

Equipment Loaner Terms and Conditions (UTC-OL)

1. COMPLETE AGREEMENT

This Purchase Order, together with all documents, drawings and specifications referred to in this Purchase Order and the Contact Schedule attached to these Purchase Order Terms and Conditions shall, when accepted by the Supplier, constitute the entire contract between the Supplier and Hospital, and shall not be altered, amended or supplemented without the Hospital's prior written approval. All Hospital contact information and addresses shall be listed in the Contact Schedule. The Supplier shall select and use the appropriate site-specific contact information as applicable. The Hospital shall not be bound by any terms or conditions in any of the Supplier's forms or documents. Either the Supplier's written acceptance of this Purchase Order, or the shipment of any article, or the commencement of any work pursuant to this Purchase Order shall constitute unqualified acceptance and no contrary or additional terms or conditions shall apply. The Hospital may insist upon strict compliance with these terms and conditions despite any previous custom, practice or course of dealing to the contrary.

2. SUPPLY OF EQUIPMENT

The Supplier agrees to supply the Equipment specified in this Purchase Order, for the time period set out in this Purchase Order, unless otherwise agreed to by the Hospital and Supplier, for the purposes of permitting the Hospital to use the Equipment. The Hospital shall have no obligation or commitment with respect to the Equipment, except as expressly set forth in this Purchase Order.

3. TITLE AND RISK OF LOSS

The Supplier shall retain title to the Equipment at all times that the Equipment is in possession of the Hospital or in transit to or from the Hospital facilities. The Supplier shall maintain insurance on an all risk basis and retain all risk of loss to the Equipment at all times that the Equipment is in transit to or from the Hospital facilities. The Hospital shall be responsible for direct loss of or damage to Equipment while it is under its care, custody, and control or if it is legally liable for loss of or damage to it.

4. PAYMENTS

The Supplier acknowledges that the Hospital shall not be liable to the Supplier for any payment pursuant to this Purchase Order including, but not limited to price, duties and freight, licence fees or otherwise, including any taxes, of any kind, with respect to the Equipment, unless otherwise agreed to by the parties in writing.

5. DELIVERY AND INSTALLATION

The Supplier shall be responsible, at its own cost, for arranging for the delivery at the agreed upon time and, if applicable, installation of the Equipment at the Hospital's facilities.

6. SHIPMENT

The Supplier shall suitably pack, mark and ship the Equipment in adequate protective packaging and in accordance with any instructions from the Hospital and the requirements of common carriers and make all arrangements for shipping.

7. INSPECTION

The Hospital shall have the right to inspect and test the Equipment after arrival. The Supplier must specify, in writing, any installation and/or special test tools and/or components and/or kits requirements for the proper use and maintenance of the Equipment. The Medical Engineering or Biomedical Engineering (“Medical Engineering”) department of the Hospital should be notified of such requirements before the Equipment is shipped.

8. CONFIDENTIALITY

All information which the Supplier receives or acquires from the Hospital either in writing, orally or through observation of the Hospital’s operation, or in the course of the Supplier’s 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. Accordingly, the Supplier shall ensure that all recipients of the said information, including the Supplier’s own employees, subcontractors, agents, officers and directors assume obligations identical in principle with those which the Supplier assumes under this section.

9. WARRANTY, GUARANTEE, COMPLIANCE

The Supplier warrants that the Equipment and/or work shall conform to the description and applicable specifications, drawings, samples or other description furnished or specified by the Hospital, shall be of good merchantable quality, of good material and workmanship, free from defect and fit and sufficient for the purposes intended, for the period of time set out in this Purchase Order, and failing no specific term, the period of one (1) year from the date of delivery (“Warranty Period”). Defective Equipment and/or parts shall be replaced at the

Supplier's expense as well as all labour charges for the Warranty Period. The Supplier also warrants that the Equipment and/or work shall be new, unless stated in the Purchase Order, shall comply with all federal, provincial and local laws, regulations and orders applicable to the manufacture, sale, packaging, storage, labeling and delivery of the Equipment and to the performance of the work, that the Supplier has absolute title, and that the use of the Equipment by the Hospital shall not infringe on any other entities' rights. The warranties shall apply notwithstanding any inspection, testing, acceptance of, or payment for the Equipment. The foregoing is in addition to any warranty or service guarantee given by the Supplier to the Hospital or implied by law.

