

BEAUMONT HOSPITAL PURCHASE ORDER TERMS AND CONDITIONS

1. GENERAL

- (a) For the avoidance of doubt, it is emphasised that these Terms and Conditions are to be read in conjunction with any overarching Contract or Framework Agreement in place between Beaumont Hospital (hereinafter 'the Contracting Authority') and the Supplier / Service Provider. In the event of any discrepancy or contradiction between these Terms and Conditions and the provisions of any Contract or Framework Agreement, the Contract or Framework Agreement shall take precedence.
- (b) In the absence of an overarching Contract or Framework Agreement, these Terms and Conditions shall constitute the sole legal instrument governing the contractual relationship between the Contracting Authority and the Supplier / Service Provider.
- (c) The commencement of any work, service or delivery pursuant to the associated Purchase Order shall constitute acceptance of these Terms and Conditions.
- (d) All terms and conditions proposed by the Supplier / Service Provider that are intended to supplement or amend these Terms and Conditions are hereby expressly rejected.
- (e) For the avoidance of doubt, the Contracting Authority's placement of the associated Purchase Order is conditional on the agreement of the Supplier / Service Provider that any terms different from, or in addition to, these Terms and Conditions, whether communicated orally or contained in any confirmation, invoice, delivery note or any equivalent instrument, shall not, unless otherwise agreed in writing by the Contracting Authority, have any validity, even if the Supplier / Service provider purports to condition its acceptance of the associated Purchase Order on the Contracting Authority's agreement to such different or additional terms.
- (f) Where the Contracting Authority has agreed in writing terms and conditions proposed by a Supplier / Service Provider, it is understood that, in the event of any conflict, discrepancy or contradiction, these Terms and Conditions shall take precedence.

2. QUALITY OF GOODS AND / OR SERVICES

- (a) The goods, services and / or works provided pursuant to the associated Purchase Order shall conform to any specification of requirements issued by the Contracting Authority, either in writing or otherwise, and / or to any sample, advertisement, catalogue, brochure or performance description offered by the Supplier / Service Provider.
- (b) As a general obligation, all goods, services and / or works provided pursuant to the associated Purchase Order shall be fit for their intended purpose, shall comply with all applicable regulations, legislative provisions and safety standards and shall be suitable for use in a live hospital environment.
- (c) In respect of goods provided pursuant to the associated Purchase Order, the Supplier warrants that the goods, at the time of delivery, shall be free from defects in materials and workmanship and shall be free from defects in design. Under circumstances of breach of warranty, the Contracting Authority shall be entitled to avail itself cumulatively of all remedies provided in law or in equity.

3. DELIVERY OF GOODS AND / OR SERVICES

- (a) All goods and / or services provided pursuant to the associated Purchase Order shall be delivered by the date or dates specified by the Contracting Authority. As a general obligation, the time of delivery shall be of the essence unless otherwise previously agreed by the Contracting Authority in writing.
- (b) All goods provided pursuant to the associated Purchase Order shall be delivered to the Contracting Authority's premises, at any reasonable delivery point specified by the Contracting Authority.

- (c) All goods provided pursuant to the associated Purchase Order shall be securely packed in trade packages of a type normally used by the Supplier and approved for commercial deliveries of the same or similar goods either in retail or in bulk quantities within Ireland.
- (d) Every package shall be clearly labelled with the name and address of the Supplier, a description of the goods, the quantity contained in the package, any special directions for storage, an expiry date (where applicable) and all other information required by any applicable statute, enactment, order, regulation or other similar instrument.
- (e) Delivery of goods shall be effective only when the goods have been signed for by a duly authorised officer of the Contracting Authority. Save in the event of a separate Consignment Stock Agreement existing between the Supplier and the Contracting Authority, property and risk in the goods shall remain with the Supplier until the goods are properly delivered and signed for in accordance with this Clause.
- (f) The Supplier / Service Provider shall be liable to the Contracting Authority for any additional expense arising due to late deliveries of goods and / or services, or, in the case of goods, for any additional expense arising due to incorrect deliveries.

