



PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE of this purchase order (hereinafter referred to as “order,” “purchase order” or “PO”) must be without qualification. Treace Medical Concepts, Inc. (hereinafter referred to as “Purchaser” or “TMC”) will not be bound by any terms and conditions not appearing hereon. Shipment by Seller of the items ordered or performance of services will constitute acceptance by Seller of these terms and conditions and a waiver by Seller of all terms and conditions contained in any acceptance form or any other communication that are inconsistent with the terms and conditions set forth of this order unless specifically agreed to, in writing, by Purchaser.

2. COUNTER-OFFERS must be made within 5 working days of the date of this order; orders without counter-offers are considered accepted after the 5th working day.

3. ACKNOWLEDGMENT – Seller will formally acknowledge the acceptance by counter signature of an order when requested. Acknowledgments requested but not received by the end of the 5th day after the date of Purchaser’s order may be considered void. Purchaser will advise Seller when it has exercised this right.

4. SHIPPING & HANDLING INSTRUCTIONS – Seller is responsible for:

- 4.1 Handling product with non-latex gloves after final cleaning operations, specified by TMC, to prevent contamination prior to shipment.
- 4.2 Affixing the TMC order number to each container pertaining to the product therein.
- 4.3 Packing product in conformance with the transportation provider’s requirements and in such a way to protect the product from damage during shipment. No extra charge will be made for packaging materials unless authority is expressly incorporated in the order.
- 4.4 Including a packing list in US domestic shipments for each purchase order shipped; data must include: PO #, purchaser’s part number (if any), item identification, item quantity shipped. All non-US locations shipping to TMC US location(s) must comply with the shipping instructions as designated on the PO.
- 4.5 Shipping quantities within +/-5% of the quantity due unless otherwise noted in the PO. When shipping “short,” the packing slip will note whether Seller is considering the order complete with the quantity shipped. Quantities in excess of those allowable may be returned freight collect and debited from the invoice by Purchaser.
- 4.6 Paying freight charges unless otherwise noted on the order. If noted on the order that TMC will pay, it should be shipped FOB Destination via ground on the TMC Federal Express account unless otherwise stated in the PO header/line item notes or by written advice from Purchaser.

4.7 Shipping product such that it will arrive at TMC no earlier than 5 days before the due date and no later than the due date. Upon notification by TMC, product may be shipped to arrive more than 5 days early if within the month of the due date.

5. PRICE – If no price is stated on this order, items will not be furnished at a price higher than last paid to Seller by Purchaser for comparable items, absent prior notice and written acceptance by Purchaser of such increased price. Seller further represents to the best of its knowledge, information and belief that the prices charged for items covered by this order are not in excess of or less than prices permitted by applicable state, federal, and local law or regulation. Seller agrees to refund any amount paid by Purchaser in excess of lawful amounts.

6. CHANGES to PURCHASE ORDERS will not be binding upon Purchaser unless approved by Purchaser in writing.

7. CHANGES to ITEMS – Seller acknowledges that certain items purchased hereunder may be incorporated into medical devices regulated under the Federal Food, Drug, and Cosmetic Act and other applicable laws and regulations, and Seller agrees to notify Purchaser of any proposed change(s) to be made to any such items. Such notification will be made in sufficient detail to allow Purchaser to determine the impact of such change(s), if any, upon the completed medical device.

8. CHANGES to PROCESS – Seller acknowledges that certain items purchased hereunder may be incorporated into medical devices regulated under the Federal Food, Drug and Cosmetic Act and other applicable laws and regulations, and Seller agrees to notify Purchaser of any proposed change(s) to be made to processing such items when those changes are other than as specified by Purchaser or when those changes have the potential to alter the performance of the items. Such notification will be made in sufficient detail to allow Purchaser to determine the impact of such change(s), if any, upon the completed medical device.