10. SERVICE, CLINICAL AND STERILIZATION TRAINING

The Supplier shall provide the following training for at least two (2) individuals specified by the Hospital:

- a. Service Training which shall include technical training within ninety (90) days of the placement of the Purchase Order unless otherwise agreed to;
- b. Clinical Training on the Equipment regarding operation of the Equipment until such time that the Hospital's staff that have been trained on the Equipment are fully competent in using or operating the Equipment, as determined by the Hospital, based on information from the Supplier and the Hospital's staff with operating the Equipment; and
- c. Sterilization Training for the cleaning, disinfecting and sterilizing of Equipment that is not intended to be single use or any single use Equipment received unsterile which requires sterilization prior to use. All training shall be provided directly by the Supplier's staff. There shall be no third-party training unless otherwise agreed to in writing. After the Service, Clinical, and Sterilization Training on

the Equipment has been completed, the Hospital reserves the right to request additional follow-up training for a period of twelve (12) months commencing after the delivery of the Equipment. The Hospital shall have the right to videotape all such training sessions; provided, however, that such taped sessions shall be used solely by the Hospital to train its staff. The cost of all the training, including travel and accommodation for the Hospital's staff to attend training course(s) at the Supplier's facilities if necessary, shall be borne by the Supplier. The Hospital reserves the right to have different types of training provided to different individuals.

11. CLEANING, DISINFECTING AND STERILIZATION

For any Equipment that is not intended to be single use, or any single-use Equipment received unsterile which requires sterilization prior to use, prior to the delivery of the Equipment, the Supplier shall submit to the Manager/Director of the Central Processing department of the Hospital:

- a. a letter from a senior official of a quality, safety, regulatory or compliance department or unit of the manufacturer of the Equipment clearly stating the recommended validation process parameters for the specific Equipment and/or a Scientific Validation Report that deals with the efficacy of the cleaning, disinfecting and sterilization of the Equipment, as applicable;
- b. reprocessing instructions: step-by-step instructions on the cleaning, disinfecting, maintaining, sterilization, reprocessing, disassembly and reassembly of the specific Equipment;
- c. for Equipment sets containing multiple instruments: a picture of the Equipment set contents and a catalogued list of the individual pieces of the Equipment sets; and

- d. for containerized Equipment sets: a letter and/or a Scientific Validation Report stating Equipment consisting of multiple instruments can be sterilized as a set in the container provided and a catalogued list of the individual pieces of the containerized Equipment sets.

12. DOCUMENTATION

The Supplier shall supply and ship with the Equipment at no charge, all applicable documentation and manuals setting out the manner in which the Equipment is to be used including but not limited to:

- a. two (2) complete sets of operator/user manuals, including software manuals as applicable and any other printed or electronic media available for user education (e.g. videos, CD-ROMS) subject to the provisions of this section;
- b. two (2) complete sets of service manuals complete with electrical, mechanical and pneumatic schematics and parts lists with pricing and software manuals, including troubleshooting guides as applicable subject to the provisions of this section;
- c. a list of all parts and components, along with any illustrations used for identification;
- d. a list of necessary accessories;
- e. a list of any parts or components that are known to be missing;
- f. documentation on any known malfunctions or breakage;
- g. the documentation referred to in Section 11, Cleaning, Disinfecting and Sterilization;
- h. the Supplier's packing and shipping instructions; and
- i. the serial or identification number. If the Equipment is shipped contaminated, the outside of its packaging shall bear a biohazard symbol. The top of the accompanying documentation shall bear a prominent notice stating that the Equipment is not fully decontaminated and explaining why the Equipment is being

shipped in that condition. The accompanying documentation shall be attached in such a way that it can be accessed without risking exposure to the contaminated contents. Provided that if the documentation referred to above in (a) and (b) has already been provided to Hospital within six (6) months of the delivery of the Equipment, no change has been made to the said documentation by the Supplier and the Hospital does not require additional copies, the Supplier shall not be required to provide the items referred to above in (a) and (b).