4. SERVICE, SUPPORT AND MAINTENANCE OF EQUIPMENT

- (a) This Clause (Clause Four) shall apply only in the event that the associated Purchase Order concerns the maintenance or service of Hospital equipment. For the avoidance of doubt, this document in its entirety shall also apply to the maintenance, service and support of medical or other Hospital equipment.
- (b) The Service Provider shall comply with all local instructions from the Contracting Authority regarding site access protocols, to include times and routes of access. The Service Provider shall visit the site only once a prior arrangement has been made with a representative of the Contracting Authority in this regard.
- (c) The Service Provider shall comply with all local instructions from the Contracting Authority concerning the times at which any required maintenance or servicing work is to be performed, taking into account the Contracting Authority's status as a major acute hospital and the Contracting Authority's remit to provide uninterrupted patient care.
- (d) As a general obligation, all service and maintenance work must be undertaken in accordance with manufacturers' recommendations and must be performed by personnel with appropriate manufacturer-referenced training. Additionally, in the event that the work in question concerns patient equipment and / or reusable invasive medical devices, it must be performed by personnel trained and competent in infection prevention and control core principles, as required under the HIQA National Standards For The Prevention And Control Of Healthcare-Associated Infections in Acute Healthcare Services, 2017 (as may be updated and amended from time-to-time).
- (e) A signed and sufficiently comprehensive Service Report must be provided to designated Contracting Authority staff members upon completion of the work, with soft copies of the Service Report forwarded to appropriate staff members of the Contracting Authority by the Service Provider upon request. The Service Report must clearly identify the serial number of the equipment in question and the Contracting Authority's asset number.
- (f) In the event that the Service Provider is aware of, or has received, any end-of-life notice (or any similar information) from the manufacturer of the equipment to which the associated Purchase Order relates, such information must be forwarded immediately to the Contracting Authority.
- (g) Should the Service Provider, in the course of any service or maintenance visit, identify any issue or potential issue that would make the equipment in question unsafe for use in a hospital setting, the Contracting Authority must be immediately notified of this fact.

- (h) The attention of the Service Provider is drawn to HPRA publication SN2010(09), 'Effective Traceability of Medical Devices' (as may be updated and amended from time-to-time). The Service Provider shall adhere in full to the responsibilities enunciated in this publication.
- (i) The Service Provider shall forward any Field Safety Notices concerning the equipment to which this Purchase Order relates to the Contracting Authority's Medical Device Vigilance Officer, with copies sent to any other individuals nominated by the Contracting Authority.
- (j) Unless otherwise indicated in any overarching Contract or Framework Agreement, or unless otherwise agreed in writing between the Service Provider and the Contracting Authority, the Service Provider shall maintain public and product liability insurance (either separately or as a combined policy) of €6.5m for the duration of any engagement to which the associated Purchase Order relates. The Contracting Authority shall have the absolute right to seek evidence of such insurance at any point during the currency of the engagement to which the associated Purchase Order relates.

5. VARIATIONS

- (a) The Contracting Authority may, by written notice, add to, omit from or otherwise vary the associated Purchase Order at any point prior to the delivery of the goods and / or services in question. The Supplier / Service Provider shall carry out such variations as though the variations were originally included in the associated Purchase Order.
- (b) Within seven calendar days of receipt of a variation order from the Contracting Authority, the Supplier / Service Provider shall provide the Contracting Authority with written detail of the total change to the price under the associated Purchasing Order in respect of the variation. Any addition to, or reduction from, the price as a result of a variation order shall be calculated at the same level of pricing as that contained in the original associated Purchase Order.
- (c) Within seven calendar days of receipt of a variation order from the Contracting Authority, the Supplier / Service Provider shall also provide the Contracting Authority with written details of the extent to which the variation in question is likely to impede or prevent the successful execution of any obligations arising under the original associated Purchase Order.

6. ACCEPTANCE AND REJECTION

- (a) The Supplier / Service Provider shall forthwith rectify (to include, where necessary, replacing) any goods and / or services that do not conform to the associated Purchase Order. Such rectification shall be at the sole expense of the Supplier / Service Provider.
- (b) If all or any of the goods and / or services governed by the associated Purchase Order do not, in any substantial respect, conform to the Purchase Order, or are not delivered substantially on time, the Contracting Authority may elect to cancel the rest of the order in whole or in part by giving notice to the Supplier / Service Provider. The Supplier / Service Provider shall then repay to the Contracting Authority any payment already made for goods and/or services rejected or cancelled. The Contracting Authority shall have no liability to the Supplier / Service Provider as a result of a cancellation made pursuant to this Clause (Clause 6[a]).