9. RISK of LOSS or DAMAGE – Seller will be responsible for the items subject to this order until they have been delivered to and accepted by Purchaser, notwithstanding any other terms contained herein. All items will be received by Purchaser subject to its right of inspection and rejection. Purchaser will be allowed a reasonable period of time to inspect the items and to notify Seller of any nonconformance with the terms and conditions of this order. Purchaser may reject any items that do not conform to the terms and conditions of this order. Items so rejected may be returned to Seller or held by Purchaser at Seller's risk and expense.

10. INVOICES - Invoices will: a) be provided with each delivery with a bill of lading or be e-mailed to ap@treace.net; b) be postmarked with the same date as the date appearing on the bill of lading; c) cover no more than 1 order; and d) note the PO upon which the delivery has been made.

11. DELIVERY; NOTICE of LABOR DISPUTES – Time is and will remain of the essence in this order; no acts of Purchaser, including, without limitation, modification of this order or acceptance of late deliveries will constitute waiver of this provision. Purchaser reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Purchaser's orders or in advance of required schedules or to defer payment of advanced deliveries until scheduled delivery dates. Seller will notify Purchaser immediately of any actual or potential labor dispute that could affect the delivery or the performance of this order.

12. PATENTS; THIRD PARTY RIGHTS – Seller warrants that the items sold hereunder and the use of such goods where a representation of suitability for such use, express or implied, has been made, do not infringe any United States letters patent or other rights of third parties. Seller further agrees to indemnify, defend and save Purchaser, its officers, directors, agents and employees (“Purchaser Indemnitees”) harmless from and against any and all liability for such infringement including damages, costs and expenses arising from any suit against Purchaser and/or Purchaser Indemnitees alleging such infringement provided Purchaser gives Seller prompt notice in writing of the filing of any such suit and permits Seller, if it so elects, to enter and defend, settle or otherwise terminate such suit.

13. TRADEMARKS – Purchaser warrants that all of the trademarks Purchaser requests Seller to affix to the items purchased are those owned by Purchaser or Purchaser has the right to use same; it is understood Seller will not acquire or claim any rights, title or interest therein or use any of such trademarks on any items produced for itself or anyone other than Purchaser.

14. ASSIGNMENT – Seller will not, without first obtaining written consent of Purchaser, in any manner assign or sub-contract all or any part of this purchase order.

15. ADVERTISING – Seller will not, without first obtaining written consent of Purchaser, in any manner advertise, publish (including denial or confirmation thereof), or use for the purposes of demonstration the fact that Seller has contracted to furnish to Purchaser the items ordered herein.

16. WARRANTY – In accepting this order, Seller warrants that the items to be shipped herein are free from defects in materials, workmanship and fabrication, and that all merchandise delivered will be of quality, quantity, size, description, and dimension specified and strictly in accordance with Purchaser’s specifications, drawings and approved samples, if any, and suitable for the purpose(s) designated. These warranties will survive acceptance and payment and will run to the Purchaser, its successors, assigns, customers, and the users of its products and will be deemed exclusive.

17. INDEPENDENT CONTRACTORS – Seller will perform hereunder as an independent contractor and not as an employee or agent of Purchaser.

18. CHANGES to SPECIFICATIONS – Purchaser will have the right by written order, without notice, to make changes from time to time in the work to be performed or the items to be furnished by Seller hereunder. If such changes cause an increase or decrease in the amount due under this order or in the time required for its performance, an equitable adjustment may be made, and the order may be modified and performed accordingly, subject to Purchaser’s agreement. Any claim by Seller for adjustment must be asserted in writing within thirty (30) days from the date the change is ordered by Purchaser. Nothing contained in this clause will relieve Seller from proceeding without delay in the performance of the order as changed.

19. CANCELLATION and TERMINATION – Purchaser may cancel this order in whole or in part without liability to Purchaser if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure or any of the other terms or conditions hereof. Purchaser may terminate this order in whole or in part at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller will, and to the extent specified therein, stop work and the placement of subcontracts, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller’s possession in which Purchaser has or may acquire an interest. Any termination claim must be submitted to

Purchaser within sixty (60) days after the effective date of the termination and will be subject to equitable adjustment based on negotiation. Any cancellation or termination by Purchaser, whether for default or otherwise, will be without prejudice to any claims for damages or other rights of Purchaser against Seller. Purchaser will have the right to the reasonable audit of all elements of any termination claim, and Seller will make available to Purchaser on request all books, records and papers relating thereto.