13. RESPONSE TIME TO MALFUNCTIONS

At any time when the Hospital is using the Equipment, the Supplier's response to malfunctions shall be two (2) hours by telephone and twelve (12) hours on-site if the malfunction cannot be resolved over the telephone. In the event that a malfunction cannot be resolved within twenty-four (24) hours of the initial telephone call, a loaner system or component of equal or superior performance, satisfactory to the Hospital, shall be provided immediately or made available within forty-eight (48) hours of the initial telephone call at no charge to the Hospital. During the Warranty Period, there shall be no charge for the services referred to in this Section.

14. ELECTRICAL EQUIPMENT

All electrical Equipment that is being loaned pursuant to this Purchase Order shall be authorized or approved in accordance with the Ontario Electrical Safety Code, current as at the date of delivery, by a Certification Organization, accredited with the Standards Council of Canada Act (Canada), and shall bear the Certification Organization's mark which identifies equipment certified for use in Canada. Certification shall be to the standard that is appropriate for the intended use of the Equipment at the Hospital's facilities.

15. LICENCES

All Equipment, which includes any products or goods that are being loaned to the Hospital, pursuant to this Purchase Order, that is defined as a Device under Food and Drugs Act (Canada) and as a Medical Device under the Food and Drugs Act (Canada), Medical Devices Regulations shall be licensed with Health Canada, Therapeutic Products Directorate, Medical Devices Bureau, unless it is exempted under the Food and Drugs Act (Canada), Medical Devices Regulations. The Supplier shall have a Medical Device Establishment Licence 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 that the Equipment is being loaned to the Hospital, the Supplier shall provide satisfactory evidence as applicable:

- a. that the Equipment is validly licensed with Health Canada, Therapeutic Products Directorate, Medical Devices Bureau;
- b. that the Supplier has a valid Medical Device Establishment Licence with Health Canada, Health Products and Food Branch Inspectorate; or
- c. that there is an exemption for either the Medical Device Licence or the Medical Device Establishment Licence.

16. LATEX

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

- a. the Equipment contains any latex;
- b. the packaging of the Equipment contains any latex; and
- c. the Equipment indicates on the smallest unit packaging if there is latex in the Equipment or if it is latex-free. The Hospital requests the right to ask for additional information with respect to latex.

17. CANADIAN STANDARDS ASSOCIATION

The Supplier has reviewed the Canadian Standards Association provisions with respect to the Management of loaned, shared, and leased medical devices and in that regard agrees that it has met all the standards and recommendations and that the Hospital can request verification of compliance either before delivery or while the Equipment is under its care or custody.

18. CUSTOMS

All commercial customs documents, including but not limited to commercial invoices, Canada Customs Invoices, and bills of lading, as applicable, shall be fully and satisfactorily completed in accordance with Canada Border Services Agency (“CBSA”) requirements. The Supplier shall obtain from the Hospital and show on the relevant commercial documents all that are accessible of the following: the Purchase Order Number or the department name of the Hospital borrowing the Equipment. Equipment eligible for duty free entry into Canada according to NAFTA shall be accompanied by a fully completed NAFTA Certificate of Origin or Statement of Origin, stamped or printed. Penalties assessed by CBSA due to incomplete, inaccurate or missing information on a commercial customs document shall be the responsibility of the Supplier, shall be charged to and paid by the Supplier or shall be deducted from any payment owing to the Supplier.

19. RETURN OF EQUIPMENT

The Supplier shall be responsible, at its expense, for picking up the Equipment at the predetermined time and location as specified on the Purchase Order or as otherwise agreed to by the parties.

Notwithstanding the foregoing, in the event that the Hospital requires the Equipment to be removed on a date other than the one specified on this Purchase Order or as otherwise agreed to by the parties, the

Hospital shall notify the Supplier of the date that the Supplier is to remove the Equipment and the Supplier shall remove the Equipment in accordance with the Hospital's instructions. In the event that the Supplier does not remove the Equipment on that date, the Hospital may remove the Equipment at the Supplier's expense. The Hospital shall in no event be held responsible for any damage or loss while removing the Equipment.

