

Cleveland Clinic London Ltd Purchase Order Terms and Conditions (“Terms and Conditions”)

Notwithstanding any different or additional terms or conditions contained in Seller's invoice, proposals or other communication, Seller accepts Cleveland Clinic London Ltd's (“Buyer”) order for products (“Products”) or services (“Services”) only on the condition that Seller expressly accepts these Terms and Conditions. Unless Seller accepts these terms and conditions without deviation or reservation, no contract shall result from an order. Any terms and conditions in any confirmation by Seller that states different or additional terms shall be null and void. Buyer hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to such terms is hereby given. Seller's commencement of performance of Services or Seller's shipment of any Products shall be deemed to be acceptance of these Terms and Conditions. Any notice by Seller objecting to these Terms and Conditions must be in writing separate from any form including but not limited to any invoice or acknowledgement form, and must be communicated to Buyer prior to any shipment of Products or commencement of any Services. Any amendment, waiver or other alteration of these Terms and Conditions by Seller shall be effective only if made by mutual agreement which has been signed by a director of the Buyer. For the purposes of these Terms and Conditions, references to “Products” shall include without limitation any software (regardless of whether or not it is supplied on any physical medium) and any deliverables created in the course of the Services. Additionally, references to “Services” shall include the maintenance or support of any software.

1. **Price.** The prices indicated on a Purchase Order (“PO”) are firm and no change or adjustments to price or any charge, surcharge, or fee will be valid unless accepted by the Buyer (in Buyer's sole discretion) in writing 45 days prior to change.
2. **Quantity.** Buyer may return any Products shipped in excess of the quantities designated in an order. Seller will bear this expense. No substitutions, changes in delivery dates, or other modifications to an order will be accepted by Buyer, without the express approval of Buyer's Supply Chain Management Department.
3. **Discrepancies.** Seller shall be responsible for any discrepancies between Products and Services provided and Products and Services ordered. Unless packing slips accompany each delivery, Buyer's count of Products received shall be conclusive.
4. **Inspection and Rejection.** Buyer may inspect and reject the Products and Services within a reasonable period of time following receipt from the carrier. Payment for Products and Services delivered or performed shall not constitute an acceptance of such Products and Services. If Buyer finds that any of the Products and Services purchased under this PO do not conform to the PO, Buyer may (in addition to its other rights and remedies) require Seller to replace the non-conforming Products and Services with conforming Products and Services at Seller's sole cost.
5. **Delivery Delay and Defaults.** Seller shall deliver all Products and perform all Services on the dates set out in the PO or (if no date is set out in the PO) the dates agreed by the parties, or promptly if no other date for performance/delivery has been specified. Time shall be of the essence for all delivery dates. Except for delays or defaults beyond Seller's control and not due to Seller's acts and omissions, Seller is liable for all delays and defaults in deliveries. Buyer may additionally approve a revised schedule, or request shipment via air or special routing to minimize delay. In any such event, Seller shall bear the added expense.
6. **Transportation.** Seller will deliver and perform all orders of Products under this PO DDP (Incoterms 2010) to the destination set out in the PO (or if no destination is set out in the PO then the Products shall be delivered to the Buyer's premises in the UK specified by the Buyer). Delivery to a carrier shall not be treated as delivery to the Buyer and the risk of loss of the Products does not pass to the Buyer until Buyer accepts the Products at the delivery address. Seller shall ensure that all shipping documents (packing slips, bill of lading, etc.) include Buyer's purchase order number(s). All orders must be shipped complete unless otherwise agreed to in writing by Buyer. Buyer reserves the right to refuse shipments delivered before requested delivery date at Seller's expense.

Unless expressly otherwise set out in the PO, all prices for Products are inclusive of all costs, including freight costs. For shipments where freight is not included in the price of the Product: (a) all quotes must contain estimated freight charges and freight charges on invoice cannot exceed estimate on quotation; and (b) if shipping is to take place from separate locations, the Seller shall bear all costs to consolidate the shipment and Buyer will only be obliged to pay freight charges from the consolidated location. Buyer shall not pay handling fees, transfer fees, or any other similar fees unless Seller receives prior written approval from Buyer's transportation Manager in Supply Chain Management. No “Handling” or “Shipping and Handling” charges shall be added to any invoice, and Buyer shall have no obligation to pay “Handling” and “Shipping and Handling” charges in any circumstances.

