

## **TERMS AND CONDITIONS OF PURCHASE (HARMAC MEDICAL PRODUCTS IRELAND)**

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### **1. ACCEPTANCE AND NOTIFICATION OF AGREEMENT**

This Purchase Order ("P.O.") becomes a binding contract subject to the terms and conditions hereof when Seller's written acceptance, invoice or acknowledgement in writing is received by Purchaser, or by commencement of performance by Seller. Acceptance by Seller of this P.O. shall be limited to all the terms and conditions set forth herein. Any written acceptance, invoice or acknowledgement sent by Seller, or any variation of the terms of delivery of any materials to Purchaser, shall not have the effect of adding to, changing, modifying or deleting any of the terms or conditions hereof. Any addition or changes to, modification of or deletion from this P.O. are expressly rejected by Purchaser, and to be valid must be in writing specifically referring to this P.O. and signed by Purchaser's authorised representative, and personally delivered to telexed or cabled or mailed by certified air mail return receipt requested to Seller and/or Purchaser at their address stated therein. This P.O. shall also be subject and subordinate to and shall not vary or modify any formal written agreement entered into between Seller and Purchaser with respect to the subject matters hereof.

### **2. DELIVERY**

The time and rate of delivery of all materials and services to be delivered under this P.O. shall be as specified in Seller's quotation, or as set forth on the face hereof if different from the quotation. Time of delivery is and shall remain the essence of this P.O. Purchaser shall have the right to cancel this P.O. in whole or in part if not delivered on time. Acceptance by Purchaser of late delivery in whole or in part shall not constitute a waiver of its claim for damages caused it by the late or non-delivery, nor its right to cancel the remaining portion of the P.O. if deliveries are behind schedule. In case of late deliveries, Purchaser may require Seller to ship by express and Seller shall pay for the difference between the freight and express rate. Default or delay in delivery caused by acts of God, casualties or other causes beyond Seller's control shall not make Seller liable therefor provided Seller immediately notifies Purchaser thereof in writing. In such event Purchaser shall have the right to cancel this P.O. in whole or in part at any time.

### **3. SHIPPING AND PACKING**

All materials ordered herein shall be suitably packed and marked for shipping. Purchaser shall not be charged for any packing, marking or boxing not separately itemised herein. Seller shall be liable to Purchaser for any loss or damage resulting from Seller's failure to provide adequate protection during shipment. Purchaser and Seller shall assist each other, including the procuring of any documents or information in filing and/or prosecuting any claims against carriers or others arising out of any such shipment. Purchaser has the right to add its name, address, trademark, tradename and/or logo to such packages, boxes or cartons for identification or re-shipping purposes.

### **4. INVOICES**

Invoices (except dating) are paid less cash discount indicated on the face hereof. Taxes required to be paid by law, if any, must be separately itemised. Date for calculation of cash discounts shall be (i) date material is received; (ii) date P.O. is scheduled for delivery; or (iii) date a proper invoice is received, whichever is later.

Bill of Lading with rate and weight must accompany invoice. P.O. number and item number must appear on all shipping documents, invoices, quality certifications, if any, and packing sheets.

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### **5. OVERSHIPMENTS**

Materials shipped on this P.O. must not be in excess of quantity ordered unless authorised by Purchaser in writing. Overshipments may be returned at Seller's expense.

### **6. WARRANTIES**

In addition to its standard warranty and/or service guarantee, if any, and any implied warranties, Seller also warrants that any material supplied hereunder shall:

- (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being in Seller;
- (b) be free from any defects in design, material or workmanship and of good and merchantable quality;
- (c) be suitable for their intended use;
- (d) conform to Purchaser's drawings and specifications, if any, whether set forth herein or in any documents attached to or referred to herein, and to any sample approved by Purchaser;
- (e) not infringe any domestic or foreign patent, trademark, copyright, trade secret or other proprietary or similar right of a third party;
- (f) be fit and safe for all purposes for which the same are purchased hereunder, and of which Seller shall have been informed by Purchaser or shall be otherwise aware; and
- (g) comply and have produced, processed and delivered in conformity with all applicable laws, statutes, regulations and orders.

Seller warrants that it shall perform any services using commercially reasonable efforts and in a good and workmanlike manner which meets the highest professional standards.