20. CONFIDENTIAL RELATIONSHIP – Seller agrees to treat as strictly secret and confidential all specifications, programs, drawings, blueprints, nomenclature, samples, models, and other information supplied to Seller by Purchaser.

21. TOOLS and MATERIALS – Purchaser will retain title to any designs, sketches, drawings, programs, electronic-files, blueprints, patterns, dies, models, molds, tools, plates, cuts, special appliances, and materials furnished to Seller by or paid for by the Purchaser in connection with this order (collectively, “Materials”). The Materials will be: a) recorded and identified as property of Purchaser and retained by Seller on consignment for use solely in fulfilling orders from Purchaser; b) held at Seller’s risk and will be replaced by Seller if lost, damaged or destroyed; and c) maintained in good condition at Seller’s expense and kept insured by Seller with loss payable to Purchaser. Purchaser will have the right to file financing statements and such other documents as may be advisable or necessary for Purchaser to record and perfect its security interest in and ownership of the Materials, and Seller will cooperate with Purchaser and execute such documents as reasonably requested by Purchaser in connection therewith. The Materials will be used exclusively in the production for Purchaser of items required by the order and will not be used for production of larger quantities than those specified herein or in the production, manufacture, or design of any items for any other person without prior written consent of Purchaser. The Materials will be subject to disposition of Purchaser at any and all times. Upon demand, the Materials will be returned to Purchaser, including any unused Materials furnished by Purchaser and all spoiled or defective Materials or products that contain any secret, proprietary or patented device, unless Purchaser will otherwise direct. However, nothing in this clause will be construed as imposing any obligation on Purchaser to furnish any such Materials to Seller.

22. TAXES – Except as otherwise provided herein and unless prohibited by statute, Seller agrees to pay any federal, state or local sales tax, use tax, transportation tax or other excise tax, custom duty or levy including foreign, provincial, and local taxes which may be imposed upon the items and supplies ordered hereunder, or by reason or their sale or delivery.

23. COMPLIANCE with LAWS – In filling this order, Seller warrants it is in compliance with all applicable federal, state, and local laws, orders and regulations, as they may be updated by the government throughout the course of performance and term of this order including, without limitation, the Federal Food, Drug and Cosmetic Act and Safe Medical Devices Act as amended, and that items supplied are not adulterated or misbranded for purposes of the foregoing. Seller represents, warrants and certifies that it is in compliance with the National Defense Authorization Act (“NDAA”) rule from Section 889 as well as the associated Federal Acquisition Regulations (FAR) 52.204-24, 25 and 26. In addition, neither the Seller nor its subcontractors or suppliers are suspended or debarred, or proposed for debarment, or declared ineligible for the award of contracts by the government. This qualifying information may be found at the following sites:

<https://www.dol.gov/agencies/ofccp/debarred-list> or
<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>.

Seller further represents, warrants and certifies that it complies with all applicable laws, orders, and regulations pertaining to equal employment opportunity (specifically Executive Order 11246), waste management, the environment, human trafficking, slavery, forced labor and/or child labor, and occupational safety and health regulations in its operations. Seller also represents and warrants that (1) it is in compliance with mandatory flowdown terms for Commercial Items sales found at FAR 52.244-6, (2) it does not discriminate against disabled Vietnam Era veterans, in compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1972, or Workers with Disabilities, (3) it has not falsely certified its size, and (4) within a three-year period preceding this sale, the company has neither been indicted for, or otherwise criminally or civilly charged by a government entity, nor been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government contract or sub-contract; violation of federal or state antitrust statutes relating to the contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property. Upon request by TMC, Seller will provide all information necessary to demonstrate to TMC compliance with all applicable laws and regulations. Seller will notify TMC immediately upon becoming aware of any concerns relating to compliance with this clause.