Unless otherwise agreed in writing by the parties, the Services shall be performed at (and all deliverables created in the provision of the Services shall be delivered to) the site designated by the Buyer.

7. **Packaging & Labelling.** Seller shall ensure that all Products are properly: (i) packed and secured in such manner as to enable them to reach their destination in good and undamaged condition; and (ii) labelled in accordance with all English laws, regulations and requirements of all applicable regulatory authorities.
8. **Invoices.** Seller will issue invoices for Products and Services provided to the attention of the Buyer's Accounting Department, in duplicate. Terms of payment are net 45 days after the later of (i) completion of delivery or performance of Products and Services or (ii) receipt of invoice.
9. **Taxes.** Unless otherwise specified, all prices are exclusive of VAT or relevant local sales tax (if any), which shall be paid at the rate and in the manner for the time being prescribed by law subject to receipt of a valid VAT (or other relevant local sales tax) invoice. The fees payable under this Agreement are inclusive of all other taxes, duties and expenses, all of which shall be borne by the Seller and not recharged to Buyer.
10. If Buyer fails to make any undisputed payment due to the Seller under a PO by the last due date for payment in breach of this Agreement, then the Seller shall be entitled to charge interest on the outstanding sum at the rate of 2% per annum above HSBC's base rate from time to time, in accordance with and subject to the following provisions:
 - i. interest shall only be payable on sums that are not being disputed in good faith by Buyer;
 - ii. interest shall accrue from the later of the last due date for payment and the date that the Seller notifies Buyer in writing of the overdue sum and that it intends to charge interest on that amount; and
 - iii. interest shall not be payable on any overdue sum unless the Seller has notified Buyer of its intention to charge interest on that sum within 60 days after the date on which the overdue sum has been paid.

The parties agree that this constitutes a substantial remedy for non-payment that replaces the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 and that Seller shall not be entitled to claim interest on any late payment under that Act.

11. **Conflict of Interest.** Seller represents and undertakes that none of Buyer's employees, officers or directors are employees, officers or directors of Seller or serve on any boards or committees of or in any advisory capacity with Seller except as disclosed herein.
12. **Representations & Undertakings.** Seller expressly represents and undertakes that all Products furnished and all Services performed shall conform to all applicable specifications and descriptions for them (including without limitation any specified in the PO) that have been provided or made available to CCL prior to execution of this PO, shall be of satisfactory quality and fit for their particular purpose, comply with all applicable English laws, rules, regulations and requirements of regulatory bodies, be appropriately certified and authorised for use in the United Kingdom for the purposes for which they are to be used by the Buyer (and Seller shall provide Buyer with such evidence of this as Buyer may reasonably require on request), and will conform with all appropriate British, EU and other international standards and specifications applicable to them. Seller shall also ensure that on delivery all Products shall be new and unused and conform to any samples agreed by the parties. Seller expressly represents and undertakes that all Products furnished and all Services performed shall be timely, of good material and workmanship and free from defects, whether latent or patent. Seller expressly represents and undertakes that all Products furnished and all Services performed shall not infringe the rights of any third party and be free from any claim of any infringement and that Seller will convey clear title in the Products to Buyer with full title guarantee free from all encumbrances. Title shall transfer to the Buyer on delivery (or on payment if earlier). Seller shall ensure that Software shall not include any disablers, time-bombs, including encrypted software keys, Trojan horses or any other virus or other instructions of any kind designed to terminate or disrupt the operation of the software. Seller shall further pass through to Buyer any manufacturer's warranties and indemnities for Products provided under this PO. Where any service levels have been agreed for the performance of Services (including without limitation any availability commitments) then Seller shall perform the Services so that these service levels are achieved and shall provide the Buyer with reasonable evidence to demonstrate this on request. No inspection, acceptance or payment for Products and Services by the Buyer shall constitute a waiver of any of these representations or undertakings.
13. **Indemnification.** Seller shall indemnify, hold harmless and, at Buyer's discretion defend. Buyer (including all directors, officers, employees, affiliates, and agents) from and against all damages, costs (including, but not limited to court costs and legal fees), loss, or cause of action for any claims arising from or relating to acts or omissions of Seller (including its subcontractors), breach of any of the Seller's obligations under this PO, breach of applicable laws, rules or regulations,

