contractors shall be given a copy of the Site Rules for Contractors, at the preliminary site meeting by the Project Lead, and/or before commencing work. Contractors shall instruct their employees and subs trades on applicable site rules and post a copy at the site office (if applicable) before any work commences.
- 14.4. Non-compliance with site rules or other mandated policy, procedure, act or regulation is subject to actions, as may be provided for in the contract documents or Purchase Order, that could lead to stop work orders or other means necessary to correct the deficiency, and as may be determined by the Project Lead.
- 14.5. The electronic version of these rules can be found on the HMMS Website at www.hmms.on.ca under Supplier Information, Site Rules for Contractors.

15.0 DISPUTE RESOLUTION:

- 15.1. The provisions of this section shall apply:
 - whenever any issue arises with respect to the interpretation of these Terms and Conditions or the Purchase Order that is not resolved in a manner or time frame acceptable to either party; or
 - whenever a party breaches or is alleged to have breached its obligations pursuant to these Terms and Conditions or the Purchase Order; or
 - whenever a matter which is the subject matter of these Terms and Conditions or the Purchase Order arises and the parties are unable to agree as to its resolution;
 - such situation being hereinafter referred to as the "Dispute".
- 15.2. If a dispute arises out of, or in connection with this Purchase Order, the parties agree to meet to pursue resolution through negotiation or other appropriate dispute resolution process before resorting to non-binding mediation.
- 15.3. All information exchanged during this meeting or any subsequent dispute resolution process, shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the dispute resolution process.

15.4. It is agreed that both parties, having exhausted all reasonable remedies of dispute resolution, reserve the right to terminate this Purchase Order upon sixty (60) days written notice without penalty.

16.0 CANCELLATION OF PURCHASE ORDER:

HMMS reserves the right to cancel a Purchase Order upon sixty (60) days written notice without penalty. Reasons for cancellation can include, but are not limited to, Supplier performance, product performance, product quality, product discontinuation, products affected by changes in clinical practices and non-compliance to the Standard Terms and Conditions of the Purchase Order.

17.0 CONFIDENTIALITY AND PRIVACY

Confidential Information – “Confidential Information” means information or data in any format relating to the business and affairs of HMMS, an Affiliate, or of their respective employees, officers, directors, and customers, and includes confidential business information, personal health information (PHI) and personal information (PI) as those terms are defined in both Ontario and Canadian privacy or information protection laws.

17.1. The Terms and Conditions of this Agreement are confidential to HMMS and the Supplier, and are not to be disseminated, distributed, or otherwise conveyed to third persons, other than those officials and employees of either party whose duties require knowledge thereof, without the expressed written consent of both parties, except in the pursuit of legal redress in the courts of law or in pursuit of the direction of any competent legal authority. The Supplier shall not issue any public announcement or news release pertaining to this Agreement, without prior written approval from HMMS. If a Supplier makes a public statement in breach of this requirement HMMS shall, in addition to any other remedy it may have, be entitled to take all reasonable steps as may be necessary, including disclosing any information about the Supplier's Proposal or Quote, to provide accurate information and/or to rectify any false impression which may have been created.

17.2. Where applicable, the Supplier may, by means of their business relationship with HMMS, have access to confidential information about staff and/or patients and/or business of HMMS.

17.3. On signing this Agreement, the Supplier confirms that it is compliant with requirements of both Ontario and Canadian Privacy Laws, in that it will use confidential information strictly for the purposes agreed upon by HMMS, and the Supplier. The Supplier confirms that it has a program for education of its staff on privacy, confidentiality and security of information, ensures that employees are aware of their privacy and confidentiality obligations. The Supplier confirms that employees who resign or are terminated must return all confidential information belonging to HMMS, are reminded of their continued responsibility to maintain the information's confidentiality, and cannot access applications, hardware, software, networks and facilities belonging to HMMS or the Supplier.

17.4. On signing this agreement the Supplier confirms that any confidential information regardless of format, obtained by the Supplier or any agent or employee of the Supplier will be kept confidential and secure. The Supplier must use effective administrative, technological and physical safeguards to protect confidential information against such risks as unauthorized access, use, disclosure, copying, modification, disposal, loss or theft. Security measures must include, but are not limited to, antivirus/anti-malware protection software, backup security, encryption software and the development, documentation and maintenance of acceptable data destruction and business recovery plans.

17.5. The Supplier agrees that HMMS and its affiliates retain custody and control of all confidential business information, personal health information and personal information and cannot be denied access to the information requested by HMMS due to late or disputed payment for services.