24. INDEMNITY and INSURANCE – Seller will defend, indemnify, and hold harmless Purchaser, Purchaser Indemnitees, Purchaser's customers and users of the purchased items from (a) any and all property damage, personal injuries or death arising out of the purchase and/or use of the items purchased hereunder and/or arising out of Seller's (or its subcontractor's) work or performance hereunder; (b) the assessment by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the items purchased hereunder; and (c) any and all damages, charges, losses (including the cost of any items lost by libel, condemnation, or voluntary recall), actions, and proceedings brought by the United States of America or any state and local government or any agency or instrumentality thereof against Purchaser and/or any Purchaser Indemnitee, or against any such items, by reason of any claim or findings by said public authority that the items purchased hereunder are not as herein guaranteed and warranted. Seller will procure and maintain liability insurance with contractual liability coverage with minimum limits of \$1,000,000 or with such higher limits as Purchaser will reasonably request. Excluded from this indemnification are any injuries and damage caused by Purchaser's negligence.

25. SETOFF – Purchaser may set off any amount due from Seller during which time Seller will continue performance hereunder while such setoff or any adjustment relating to such setoff is being made.

26. GOVERNING LAW; DISPUTE RESOLUTION; VENUE – The contract resulting from the acceptance of this order (the "Contract") will be interpreted according to the laws of the State of Florida, without regard to principles of conflict of laws. Any and all disputes arising in connection with the Contract will be resolved as follows: (a) Purchaser and Seller will first attempt in good faith to resolve the dispute in an amicable manner through discussions between them for a period of at least sixty, but no more than ninety, days; (b) if such discussions do not yield an agreement resolving the dispute, Purchaser and Seller will engage in non-binding mediation before an agreed-upon business mediator to be conducted within sixty days following the conclusion of discussions pursuant to clause (a) above, with each party bearing fifty percent of the costs of such mediation; and (c) if the non-binding mediation

does not yield an agreement resolving the dispute, Purchaser and Seller will each be free to pursue equitable or legal remedies to resolve the dispute, it being understood and agreed that notwithstanding any provision above to the contrary, Purchaser and Seller will have the right to seek injunctive relief at any time if time is of the essence or if failure to do so would result in material prejudice to Seller or Purchaser, as the case may be. Any litigation necessary to resolve a dispute as set forth above will be brought in the Federal District Court, Middle District of Florida, Jacksonville Division.

27. DAMAGES – Purchaser’s liability for breach of this Agreement will not exceed the difference between the resale prices of any items or work in process sold in good faith and in commercially reasonable manner and the contract price for such items or work in process, less expenses and costs saved in consequence of Purchaser’s breach. Purchaser will not be liable for any indirect, incidental, special, or consequential damages. Seller remedies contained herein are not optional but will be Seller’s exclusive remedies.

28. WAIVER – No waiver of any of the provisions contained in this order will be valid unless made in writing and executed by both parties. No charges beyond the contract price specified in the purchase order will be allowed except with Purchaser’s written consent. Failure of Purchaser to insist upon strict performance will not constitute a waiver of any of the provisions of this order or waiver of any other default.

29. ON SITE INSPECTION – Seller acknowledges that certain items purchased hereunder may be incorporated into medical products subject to federal agency, other regulatory, customer, and Purchaser requirement for on-site inspection. Seller agrees that pursuant to notification made to it, inspection of site, product, and documentation will be allowed.

30. REGULATORY NOTIFICATION – Seller will immediately notify TMC within 2 business days in the event Seller supplier receives any compliance/enforcement action notification (such as a result from inspection) from a regulatory agency (such as, for example, a United States FDA 483 Observation Letter or Warning Letter). Seller will update TMC and provide corrective action plans until the issue is fully resolved with the applicable regulatory agency, including any close-out dates and letters provided by such regulatory agency.