alleged or actual latent or patent defective Products or Services, and any claim of infringement of any third party intellectual property rights (including but not limited to, patent, trademark, trade secret, designs, database rights and copyright) resulting from action under this PO, any unauthorized access, use, or disclosure or misappropriation of CCL's Confidential Information (including, but not limited to personal data and patient information). If Buyer's use of any Product or Services is or is likely to be enjoined as an infringement of any third party intellectual property rights, Seller shall, at Seller's option and expense, either: (i) procure for Buyer the right to continue to use the Product or Services under the terms of this PO; or (ii) replace or modify the Product or Services (without adversely affecting its functionality and performance) so that it is non-infringing. If these options do not adequately protect Buyer's interests, in Buyer's sole discretion, Buyer may elect to terminate this PO and Seller shall refund to Buyer all consideration paid by Buyer under it to the date of termination.

14. **Insurance.** Seller will maintain such public liability insurance, including, but not limited to, products liability insurance and other insurance that will adequately protect Buyer against such damages, claims, liabilities, costs, losses and expenses.
15. **Applicable Law.** The terms and conditions of all POs and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter shall be governed by and construed in accordance with the laws of England and Wales without regard to its conflict of laws provisions. All actions brought under or in connection with any PO (including non-contractual disputes or claims) shall be brought in the courts of England and Wales.
16. **Cancellation/Termination.** Buyer may terminate or cancel a PO, in whole or in part, at any time upon written notice to Seller. Buyer will remain obliged to pay for Products shipped or Services performed by Seller prior to receipt of Buyer's notice.
17. **Confidentiality & Data Protection.** Seller shall keep confidential and not disclose to any person any confidential information obtained from Buyer and/or concerning the business, affairs, clients or suppliers of Buyer or its affiliates. [Where Seller processes personal data in connection with the Services and/or Products then the Seller shall comply with all privacy and data protection laws applicable to the processing of that personal data. In addition, where the Seller processes personal data as a processor on behalf of Buyer then Seller shall comply with the terms of Buyer's standard data processing agreement provided to Seller by Buyer.]
18. **Use of Name.** Without prior written permission, Seller (including its subcontractors, employees, or agents) may not use Buyer's (or Buyer's group companies') name or trademarks as an endorsement or otherwise release information relating to the order.
19. **Assignment.** Seller may not assign or subcontract any of its rights or obligations under this PO.
20. **Compliance with Laws.** The parties shall comply with all applicable laws, rules and regulations. In the event any part of this PO is determined to breach applicable laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the provisions which are in violation. In the event the parties are unable to agree to new or modified terms as required to bring this PO into compliance, either party may terminate this PO upon written notice to the other party.
21. **Third Party Rights.** Buyer shall be entitled (acting on behalf of its affiliates) to recover any losses suffered by its affiliates as a result of any breach of Seller's obligations as if they had been suffered directly by Buyer. Except for the previous sentence (which shall be enforceable by Buyer's affiliates) and for the indemnification rights set out in these terms, the contracts formed through the use of these terms shall not give rise to any rights for any third party under the Contracts (Rights of Third Parties) Act 1999.
22. **Valid Master.** In the event that the parties have a currently valid, fully executed agreement governing purchases of the Products or Services covered by this PO, then these terms and conditions shall not apply.
23. **Compliance Related Changes.** The parties recognize that the law and regulations may change or may be clarified, and that the terms of this PO may need to be revised, on the advice of counsel, in order to remain in compliance with such changes or clarifications, and the parties agree to negotiate in good faith revisions to the terms that cause the potential or actual violation or noncompliance. In the event the parties are unable to agree to new or modified terms as required to bring this PO into compliance, either party may terminate this PO on written notice to the other party.
24. **Environmental Impact.** The parties agree to cooperate with one and other in connection with the identification, adoption and implementation of environmentally friendly initiatives intended to improve environmental related conditions, including, but not limited to, fuel economy, hazardous waste handling, air quality and conditions of the work environment.

25. **Compliance With Policies.** Seller shall comply with Buyer's policies and procedures for its vendors as contained in its Supplier Relationship Management Handbook or as otherwise provided or made available to Seller from time to time, including but not limited to those covering Code of Conduct, Credentialing, Training, Supplier Diversity, Products Purchased being Mercury Free and Visits within Buyer's Hospitals.