



## Med-Eng Terms and Conditions of Sale

### 1.0 Definitions

"Acceptance":	the express act by the Buyer to accept the Products and/or Services delivered by Med-Eng, at which point title and risk passes to the Buyer;
"Brochure":	means any brochure published by Med-Eng advertising and detailing the Products and/or the Services provided by Med-Eng;
"Buyer":	means the purchaser of Products and/or Services herein sometimes referred to as Party;
"Customer":	means the Buyer or company responsible for purchasing products and/or services from Med-Eng;
"Liability":	means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities including but not limited to any claims under an indemnity;
"Med-Eng":	means Med-Eng, LLC or Med-Eng Holdings ULC herein sometimes referred to as Party;
"Order":	means any contract or purchase agreement/order between Med-Eng and the Buyer incorporating these conditions for the sale of Products and/or the provision of the Services;
"Order Acknowledgement":	means the written acknowledgement of Buyer's Order by Med-Eng;
"Pricing", "Cost":	means the Firm Fixed Price ("FFP") or Rough Order of Magnitude Cost ("ROM") provided by Med-Eng to the Buyer;
"Products":	means any products, identified by part number, purchased by the Buyer in which title is intended to pass once the quantity or lot size of products have been delivered in accordance with the Order and/or Order Acknowledgement;
"Quotation":	means the quotation or proposal submitted by Med-Eng in response to Buyer's request;
"Services":	means the Services and/or work purchased by the Buyer, to be performed by Med-Eng;
"Special Conditions":	means the conditions which are expressly set out or referenced on the Order, including but not limited to delivery date, shipment documentation and packaging;
"Website":	means any and all websites used by Med-Eng to advertise and/or sell its Products and/or Services from time to time.

### 2.0 Basis of Order

- 2.1 These conditions shall govern the agreement between Med-Eng and the Buyer to the exclusion of any other terms or conditions, even where the orders placed by the Buyers are not expressed to be subject to them.
- 2.2 No variation to these conditions shall be binding on Med-Eng unless contained in Med-Eng quotations or agreed in writing between the Buyer and Med-Eng.
- 2.3 Med-Eng associates, sub-contractors and/or agents are not authorized to make any representations or warranties concerning the Products unless confirmed by Med-Eng in writing.
- 2.4 The Buyer acknowledges that it does not rely on any representation and/or warranty which have not been made in accordance with these conditions.

### 3.0 Quotations and Orders

- 3.1 Quotations are not binding unless a Buyer Order is placed and accepted against the Quotation by Med-Eng. Quotations shall specify the period of validity. Quotations may be withdrawn by Med-Eng at any time during this period by written notice.
- 3.2 Buyer's Order shall come into effect on the latter of execution of this Order by Med-Eng or with Med-Eng Order Acknowledgement.

### 4.0 Delivery and Acceptance

- 4.1 Med-Eng will use all reasonable commercial practices to ensure, whether complete, partial, or milestone, delivery on the dates specified. These dates are subject to change with any matter beyond the reasonable control of Med-Eng. In this event Med-Eng will provide notice as soon as it learns of any such delays.
- 4.2 Where Products are to be delivered in installments, each delivery shall constitute a separate and distinct Order and failure by Med-Eng to deliver, or any claim by the Buyer in respect of, any installment shall not entitle the Buyer to repudiate and/or terminate this Order as a whole.
- 4.3 The Buyer shall have no right to reject Products and shall have no right to rescind for late delivery unless the due date for delivery has passed and the Buyer has served on Med-Eng a written notice



requiring this Order to be performed and giving Med-Eng not less than thirty (30) days in which to do so and the notice has not been complied with.

- 4.4 The Buyer shall be responsible at its own cost for all arrangements to unload the Products when delivered to the Buyer.
- 4.5 If the Buyer refuses to take delivery of any Products, Med-Eng shall be entitled to withhold delivery and/or performance of any other Products and/or Services, treat this Order as repudiated by the Buyer, and shall have the right to rescind this Order.
- 4.6 Acceptable INCOTERMS are FCA-Origin or EX Works ("EXW"), unless otherwise agreed upon between Med-Eng and the Buyer. Title and risk passes to the Buyer as per Incoterms.
- 4.7 Formal Acceptance by Buyer occurs at delivery, in accordance with the Order and Order Acknowledgement.