20. INDEMNIFICATION

The Supplier shall be responsible for and shall save harmless and indemnify the Hospital, the Hospitals' employees, subcontractors, agents, officers and directors from and against all losses, costs, damages, suits, claims and demands of every nature whatsoever arising out of or by reason of the Equipment delivered or work performed pursuant to this Purchase Order, performance or purported performance of the terms and conditions of this Purchase Order by the Supplier or the Supplier's employees, subcontractors, agents, officers and directors, including without limitation those made or sustained in respect of property damage, personal injury (including death) and infringement of any intellectual property right, including but not limited to copyright, trademark, patent or trade secret. This indemnity shall survive the delivery of the Equipment.

21. MEDICAL ALERTS AND SAFETY NOTIFICATIONS

In the event that a medical alert, recall, safety notification, advisory or warning is issued or communicated, at any time, by the Supplier or manufacturer of the Equipment or a recognized reporting agency involving any of the Equipment delivered to any of the addresses set out in the Contact Schedule or such other designated destination or posted on the Health Canada Web site, the Supplier shall:

- a. communicate the medical alert, recall safety notification, advisory or warning by registered mail and by facsimile to the appropriate location(s) as listed in the Contact Schedule;
- b. follow any Health Canada protocols and requirements; and
- c. take all steps necessary to remedy the situation at no cost to the Hospital. The Supplier shall also:
 - i. inform the Hospital of any possible design defect or malfunction condition occurring anywhere in the world with the Equipment, or equipment similar to the Equipment supplied under this Purchase Order, at its earliest possible opportunity, but in no event, more than five (5) days after the Supplier becomes aware of the existence of such a defect or malfunctioning condition; and
 - ii. communicate the situation set out in Section 21 (i) to the Hospital in the same manner as set out in Section 21 (a) above.

22. NON-WAIVER

Failure of the Hospital to insist upon strict performance of any of the 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 Equipment or approval of design, shall not release the Supplier of any warranties or obligations of this Purchase Order.

23. 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 Hospital or use the Hospital's name for the purpose of advertising or solicitation of business without the prior written consent of the Hospital.

24. GOVERNING LAW

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

25. ASSIGNMENT

The Supplier shall not assign, subcontract or otherwise transfer this Purchase Order, in whole or in part, by operation of law or otherwise, without the express written consent of the Hospital. The Supplier agrees that the Hospital may assign, subcontract and transfer its rights and remedies under this Purchase Order, in whole or in part.

26. COMPLIANCE WITH ACCESSIBILITY STANDARDS

The goods and/or services provided hereunder shall comply with applicable accessibility standards under the *Accessibility for Ontarians with Disabilities Act, 2005* 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.

The Supplier shall comply, and shall ensure that its personnel read and comply, with all Purchaser policies in respect of the *Accessibility for Ontarians with Disabilities Act, 2005* and its regulations, as may be applicable to the goods and/or services.

27. AODA COMPLIANCE PROCEDURE

- a. The Hospital will manage complaints efficiently, fairly, effectively, and uniformly. In the event that an AODA complaint is registered in respect of any aspect of the competitive procurement process, the complainant

shall submit the complaint in writing by mail, fax or email to the Hospital, including the following:

- i. specific identification of the AODA accessibility requirement that is alleged to have been breached;
 - ii. specific description of each act alleged to have breached the AODA requirement;
 - iii. precise statement of the relevant facts;
 - iv. identification of the issues to be resolved;
 - v. complainant's arguments and supporting documentation and
 - vi. complainant's requested remedy.
- b. Once a written complaint has been submitted to the Hospital (to the contact identified in the procurement document or contract), receipt will be acknowledged within five (5) business days. If the information regarding the complaint is incomplete, the Hospital will contact the complainant within ten (10) business days. Anonymous complaints will not be processed through this protocol.

Contact Schedule

MEDICAL / BIOMEDICAL ENGINEERING
MEDICAL ALERTS AND SAFETY NOTIFICATION

The Supplier shall select and use the appropriate site-specific information as applicable.

University Health Network

Medical Engineering
200 Elizabeth Street, NCSB 3C 438
Toronto, Ontario M5G 2C4
Phone: (416) 340-3633
Facsimile: (416) 340-4955

University Health Network – Toronto Rehabilitation Institute

Risk Management
130 Dunn Avenue
Toronto, Ontario M6R 2R7
Phone: (416) 597-3422 x3436
Facsimile: (416) 597-7037