

TROY INNOVATIVE



Vendor Terms and Conditions

1. Applicability

(a) This purchase order is an offer by Troy Innovative, Inc. (the "**Buyer**") for the purchase of the goods specified on the face of this purchase order (the "**Goods**") from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

(b) These Terms apply to any repaired or replacement Goods provided by Seller hereunder.

(c) Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

2. Acceptance

This Order is not binding on Buyer until Seller accepts the Order in writing or starts to perform in accordance with the Order. If Seller does not accept the Order in writing or provide written notice that it has commenced performance within three (3) days of Seller's receipt of the Order, this Order will lapse. Buyer may withdraw the Order at any time before it is accepted by Seller. Seller shall clarify with Buyer any inconsistencies or conflicts in this Order. Should Seller fail to contact Buyer to resolve any such conflicts or inconsistencies, Seller will be solely responsible for any errors resulting from any conflicts or inconsistencies occurring in this Order. Where documents are referenced, the issue date in effect at the time of Order placement shall be applicable, unless another issue date is specified in the Order.

3. Delivery Date

Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

4. Quantity

If Seller delivers more than 10% of the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. Delivery Location

All Goods shall be delivered to the address specified in this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer.

6. Shipping Terms

Delivery shall be made FCA Delivery Location, Incoterms or as otherwise set forth on the face of this Order. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Buyer within two (2) business day[s] after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order.

7. Title and Risk of Loss

Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until Buyer's acceptance of the Goods.

8. Packaging

All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

9. Changes

At all times Buyer will have the right to make changes to this Order, including changes to drawings, designs, configurations, specifications, quantities, methods of shipment or packing and delivery schedules or location of delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of any work under this Order, an equitable adjustment will be made in the contract price or delivery schedule, or both, and this Order will be modified in writing accordingly. Nothing in this Section, including any disagreement with Buyer as to any claimed adjustment, will excuse Seller from proceeding with this Order as changed. Any claim by the Seller for adjustment under this Section 9 must be in a detailed writing and delivered to Buyer within five (5) days after the date Seller receives notification of change. Any change will be authorized only by a duly executed amendment to this Order. Information, such as technical information or guidance provided to Seller by representatives of Buyer, will not be construed as a change within the meaning of this Section. If Seller considers that the conduct of any of Buyer's employees has constituted a change under this

Order, Seller will immediately notify Buyer, in writing, as to the nature of the change and any proposed adjustment, which will then be subject to this Section 9.

10. Changes in Materials or Process by Supplier

Seller acknowledges that certain TROY INNOVATIVE PURCHASING TERMS AND CONDITIONS Goods purchased hereunder may be incorporated into medical devices regulated under the U.S. Federal Food, Drug and Cosmetic Act. Seller agrees that it will make no changes or modifications in the manufacture or in any raw material, facilities, suppliers/subcontractors, inspection/test plans, process or packaging methods and materials involving or affecting the Goods ("**Changes**") without the prior written approval of Buyer. The foregoing Changes includes, without limitation, changes to equipment, fluids used in processing or manufacture, and any other fluids, adhesives, or lubricants which may intentionally or inadvertently come in contact with the Goods. Seller's notification of Changes must be made in sufficient detail to allow Buyer to determine the impact of such Change(s), if any, upon the completed medical device prior to Seller effectuating such change. In the event Seller proposes a Change, Seller shall cease performance on all outstanding Purchase Orders and those partially completed pending written acceptance of such Change(s). Seller shall not modify, alter or Change the performance or delivery of Services specified on this Purchase Order (or associated documentation) without the advance written consent of Buyer.

11. Inspection and Rejection of Nonconforming Goods

The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. Seller must notify the Buyer of any known or suspected nonconforming Goods prior to shipping the Goods. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 20. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

12. Price

The price of the Goods is the price stated in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

13. Payment Terms

(a) Invoices shall be rendered on completion of services or delivery of goods and shall contain the Purchase Order Number, item number, description of goods or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to one, and only one, purchase order.

(b) Payment shall be made on the terms of net 45 days from the date of invoice.

(c) Seller recognizes that Purchaser will be treated as a tax-exempt entity, and Purchaser will provide Seller with its exemption certificate on request. All invoices of Seller to Purchaser shall exclude taxes that are excludable under Purchaser's tax-exempt status.

14. Setoff

Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

15. Warranties

Seller warrants to Buyer that for a period of one (1) year from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties shall run to Buyer, its successor, assigns and customers and the user of its products. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer. In the event of failure by Seller to correct defects in or replace non-conforming goods promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and charge for the costs incurred by Buyer thereby.