#### **5.0 Price and Payment**

- 5.1 The Price and currency will be as shown in the current and appropriate Med-Eng price list, which may be amended from time to time, or the valid Med-Eng Quotation and shall be agreed in writing between the Parties prior to placement of an Order.
- 5.2 Med-Eng prices are exclusive of VAT or other tax. Unless agreed in writing otherwise, the Buyer is responsible for any taxes.
- 5.3 Payment shall be determined and agreed in writing between the Parties prior to placement of an Order, and shall be referenced in the Order and confirmed in the Order Acknowledgement.
- 5.4 If the Buyer fails to make any payment as agreed on the due date, Med-Eng may charge the Buyer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the per annum rate of 4% above the base rate from time to time of Med-Eng's bank or the applicable rate applied by law, whichever is the greater. Such interest shall be compounded by monthly rates.
- 5.5 The Buyer shall pay all sums due to Med-Eng under this Order without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 5.6 Delayed payment may result in withheld or suspended delivery of Product and/or performance under this or any other Order with the Buyer.

#### **6.0 Specification**

- 6.1 Any specification supplied by Med-Eng to the Buyer shall only be approximate unless agreed by Med-Eng in writing.
- 6.2 Details and/or specifications in any brochure, on any website or in any price lists (including but not limited to technical data, dimensions and weights produced by Med-Eng) are intended as a guide only and only give a general approximation of the Products.
- 6.3 The quantity, quality, description and/or specification for the Products and/or the Services shall be established in the Med-Eng Quotation and/or Buyer's Order.
- 6.4 The Buyer is responsible for ensuring any specification provided is and adequate for the Products quoted.
- 6.5 The Buyer agrees to indemnify and keep indemnified Med-Eng against any liability arising out of Med-Eng use of specifications, details and/or drawings supplied by the Buyer.
- 6.6 Med-Eng reserves the right to make changes to the specification of the Products at any time provided that they do not have a material adverse effect on the quality and/or performance of the Products.
- 6.7 If Med-Eng does make changes to the specification of the Products which have a material adverse effect then the Buyer shall have the right to cancel the affected Order without liability.
- 6.8 Med-Eng reserves the right to withdraw Products from a brochure or from a website at any time. Where a Product has become obsolete or discontinued Med-Eng shall be entitled to, where possible, offer the Buyer a reasonable alternative. If Med-Eng does withdraw a Product from a brochure and/or a website and no reasonable alternative is available, the Buyer shall have the right to cancel the affected Order without liability.

#### **7.0 Intellectual Property Rights and Confidentiality**

- 7.1 The Buyer shall not make any modification to the Products or their packaging, nor alter, remove, or tamper with any trademarks used on or in relation to the Products.
- 7.2 All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered), skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products, their packaging and/or arising from the Services shall be owned by Med-Eng absolutely.



7.3 The Buyer agrees that, at Med-Eng's cost, it will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 7.2 above and/or to assist Med-Eng in the application, registration, renewal and/or protection of such intellectual property rights.

7.4 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

#### **8.0 Site for Services**

8.1 The Buyer will allow and/or procure sufficient access to Med-Eng associates, subcontractors and/or agents to allow them to carry out the Services.

8.2 Med-Eng shall inform the Buyer in advance of the equipment and/or facilities required to perform the Services.

8.3 If Med-Eng is providing training to the Buyer's personnel, Med-Eng shall inform the Buyer of the minimum qualifications and/or experience that those personnel must possess.

#### **9.0 Property**

9.1 Med-Eng shall retain ownership of the Products until title has passed to the Buyer in accordance with clause 4.6.

9.2 Payment terms and currency shall be negotiated and agreed in writing between the Parties prior to placement of an Order.

9.3 Payment shall be upon receipt of the Med-Eng invoice, or upon successful delivery of the Product and/or Services if agreed in writing by Med-Eng.

9.4 Until Med-Eng has received payment in full or cleared funds of all sums due and/or owing for all Products and/or Services supplied to the Buyer by Med-Eng under this Order, the Buyer shall keep the Products insured for the price at which the Products were sold to the Buyer against all insurable risks and shall ensure that Med-Eng is named on such policy of insurance as loss payee. Any monies received from the Buyer by Med-Eng in accordance with this clause shall not discharge the Buyer's liability to pay the price for the goods plus interest accrued in accordance with clause 5.5 but shall be set off against any such liability.