7. PRICE AND TERMS OF PAYMENT

- (a) The associated Purchase Order shall not be executed at prices higher than those detailed on the Purchase Order. No additional charge whatsoever shall be payable by the Contracting Authority for goods and / or services not specified and priced separately on the associated Purchase Order.
- (b) Unless otherwise agreed in writing between the Supplier / Service Provider and the Contracting Authority, the prices detailed on the associated Purchase Order shall include all packaging material, loading and delivery to the Contracting Authority's premises.

- (c) By commencing of any work, service or delivery pursuant to the associated Purchase Order, the Supplier / Service Provider warrants that the prices detailed on the associated Purchase Order are commercially sustainable and have been formulated to take into account all statutory or legislative provisions. The Contracting Authority shall under no circumstances be responsible for any liability that falls due to the Supplier / Service Provider as a result of any non-payment of any or all taxes, levies, duties, assessments, deductions, penalties or interest thereon.
- (d) The Contracting Authority transacts in Euro (€) only. Invoices shall be submitted in Euro (€) only. Prices detailed on the associated Purchase Order are in Euro (€) and all payments in respect of the associated Purchase Order shall be calculated and paid in Euro.
- (e) Unless otherwise agreed in writing between the Supplier / Service Provider and the Contracting Authority, the Supplier / Service Provider shall be entitled to invoice the Contracting Authority for the price of the goods and / or services at any time following acceptance of the goods or delivery of the services.
- (f) Invoices submitted by the Supplier / Service Provider pursuant to the associated Purchase Order shall not be paid by the Contracting Authority unless the Purchase Order number is clearly quoted on the invoice.
- (g) Payment shall be strictly contingent upon the furnishing by the Supplier / Service Provider of appropriately detailed and sufficiently comprehensive invoices and any supporting documentation that may be required by the Contracting Authority. Payment shall also be strictly contingent upon adherence by the Supplier / Service Provider to any invoicing arrangements agreed between the Supplier / Service Provider and the Contracting Authority.
- (h) The Contracting Authority will retain, in accordance with Clause 523 of the Taxes Consolidation Act, 1997 (as amended by subsequent Acts up to and including the Finance Act 2015 and as may be further updated and amended from time-to-time), any withholding taxes payable to the Supplier/Service Provider.
- (i) The Contracting Authority undertakes to operate in accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2012.
- (j) For the avoidance of doubt, in the event that the associated Purchase Order concerns the supply of goods, the Purchase Order is placed on a 'deliver duty paid' basis; thus, the Supplier shall have sole responsibility for all costs and risks associated with the delivery of the required goods, including the payment of duties and charges in Ireland.

8. GOODS FROM OUTSIDE THE EUROPEAN UNION

- (a) Further to Clause 7(j) above, in the event that the associated Purchase Order pertains to goods from outside of the European Union, the responsibilities of the Supplier in respect of 'delivery duty paid' shall not include responsibility for the payment of VAT, which shall be accounted for and paid by the Contracting Authority in accordance with the 'Postponed VAT' accounting method.
- (b) It is a condition of the associated Purchase Order that the Supplier and the Supplier's Delivery Agent acknowledge and accept without reservation the Contracting Authority's chosen methodology for the payment of VAT.
- (c) As necessary and upon request, the Contracting Authority shall provide the Supplier with its Economic Operator's Registration and Identification (EORI) number in order to facilitate the operation of the 'Postponed VAT' accounting method.
- (d) It is incumbent upon the Supplier to formulate commercially-sustainable prices that take account of the precise extent of the Supplier's responsibilities in respect of delivery costs, customs costs, administration costs and expenses of every description. The price shall not be formulated to take into

account import VAT, however, which shall be a matter solely for the Contracting Authority in accordance with Clause 8(a) above.

- (e) As all goods, including those from outside of the European Union, are delivered on a 'deliver duty paid' basis, any invoices from a delivery agent of the Supplier in connection with this Purchase Order shall be automatically rejected.
- (f) As the payment of import VAT is a matter solely for the Contracting Authority in accordance with Clause 8(a) above, any invoices from a Supplier or a delivery agent of the Supplier concerning the payment of VAT and / or an associated handling charge or processing charge in connection with this Purchase Order shall be automatically rejected.
- (g) The Contracting Authority shall not tolerate a situation whereby the delivery of goods is delayed or frustrated due to demands from the Supplier or the Supplier's delivery agent for the immediate payment of VAT and / or an associated handling charge or processing charge. Similarly, the Contracting Authority shall not tolerate a situation whereby the release of goods by a delivery agent is withheld pending the payment of VAT and / or an associated handling charge or processing charge. Such circumstances shall give rise to serious concerns on the part of the Contracting Authority regarding the Supplier's ability to provide a sufficiently reliable and continuous service and may, depending upon the materiality of the delay, result in the cancellation of the associated Purchase Order and / or the termination of any over-arching contractual relationship in place between the Supplier and the Contracting Authority.