If requested by Purchaser, Seller shall furnish to Purchaser a complete set of specifications, drawings or other technical data or information for the materials with all modifications made thereto from time to time ("specifications"). All materials supplied hereunder shall be in strict conformity with said specifications. Purchaser shall in its discretion be entitled to test and/or verify that the materials confirm to such specifications and standards, are not defective, and are in good order and condition. Seller shall have the right to inspect any materials claimed by Purchaser to be defective or damaged. In case of dispute on whether the materials confirm to such specifications and standards or are in good order and condition which Seller and Purchaser are unable to resolve, the dispute shall be referred for final and conclusive determination by a qualified independent laboratory and the costs thereof shall be paid by the losing party.

Purchaser shall have the right to return all defective or damaged materials to Seller at Seller's expense for repair, replacement or refund at Purchaser's option. The foregoing warranties and rights shall survive inspection, delivery and payment. All warranties shall run to Purchaser, its customers and users of the materials or the product in which the materials or the services may be incorporated.

### **7. PROPRIETARY INFORMATION**

All specifications, drawings, designs, know-how, trade secrets, customer lists, sales information, technical data, inventions or other proprietary information which may be disclosed by Purchaser

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or Seller, or which are developed by Purchaser or Seller in connection with the subject matter of this contract shall be the sole and exclusive property of Purchaser.

Seller agrees to disclose promptly to Purchaser any and all proprietary information developed in connection with this P.O. and to transfer all right, title and interest in and to such proprietary information to Purchaser, including any patent applications or other registrations thereon. Seller agrees to hold in confidence, not disclose to any third party, and to use said proprietary information or Purchaser's other proprietary information only for the purposes connected with this P.O. and not in any manner detrimental to Purchaser's interests. Seller further agrees that any such information in written or printed form will be returned to Purchaser upon request. The conditions and obligations of this Paragraph 7 shall survive the termination of this P.O. Any information provided by Seller to Purchaser in connection with this P.O. will be submitted on a non-confidential basis.

### **8. MATERIAL FURNISHED BY PURCHASER**

Any material, tools and equipment furnished, or directly paid for, by Purchaser shall be deemed to be bailed to Seller for mutual benefit, and title thereto shall remain in Purchaser. Seller shall not use the same for any third party, and shall be responsible for any loss or damage thereto, and shall keep all materials, tools and equipment in which Purchaser has an interest insured against risk of loss or damage for their values, at Seller's expense while they are in Seller's possession. Any remaining materials, tools and equipment shall be immediately returned to Purchaser F.O.B. Seller's facility, properly packed, upon receipt or Purchaser's written directions.

### **9. PRICE**

If price is omitted it is agreed that Seller's price will be Seller's lowest prevailing price provided such price is not higher than previously quoted to or charged Purchaser. If the price is to be higher, Seller must first obtain Purchaser's written agreement to the higher price.

### **10. INDEMNITY; INSURANCE**

Seller, its heirs, successors, assigns and legal representatives shall forever protect, indemnify, defend and save harmless Purchaser, its subsidiaries and affiliated companies, their successors, assigns, and customers and users of their products from and against all damages, claims, suits at law or in equity, demands, losses or expenses (including, without limitation, reasonable attorneys' fees) of any kind arising out of or alleged to have arisen out of or in connection or relating to (a) any act or omission to act of Seller, (b) any breach by Seller of any warranty (express or implied), or (c) any breach by Seller of any term, condition or covenant set forth in this P.O.

Seller agrees to comply with Purchaser's insurance conditions as revised from time to time and submit certificates or other equally accepted evidence of such insurance. This insurance, at the present time, shall include but not be limited to:

Comprehensive General Liability including contractual and product liability. There shall be minimum limits of €100,000/€300,000 for bodily injury and €50,000 property damage.

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The certificates must specifically mention that contractual and products liability is provided and must contain a clause covering Seller's assumption of liability. Seller agrees to supply (if needed) automobile liability insurance owned, non-owned and hired vehicles.

### **11. PATENTS TRADEMARKS AND TRADENAMES**

Seller agrees to protect, indemnify, defend and save harmless Purchaser, its officers, agents, successors, assigns and customers from and against all damages, claims, demands, seizures, injunctions, judgements, attorney's fees and costs of any kind for actual or alleged infringement of any tradename, trademark, trade dress, patent, registered design, copyright, or other industrial property right, including rights arising from confidential disclosures or relationships, because of the manufacture and sale by Seller or the purchase, possession, use or sale by Purchaser of any material specified in this P.O. (unless the material is of Purchaser's design) in any country or territory of purchase, possession, use or sale by Purchaser.