#### **10.0 Default**

10.1 If the Buyer: (i) fails to make any payment to Med-Eng when due; (ii) breaches the terms of this Order (and, if the breach is capable of remedy, has not remedied the breach within 30 days of receiving notice requiring the breach to be remedied); (iii) persistently breaches any one or more terms of this Order; (iv) pledges or charges any Products which remain the property of Med-Eng, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction; or, (v) appears reasonably to Med-Eng to be about to suffer any of the above events then Med-Eng shall have the right, without prejudice to any other remedies to exercise any or all of the rights set out in clause 10.2 below.

10.2 If any of the events set out in clause 10.1 above occur in relation to the Buyer then: (i) Med-Eng may enter, with reasonable notice, any premises of the Buyer (or premises of third parties) where Products owned by Med-Eng may be and repossess and dispose of or sell any Products found which are owned by Med-Eng so as to discharge any sums due to Med-Eng under this Order or any other agreement with the Buyer; (ii) Med-Eng may require the Buyer not to resell or part with the possession of any Products owned by Med-Eng until the Buyer has paid in full all sums due to Med-Eng under this Order or any other agreement with the Buyer; (iii) Med-Eng may withhold delivery of any undelivered Products and stop any Products in transit; (iv) Med-Eng may withhold the performance of any Services and cease any Services in progress; (v) Med-Eng may cancel, terminate and/or suspend without liability to the Buyer any Order with the Buyer; and/or, (vi) all monies owed by the Buyer to Med-Eng shall immediately become due and payable.

#### **11.0 Warranty**

11.1 Med-Eng warrants that our Products will be free from defects in materials and/or workmanship for a period of twelve (12) months except for: a) Med-Eng EOD 9, EOD 10, and TAC 6 products which are covered for a period of twenty-four (24) months (excludes rechargeable batteries) and; (b) Med-Eng Hook & Line ("HAL") products which are covered by a limited lifetime warranty. Warranty commences on the date of delivery of the Products to the Buyer, unless otherwise agreed between the Parties.

11.2 The warranty in clause 11.1 above is given by Med-Eng on condition that Med-Eng shall be under no liability: (i) in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer; (ii) in respect of any faults arising after risk in the Products has passed which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect



in the Products as appropriate; and/or (iii) in respect of any faults or defects caused by willful damage, abnormal working conditions, failure to follow Med-Eng's instructions, misuse, alteration or repair of Products without Med-Eng's approval, improper use and maintenance, or negligence on the part of the Buyer or a third party; and/or (iv) in respect of any defect in the Products caused as a result of fair wear or tear.

- 11.3 If any Products prove to be defective under warranty in accordance with clause 11.1, Med-Eng shall at its sole option either repair or replace such Products within a reasonable period of time of being notified of the defect.
- 11.4 Med-Eng shall have no Liability to the Buyer under the warranty in clause 11.1 above unless any defect is notified to Med-Eng within thirty (30) working days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by the Buyer.
- 11.5 Med-Eng will replace free of charge any Products missing from a delivery of Products provided that the missing items are notified to Med-Eng in writing within twenty (20) working days of delivery or, in the event of total non-delivery, this fact is notified to Med-Eng within fourteen (14) working days of receipt of the invoice by the Buyer.
- 11.6 PROPER FIT, AND TRAINING, IS ESSENTIAL TO THE USER'S SAFETY AND THE LIFE EXPECTANCY OF MED-ENG PRODUCTS. PLEASE REFER TO THE APPLICABLE USER'S MANUAL.

## **12.0 Repairs, Replacements and Returns**

- 12.1 Med-Eng will at its option either repair, replace free of charge or re-perform any defective Products where the defect is apparent provided that the defect is notified to Med-Eng in writing within ninety (90) calendar days.
- 12.2 Med-Eng may at its sole discretion replace, repair free of charge or re-perform defective Products which are not notified to Med-Eng in accordance with 12.1 where in the opinion of Med-Eng the defect would not have been ascertainable on inspection and has been notified to Med-Eng as soon as reasonably practicable.
- 12.3 Any non-warranty repair by Med-Eng will be charged at a reasonable price, as agreed in writing between the Parties.
- 12.4 Med-Eng warrants all repairs and upgrades for a period of ninety (90) days from the time of receipt by Buyer, unless otherwise agreed between the Parties. The warranty covers all replaced parts and workmanship, only.
- 12.5 Defective Products must be returned to Med-Eng, or to an authorized Med-Eng representative for inspection if requested by Med-Eng.
- 12.6 Product returns, regardless of reason or origin of return, must have a Return Material Authorization ("RMA") issued by Med-Eng prior to return. RMA's will be approved and processed based on the following guidelines: (i) returns must be requested within sixty (60) days of Product invoice; (ii) Product returns are for new, unused Products unless otherwise authorized; (iii) Buyer will only be credited for Products and quantities authorized for return; (iv) Product inspection will be performed on returned Products before credit is processed.
- 12.7 For Product returns where Med-Eng is not at fault the Buyer is responsible for all packaging, logistics requirements, damage or claims and freight.
- 12.8 Upon receipt of Product under 12.7, there will be an analysis to determine whether the return represents excessive or obsolete inventory for Med-Eng. Med-Eng will have the option of either rejecting the return request in its entirety, or reducing the amount of Product it will accept for return. If the return is approved, there will be a 20% restocking fee applied against the credit resulting from the return.

