

1. General

These terms and conditions ("Terms") apply to a purchase by Interior Health ("IH"), from a vendor, supplier, consultant, contractor or service provider ("Vendor") for the supply of specified products and/or performance of specified services (herein referred to as "Products" or "Services", and collectively as "Deliverables"), if these Terms are attached to or incorporated by reference into a purchase order issued by IH ("Purchase Order") or other contractual document.

2. Acceptance of terms

Except as may otherwise be agreed to in writing by the parties, if Vendor proceeds to provide the Deliverables to IH, such conduct will be deemed to be Vendor's acceptance of the Purchase Order, including these Terms. Additional provisions regarding offer and acceptance in relation to this Purchase Order may be described on the face of this Purchase Order, and/or in other contractual documents.

3. Time

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

4. Shipping instructions

Products must be shipped complete and include all manuals, operating and maintenance instructions (if applicable) in English, unless otherwise authorized in writing by IH. If Products include equipment, then unless otherwise authorized in writing by IH, a minimum of two (2) complete and unabridged sets of operator manuals, service manuals, electrical schematics and troubleshooting documentation must accompany each piece of equipment at the time of delivery; invoices will not be paid until all such manuals and documentation are received. A packing slip detailing the following information must accompany all shipments of Products: (a) the Vendor's full legal name and address; (b) the Purchase Order number; and (c) a description of the Products and quantity shipped.

5. Loss or damage in transit

Unless otherwise agreed in writing by the parties, title and risk of loss or damage to any of the Products will remain with the Vendor until the Products are delivered to IH at the specified delivery location, at which time title, risk of loss or damage will pass to IH.

6. Intellectual property rights

IH exclusively owns all intellectual property rights, including copyright, in any reports, plans, drawings, records, software or other material, whether complete or not, that the Vendor (or its subcontractors) authors, develops or otherwise creates in the course of performing the Services ("Foreground IPR"). Upon IH's request, the Vendor will deliver to IH documents satisfactory to IH that irrevocably waive in IH's favour any moral rights which the Vendor, its subcontractors or their respective employees may have in the Foreground IPR and that confirm IH's ownership of the Foreground IPR.

The Vendor (and/or its licensors) exclusively owns all intellectual property rights, including copyright, in any material, whether complete or not, that the Vendor (and/or its licensors) authors, develops or otherwise creates other than in the course of performing the Services, including pre-existing material ("Background IPR"). To the extent that any Background IPR protects all or part of the materials to be delivered to IH hereunder, the Vendor hereby grants to IH: (i) a non-exclusive, perpetual, irrevocable, royalty-free license to the Background IPR as necessary to allow IH to fully benefit from such materials for noncommercial purposes, including the right to use, reproduce, translate, modify, publish and distribute such materials; and (ii) the right to sublicense or assign to third-parties any or all of the licenses granted to IH under this section.

7. Warranty

7.1 The Vendor confirms it is aware of the intended use of the Products and warrants and guarantees that the Products supplied, at the time of delivery will: (a) be fit for their intended use in a health care environment; (b) be free from defects and/or imperfections; (c) be free and clear of all charges, liens, claims or encumbrances; and (d) not infringe any intellectual property rights.

7.2 The Vendor and the Deliverables, at the time of delivery or performance, will: (a) comply with all requirements agreed upon by the parties; and (b) comply with all applicable laws, codes, statutes, by-laws, rules and regulations of any federal, provincial, municipal or other competent authority.

7.3 As a condition of acceptance by IH, all Products will be subject to inspection by IH: (a) at the place specified for delivery; or (b) as may be specified in writing by IH, at the Vendor's or other premises, and, if rejected by IH in its sole discretion because the Products do not comply with the specified quality the Products will, as directed by IH, be removed and/or replaced at the Vendor's expense.

7.4 Acceptance of the Deliverables by IH, including verification at any time of the quality of the Deliverables or any payment for the Deliverables, will not be interpreted to mean that IH has in any way accepted Deliverables that do not comply with the specified quality or other requirements or that the Vendor is in any way relieved from its obligation to comply with such specified quality or other requirements.

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

8. Invoicing and payment

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

8.2 IH will pay invoices within 30 days of receipt, except if IH reasonably disputes any invoice, IH will notify the Vendor in writing within 30 days of the date of receipt of the invoice, and the dispute will be resolved in accordance with section 15 of the Terms. If the Vendor is not a resident in Canada, the Vendor acknowledges that IH may be required by law to withhold income tax from the purchase price otherwise payable to the Vendor, and then to remit that tax to the Receiver General of Canada on the Vendor's behalf.

9. Licenses and permits

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

10. Records

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

11. Cancellation

11.1 IH may at any time by written notice to the Vendor cancel the purchase of Deliverables that, as of the date of cancellation, have not been delivered or performed.

11.2 If IH cancels the purchase under section 11.1, IH will pay all reasonable costs the Vendor has incurred or has irrevocably committed to incur with respect to the cancelled Deliverables. Such payment will in no event exceed the purchase price under the Purchase Order with respect to the cancelled Deliverables, and will be reduced by any refunds or salvage available to the Vendor plus the aggregate amount, if any, previously paid by IH on account of the cancelled Deliverables.