9. FORCE MAJEURE

- (a) If delivery by the Supplier / Service Provider is delayed by circumstances beyond the control of the Supplier / Service Provider, and strictly contingent upon the fact that the circumstances in question genuinely constitute a force majeure event, the time for delivery or acceptance may be extended, at the Contracting Authority's sole discretion.

10. GOVERNING LAW

- (a) These Terms and Conditions shall be construed in accordance with the laws of Ireland. Any commercial relationship between the Supplier / Service Provider and the Contracting Authority shall be subject to the exclusive jurisdiction of the Irish courts.

11. GENERAL DATA PROTECTION REGULATIONS

- (a) In accepting the associated Purchase Order, the Supplier / Service Provider acknowledges, undertakes and warrants that, to the extent that it may be deemed a 'data processor' for the purposes of the General Data Protection Regulations (hereinafter 'the GDPR'), the Supplier / Service Provider is aware of all applicable obligations under the GDPR and has in place sufficiently robust mechanisms to ensure adherence to the relevant provisions of the GDPR.
- (b) In accepting the associated Purchase Order, the Supplier / Service Provider acknowledges, undertakes and warrants that, to the extent that it may be deemed a 'data processor' for the purposes of the GDPR, it will implement appropriate technical and organisational measures in such a manner that any processing activities undertaken will meet the requirements of the GDPR and ensure the protection of the rights of the data subject;
- (c) In accepting the associated Purchase Order, the Supplier / Service Provider acknowledges, undertakes and warrants that, to the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Operator undertakes to comply with the provisions of Article 28(3)(a) to 28(3)(h) of the GDPR;

- (d) In accepting the associated Purchase Order, the Supplier / Service Provider acknowledges, undertakes and warrants that, to the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Operator undertakes to comply with the provisions of Article 28(4) of the GDPR.

12. CANCELLATION OF PURCHASE ORDER

- (a) If at any time prior to the delivery of goods and / or services under the associated Purchase Order, the Contracting Authority becomes aware that the Supplier / Service Provider will be unable to comply with any provisions of these Terms and Conditions, the Contracting Authority shall have the right to cancel the associated Purchase Order forthwith and without liability to the Supplier / Service Provider. This right shall be without prejudice to any other rights or remedies to which the Contracting Authority may be entitled.

13. REPRESENTATIONS AND WARRANTIES OF THE SUPPLIER / SERVICE PROVIDER

- (a) At all times, the Supplier / Service Provider represents and warrants that:

- It has the full power to enter into the associated Purchase Order and to perform its obligations under the Purchase Order;
- All goods and or services delivered pursuant to the associated Purchase Order (and the Contracting Authority's use of such goods and services) do not and will not (in each case on a full indemnity basis) infringe upon any third party's intellectual property rights, right of publicity or privacy , or any other proprietary rights, whether contractual, statutory or common law.

14. HEALTH AND SAFETY

- (a) In effecting any delivery of goods to the Contracting Authority's premises, the Supplier and / or the Supplier's delivery agent shall adhere fully to the relevant provisions of the Safety, Health and Welfare at Work Act, 2005 (as may be updated and amended from time-to-time).

- (b) The Supplier and /or the Supplier's delivery agent shall take due cognisance of the fact that the place of delivery comprises an acute hospital environment. Consequently, the Supplier and / or the Supplier's delivery agent undertake as follows:

- The Supplier and / or the Supplier's delivery agent shall comply with all local instructions from the Contracting Authority intended to mitigate the transmission of any disease or illness, including, but not limited to, SARS-CoV-2.
- The Supplier and / or the Supplier's delivery agent shall adhere to all national regulations or guidance intended to mitigate the transmission of SARS-CoV-2 (to include, where relevant, the correct use of personal protective equipment and the maintenance of appropriate social distancing measures).