## **13.0 Indemnification**

- 13.1 Buyer shall defend, indemnify and hold Med-Eng and its affiliates and their respective officers, directors, employees, and agents harmless from and against any third-party claim, action, suit or proceeding resulting from: (i) Buyer's breach of its representations and warranties; (ii) any injury to persons caused by Buyer's failure to exercise reasonable care or its willful misconduct; or (iii) any breach of Buyer's obligations under this Order. Buyer shall indemnify Med-Eng for all losses, damages, liabilities and all reasonable expenses and costs (including, but not limited to attorneys' fees) incurred by Med-Eng in any such claim, action, suit or proceeding.
- 13.2 Med-Eng shall defend, indemnify and hold Buyer and its affiliates and their respective officers, directors, employees, and agents harmless from and against any third-party claim, action, suit or proceeding resulting from (i) any injury to persons caused by Med-Eng's failure to exercise reasonable care or its willful misconduct; or (ii) breach of Med-Eng's obligations under this Order. Med-Eng shall



indemnify Buyer for all losses damages, liabilities and all reasonable expenses and costs (including, but not limited to attorneys' fees) incurred by Buyer in any such claim, action, suit or proceeding.

#### **14.0 Limitations on Liability**

- 14.1 Med-Eng shall have no liability: (i) for defective where the defect has been caused or contributed to by the Buyer to the extent so contributed, including but not limited to where the Buyer continued use of defective Products; (ii) for any loss and/or damage suffered by the Buyer as a result of late delivery of the Products and/or late performance of the Services; (iii) if the price for the Products and/or the Services has not been paid in full by the due date for payment; (iv) for defective Products, Products not dispatched or Products damaged or lost in transit unless the event is notified to Med-Eng within the appropriate time limit set out in this Order; and (v) to the extent that the Buyer is covered by any policy of insurance and the Buyer shall ensure that the Buyer's insurers waive any and all rights of subrogation they may have against Med-Eng.
- 14.2 The Buyer shall give Med-Eng a reasonable opportunity to remedy any matter for which Med-Eng is liable before the Buyer incurs any costs and/or expenses in remedying the matter itself. If the Buyer does not do so Med-Eng shall have no liability to the Buyer.
- 14.3 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 14.4 EXCEPT FOR A CLAIM OF INDEMNIFICATION MADE PURSUANT TO SECTION 14, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.5 EXCEPT FOR A CLAIM OF INDEMNIFICATION PURSUANT TO SECTION 14, IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY, IN THE AGGREGATE, EXCEED THE TOTAL AMOUNT OF PAYMENTS MADE DURING THE TERM OF THIS ORDER.

#### **15.0 General**

- 15.1 No waiver by Med-Eng of any breach of this Order shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 15.2 Neither Party shall be responsible for any delay or failure in performance of any part of this Order to the extent that such delay is caused by fire, flood, explosion, war, strike, embargo, sanctions, government requirement or restriction, civil or military authority, acts of terrorism, drought, bad weather, act of God, inability to obtain raw materials or supplies of Products, and other similar causes beyond its control ("Conditions"). If any such Condition occurs, the party delayed or unable to perform shall promptly give notice to the other party and, if such condition remains at the end of thirty (30) days thereafter, the party affected by the other's delay or inability to perform may elect to (1) terminate such purchase order or part thereof, or (2) suspend such purchase order for the duration of the condition.
- 15.3 The Buyer may not assign this Order (or any part) without the express written consent of an authorized Med-Eng representative.
- 15.4 All third party rights are excluded and no third party shall have any right to enforce this Order.
- 15.5 Med-Eng Holdings ULC Orders shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada. Med-Eng, LLC Orders shall be governed by and construed in accordance with the laws of the State of Delaware, United State of America.