### **12. TERMINATION OF PURCHASER'S OPTION**

Purchaser may terminate this P.O. in whole or in part, by written notice of termination, whereupon Seller will terminate pursuant to the notice of all work started under the P.O. Seller will promptly advise Purchaser of quantities of applicable work and material on hand or purchased prior to termination and the most favourable disposition that Seller can make thereof. Seller will comply with Purchaser's instructions regarding disposition of such work and material. Within 90 days after receipt of such notice of termination, Seller will submit all its claims pursuant thereto. Purchaser will have the right to check such claims at any reasonable time by inspecting and auditing the records, facilities, work or materials of Seller relating to this P.O. Purchaser will pay Seller the P.O. price of finished work and the cost to Seller (excluding profit or losses) of work in progress and raw material based on any audit Purchaser may conduct and generally accepted accounting principles; less, however (i) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Purchaser's consent; (ii) the agreed value of any items used or sold by Seller with Purchaser's consent; and (iii) the value of any defective, damaged or destroyed work or material. Purchaser will make no payments for finished work, work in progress or raw material fabricated or procured by Seller in excess of Purchaser's written releases. Payment made under this clause will constitute Purchaser's only liability in the event this P.O. is terminated as provided herein. Seller's acceptance of such payment will constitute as acknowledgement that Purchaser has fully discharged such liability.

The provisions of this clause will not apply to any termination by Purchaser for default by Seller or for any other cause allowed by law under this P.O.

### **13. TERMINATION FOR DEFAULT**

Purchaser will have the right to terminate this P.O. upon Seller's failure to make deliveries within the time specified herein or upon Seller's breach or failure for any reason to observe or perform any other provision hereof. In such event, Purchaser shall not be required to pay Seller's price, or shall be entitled to an immediate refund of any price paid without prejudice to other rights or remedies available to it. If Seller's financial or credit condition should at any time be unsatisfactory to Purchaser at its reasonable discretion, Purchaser shall also have the right at its option upon 10 days' written notice to terminate this P.O. at once and/or at its option all other P.O.'s or

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agreements entered into with Seller of any nature whatsoever, without any liability or obligation therefor to Seller.

### **14. COMPLIANCE WITH LAW**

Seller agrees that the materials produced and all other performances under this P.O. will be carried out in accordance with all applicable laws, regulations or orders as they may be issued or amended from time to time, except that the terms, conditions and provisions of the UN Convention on International Sales Transactions shall not apply hereto. In the event of any disputes, claims, controversies or questions regarding any of the provisions of this P.O., they shall be constructed and governed in accordance with the laws of the Republic of Ireland and be subject to the jurisdiction of the Irish Courts.

### **15. CHANGES**

Purchaser may at any time make changes in the drawing, specifications, samples, quantities, delivery schedules, shipments, or other description as to any article, material or work covered by this P.O. If any such change causes an increase or decrease in the amount due under this P.O., then an equitable adjustment shall be made by mutual agreement, reduced to writing and executed by authorised representatives of both parties. Any claim by Seller for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by Seller of the notification of change.

No changes in or to the material specifications and/or drawings as to any article, material and work covered by this P.O. shall be made unless notified to Purchaser in advance and accepted by it in writing prior to allocating the goods to Purchaser.

### **16. WAIVERS**

Any waiver of strict compliance with the terms and conditions of this P.O. shall not be a waiver of either party's right to insist upon strict compliance of such terms and conditions subsequently or of any term and condition thereafter, or of any rights or remedies available to it hereunder or any law.

### **17. PERFORMANCE BY SELLER**

This P.O. is issued to Seller in reliance upon Seller's personal performance of the duties imposed by and accepting same Seller agrees not to assign this order or delegate the performance of its duties without consent in writing of Purchaser. Any such assignment or delegation attempted without the previous written consent of Purchaser shall effect, at the option of Purchaser, a cancellation of all Purchaser's obligations hereunder.

### **18. WORK ON PURCHASER'S PREMISES**

If any work under this P.O. is to be performed on Purchaser's premises, Seller agrees to protect, indemnify, defend and save harmless Purchaser from and against all claims, losses or damages due to injury or death to any persons, including Seller's agents, servants or employees, and damage to or the destruction of any property resulting from Seller's negligent acts or omissions incident to or arising out of such work.

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### **19. USE OF NAME, TRADEMARK AND TRADENAMES**

- (a) Unless authorised by Purchaser in writing, the name of Purchaser, its parent, subsidiaries and/or affiliated entities or any of their trademarks shall not be used by Seller.
- (b) If the material specified within this P.O. is peculiar to Purchaser's design, either as an assembly, or if the material bears Purchaser's Trademarks and/or Identification Mark, it shall not bear the Trademark or other designation of the Maker or Seller and similar material peculiar to Purchaser's design or bearing its Trademark or Identifying Mark shall not be sold or otherwise disposed of to anyone than Purchaser.