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

12. Safety

If the Services explicitly or implicitly include any inspection, installation or other work at an IH facility by the Vendor or any representative or subcontractor of the Vendor, all such activity will be performed and undertaken in strict compliance with all applicable safety laws and regulations, including regulations under the *Workers Compensation Act* of British Columbia and/or similar legislation, as applicable, and also in strict compliance with any safety procedures and policies published and issued by IH for use at such premises, and the Vendor will, at its own expense, carry full workers' compensation board ("WorkSafeBC") coverage for itself and all its workers, employees, servants and other representatives engaged in performing the work, and will ensure that any of its onsite subcontractors carry like coverage. The Vendor will provide a WorkSafeBC Letter of Clearance to IH in relation to the Vendor and any of its onsite subcontractors prior to commencing any work at an IH facility, and within ten business days following any IH request.

13. Insurance

13.1 The Vendor will, at its own expense and without limiting its liabilities herein, insure its operations under a contract of comprehensive or commercial general liability, with an insurer licensed in British Columbia, in an amount of not less than \$2,000,000 per occurrence insuring against bodily injury, personal injury and property damage including loss of use thereof and failure to perform. Such insurance will extend to and include product and completed operations, owners and contractors protective, broad form all risks property damage, non-owned auto, blanket contractual, contingent employers, cross-liability, employees as additional insured and tenant's legal liabilities. All insurance other than automobile insurance will be stated to be primary insurance and will not require the insuring of or contribution to any loss by any insurer of IH, and will contain a breach of warranty clause whereby a breach of condition by the Vendor will not eliminate or reduce coverage for IH. Certified copies of any such insurance policies shall be made available to IH upon IH's written request, acting reasonably. At the request of IH at any time and from time to time, the Vendor will provide IH with evidence of such insurance coverage in the form of a Certificate of Insurance satisfactory to IH within ten business days following any IH request. The Vendor will similarly file with IH evidence of each renewal of insurance coverage at least ten days prior to the expiry of any insurance coverage required by these Terms. If written on a layered basis, such policy will provide that upper layers insurers' coverage responds (including in respect of any defence obligation under any liability policy) in case of exhaustion of any underlying insurance, or in the case of insolvency of any underlying insurer. Such policy of insurance will contain:

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

13.2 Vehicle Insurance

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

14. Indemnity

The Vendor will indemnify and save harmless IH, its employees, members and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that IH, its employees, members or agents may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of obligations regarding the Deliverables to be provided under this Purchase Order, where the same or any of them are based upon, arise out of, or occur, directly or indirectly, by reason of any act or omission of the Vendor, or of any agent, employee, officer, director or subcontractor of the Vendor, relating to the Deliverables under this PO, excepting always liability arising out of the independent negligent acts of IH, its employees, members or agents. IH, its employees, members or agents shall not be responsible for any bodily or personal injury that may be suffered or sustained by the Vendor, or any agent, employee, officer, director or subcontractor of the Vendor, in the performance of its obligations under this PO.

15. Dispute resolution

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

16. Assignment

The Vendor may not assign the Purchase Order, or the proceeds thereof, in whole or in part without IH's prior written consent, nor will the Vendor enter into any subcontract for any or all of the Deliverables without the prior written consent of IH.

17. Applicable law

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

18. Specific standards

Without limiting any of Vendor's general obligations hereunder, and unless otherwise agreed in writing by the parties: (a) All electrical equipment must be C.S.A approved upon arrival at the facility; and (b) All medical devices must have a valid Medical Device License issued by Health Canada's Therapeutic Products Directorate.

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

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

20. Confidentiality

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

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

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

21. Unforeseeable delays

If IH or the Vendor fails to perform any term of these Terms and such failure is due to an Unforeseeable Delay Event, that failure will not be deemed to be a default under these Terms. The party affected by an Unforeseeable Delay Event will notify the other party as soon as reasonably possible and will take all reasonable steps to minimize the extent and duration of the Unforeseeable Delay Event and its effect on performance under the Purchase Order. The time within which anything must be done under the Purchase Order will be extended as required to reflect the effects of the Unforeseeable Delay Event. If the Unforeseeable Delay Event requires suspension or curtailment of all or any of a party's obligations under the Purchase Order, that party will suspend or curtail its operations in a safe and orderly manner. “Unforeseeable Delay Event” means any cause beyond the control of a party that is not caused by its default or act or omission and not avoidable by the exercise of reasonable effort or foresight by that party, including a decrease in average quarterly census of patients, explosion, fire, casualty or accidents, epidemics, cyclones, earthquakes, floods, droughts, war, terrorism, civil commotion, blockade or embargo, but excluding insufficient financial resources, increases in commodity prices, inability to obtain labour, equipment or materials, or labour disputes.

22. Relationship

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

23. Notices

All legal notices, requests, demands and other communications required or permitted to be given under this Purchase Order for IH will be in writing and sent to the Contact Person listed on the Purchase Order.

24. Severability

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

25. Survival

Provisions herein regarding warranties; insurance, liability and indemnification; dispute resolution; applicable laws; FIPPA; confidentiality; any accrued but unpaid payment obligations, and any other provisions which, by their terms or nature, are intended to survive the provision of the Deliverables or cancellation of this Purchase Order, will continue in force indefinitely subject to any applicable limitation period prescribed by law.

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