- 17.6. In consultation with area leadership, Biomedical Engineering and IT Security the Supplier will work with the hospital to ensure any patient-identifying information is removed from medical equipment/device(s), which was brought into the organization for evaluation, or any equipment sent off-site for repair, prior to this equipment/device leaving the hospital premises.
- 17.7. The Supplier will keep current a privacy policy, which assigns a person responsible for privacy compliance, outlines a process for dealing with privacy complaints, and defines a breach management process. Upon request, the Supplier will share its privacy policy with HMMS and/or notify HMMS of any changes made to your privacy policy during the term of any contract. This Agreement confirms that HMMS is authorized to audit the privacy policies and practices and security measures of the Supplier at the discretion of HMMS, and on reasonable notice, HMMS or its representative will be allowed access to inspect your premises, security practices, books and records to ensure compliance with this Agreement.
- 17.8. The Supplier agrees to notify HMMS within one (1) business day and in writing if it becomes aware of a privacy, confidentiality or security breach relating to HMMS confidential information. In that event, the Supplier will consult with HMMS in identifying the root cause of the breach and the affected information, assessing the consequences of the breach, undertaking and implementing possible mitigation measures for the breach such as assistance in recovering lost or disclosed information, and determining appropriate measures to prevent the recurrence of such a breach. Supplier will immediately revoke any users' access if security is breached and/or on HMMS' request. Supplier will comply with any stipulated sanctions for breaching the contract, including ending the contract.
- 17.9. In the event of a breach, HMMS reserves the right to:
- 17.9.1. Hold vendor responsible for any and all costs incurred by HMMS due to the supplier's failure to sufficiently protect HMMS' personal and personal health information.
- 17.9.2. Terminate the contract, order, or agreement, without penalty, for any privacy breach or serious breach
- 17.9.3. Take legal action against Suppliers for violating privacy and confidentiality provisions of the contract and an acknowledgement that HMMS has been irreparably harmed.
- 17.10. When storing or sharing confidential business information, personal or personal health information in electronic format, HMMS requires its Suppliers to provide, upon request:
- 17.10.1. An electronic record of all accesses of information including time and source of access, and
- 17.10.2. A written assessment of how the service the supplier offers may threaten, make vulnerable or risk the security and integrity of the information (Threat Risk Assessment), and how they impact privacy (Privacy Impact Assessment).
- 17.11. On expiry or termination of this Agreement, or upon request of HMMS, the Supplier will cease any and all use of the confidential information and will return it to HMMS, at no cost, including any copies, or will destroy it in a manner designated by HMMS, with proof of destruction.
- 17.12. The Supplier agrees to notify HMMS 30 days prior to and in writing if it will be moving, hosting/storing or backing up data or confidential information relating to HMMS at a facility not identified in this agreement.

18.0 INDEMNIFICATION:

The Supplier shall indemnify and hold harmless HMMS, LHSC, St. Joseph's, and Affiliates, and their respective directors, officers, employees, volunteers and agents from and against all liabilities, claims, demands, damages, losses, costs, expenses, (including reasonable legal fees) and injury, sickness or death to persons or damage or destruction to property (hereinafter called Claims) occasioned wholly or in part,

18.1. by the negligent acts, errors and omissions by the Supplier, its officers, directors, employees, agents or others for whom it is responsible in law, or attributable to the use of the Supplier's equipment, products and/or services by HMMS, LHSC, St. Joseph's and Affiliates.

18.2. as a result of anything done or permitted to be done by the Supplier, its directors, officers, employees, agents or others for which they are responsible by law in connection with the Purchase Order.

19.0 INSURANCE AND LIABILITY:

- 19.1. Upon issuance of the Purchase Order, the Supplier shall provide proof of its current Commercial General Liability Insurance Policy and agrees to maintain coverage through the term of the Purchase Order. The Supplier shall carry insurance for not less than \$5,000,000 (inclusive coverage) for bodily injury including death, personal injury, and/or property damage. The policy shall be endorsed to include HMMS, LHSC, St. Joseph's, and Affiliates as additional insureds subject to a cross liability clause, and (30) days notice of cancellation or material change.
- 19.2. Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$2,000,000 (inclusive per occurrence) for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the Supplier/Contractor and endorsed to provide HMMS with not less than (15) days notice in writing in advance of any cancellation, change or amendment restricting the coverage.
- 19.3. The Supplier agrees to provide proof of liability insurance by providing a current valid certificate of insurance to HMMS on an HMMS Certificate of Insurance Form during the term of the Purchase Order. The electronic version of this form can be found on the HMMS Website at www.hmms.on.ca under Supplier Information, Certificate of Insurance
- 19.4. The Supplier must advise HMMS immediately of any change in insurance provider or limits of liability. Failure to comply with the insurance requirements will result in the cancellation of the Purchase Order.

20.0 PRICING:

- 20.1. The Supplier agrees that HMMS will receive the best available pricing based on accounts of similar size and volumes. Failure on the part of the Supplier to address this issue may be considered just cause for cancellation of the Purchase Order.
- 20.2. Unless otherwise stipulated in a separate HMMS Agreement or amendment to the Purchase Order, the Supplier agrees to provide HMMS with a minimum sixty (60) days advance written notice of any price increases. HMMS reserves the right to negotiate these price increases to the mutual acceptance of both parties.

21.0 GOVERNING LAW

The Purchase Order and these Terms and Conditions shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein.

22.0 COMPLIANCE WITH LAWS AND REGULATIONS:

- 22.1. All purchases are subject to the laws of the Province of Ontario and the laws of Canada applicable therein.
- 22.2. All equipment, goods and services provided by the Supplier to HMMS must comply with and meet all regulatory approvals and be licensed for sale in Canada.
- 22.3. The Supplier must provide all permits, licenses, consents and authorizations necessary to perform its obligations. Failure to do so may result in the cancellation of the Purchase Order.

23.0 NEWS RELEASE:

The Supplier shall not issue any publicity or news release pertaining to the Purchase Order without prior written approval from HMMS.

24.0 ASSIGNMENT/TRANSFER OF PURCHASE ORDER:

The Supplier may not assign nor transfer this Purchase Order in whole or in part,, to any other Supplier, without the prior written approval of HMMS.

25.0 AUDIT:

Authorized HMMS employees and their agents have the right to review the records and accounts maintained by the Supplier pertaining to Service levels; the pricing of products and services related to any established pricing formulas; the pricing of products and services related to agreed benchmarks and/or most favoured customer pricing arrangements; and the source documents supporting invoices to HMMS.

26.0 ENTIRE AGREEMENT

The Purchase Order and these Terms and Conditions constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings whether oral, written, express or implied.

27.0 AMENDMENT:

These Terms and Conditions may not be varied, amended or supplemented except as provided in the Purchase Order or by a separate agreement in writing signed by each of the parties.

28.0 TAXES:

Harmonized Sales Tax (HST) Number for HMMS is R119183671.