16. General Indemnification

Seller shall defend, indemnify and hold harmless Buyer and Buyer's subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

17. Intellectual Property Indemnification

Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. Insurance

During the term of the Order Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including products and completed operations liability and contractual liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with ten (10) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

19. Compliance with Law

Seller represents and warrants that it is in compliance with and all goods and/or services supplied hereunder have been produced or provided in compliance with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules and regulations. Seller shall comply with any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Order. Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any good and/or service.

20. Termination

Buyer may terminate this Order, in whole or in part, at any time with or without cause on written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part or if it is found that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Seller to any officer, agent, employee or representative of Buyer with a view towards securing a contract or securing favorable treatment with respect to the awarding, amending, or the making of any determination with respect to the performance of such contract. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against its proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Seller. If

Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination. Reference section 24 of this agreement.

21. Limitation of Liability

Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 15, 16, 17 and 23 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

22. Waiver

No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. Confidential Information

A signed Mutual Non-Disclosure Agreement must be on file with Buyer. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

24. Buyers Property

The following terms apply to any tools, patterns, equipment, material, or other property which is supplied to Seller by Buyer (hereinafter "Buyer Furnished Property"):

(a) Title to Buyer Furnished Property shall remain with Buyer. Seller shall segregate and clearly mark Buyer Furnished Property to show Buyer's ownership and shall preserve Buyer's title thereto free and clear of all encumbrances. Seller shall, if requested by Buyer, submit to Buyer an itemized inventory showing the description and location of each item of Buyer Furnished Property. Buyer shall have the right to enter Seller's premises to inspect Buyer Furnished Property. Should Seller fail to perform the duties imposed upon it by this section or should Buyer at any time have reason to believe that its title to, or right to the possession of any Buyer Furnished Property is threatened. Buyer shall have the right to enter upon Seller's premises and remove such property. Upon completion or termination of this Order, Seller shall segregate all Buyer Furnished Property and shall dispose of the same as Buyer may direct. Buyer

reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer upon issuance of written notification to Seller of such intent.

(b) Seller shall, at its expense, perform all maintenance, repairs, and replacements necessary with respect to Buyer Furnished Property so that the same may remain suitable for the use contemplated hereby and may be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

(c) Seller shall give Buyer (3) days written notice of any Buyer Furnished Property which is found to be defective. The correction or replacement of such defective property shall be accomplished at Buyer's written direction.

(d) Upon delivery to Seller, the risk of loss or damage to Buyer Furnished Property shall be upon Seller. Risk of loss or damage shall transfer to Buyer when such property is returned to Buyer at delivery location.

(e) Seller waives any and all claims relating to loss, damage, injury, or delay arising out of or related to Buyer Furnished Property and Seller shall indemnify Buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Buyer Furnished Property, whether such damage, injury, or death be caused by defects in such property, negligence in the use thereof, strict liability, or otherwise

25. Access to Work

Buyer and its customers shall, at all times, have access to all places of manufacture where equipment or materials are being made or prepared for use under this Order, and they shall have full facilities for unrestricted inspection of such equipment or materials and access to all manufacturing records including materials and inspection records for a complete review or audit.

26. Work on Buyer's Premises

If Seller's work under this Order requires Seller to be on the premises of Buyer or at Buyer's direction, Seller will take all necessary precautions to prevent any injury to persons or damage to property, including following any rules, procedures or other requirements of Buyer.

27. Material Safety Data Sheets

If required by law, an applicable Material Safety Data Sheet ("MSDS") and labeling with precede or accompany each shipment of Seller. Seller shall further provide Buyer with updated MSDS's and labeling as required by law.

28. Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, pandemic, war,

invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than 30 business days, Buyer may terminate this Order immediately by giving written notice to Seller.

29. Assignment

Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

30. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

31. No Third-Party Beneficiaries

This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

32. Governing Law

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Ohio, in which Buyer is located without giving effect to any choice or conflict of law provision or rule.

33. Cumulative Remedies

The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

34. Publicity

Seller will not use Purchaser's name or logo in publicity, advertising, or similar activity, except with Purchaser's prior written consent. Seller will not disclose the existence of this Order or any of its respective terms to any third party without Purchaser's prior written consent.

35. Documentation

It is agreed that all technical documentation and other literature necessary for the proper use of the goods or services will be provided to Purchaser with the goods or services, unless otherwise directed by Purchaser, and its cost is included in the price.

36. Notices

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

37. Severability

If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

38. Survival.

Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, and Survival.

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