

Purchase Order Terms and Conditions (Government Contract)

ClinicalRM ("Buyer") hereby orders certain items and goods identified on the face hereof from the party identified on the face hereof ("Seller") with the understanding that these items and goods may be used by ClinicalRM in the performance of a government contract. Seller agrees to the following terms set forth on the face hereof:

1. **PRICE.** The price shall not be higher than that appearing on the face of this Purchase Order ("Order"), or if no price appears thereon, then no higher than that last quoted by Seller. The price shall include all applicable Federal, State, and local taxes and duties.
2. **INSPECTION & ACCEPTANCE.** Buyer shall only tender for acceptance those items that conform to the requirements of this Order. Delivery of the goods and materials shall not constitute acceptance of such goods and materials. All goods and materials shall be subject to inspection and acceptance by Buyer after delivery to the location specified on the Order or at Buyer's location if no point of delivery is specified. Material failing to meet the requirements of this Order will be held at Seller's risk and may be returned at Seller's expense. Buyer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, Buyer may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services, at Buyer's option.
3. **SUBSTITUTION AND EXTRAS.** No substitutions of materials or accessories may be made without Buyer's written consent. No charge will be allowed for extras, shipping, packing, crating, freight or other carrier's charges, unless designated on this Order. If Buyer designates a specific shipper on the front of this Order, Seller agrees to use such shipper. In the event Seller fails to use such shipper, Seller shall be responsible for any increase in shipping costs to Buyer along with any other costs and expenses incurred by Buyer due to Seller's failure to use the designated shipper.
4. **DELIVERY.** Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule, except at Seller's own risk. It is Seller's responsibility to comply with this schedule but not to anticipate Buyer's requirements.
5. **TERMINATION FOR CAUSE.** In addition to any other rights which Buyer may have, Buyer may terminate this Order, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. **TIME IS OF THE ESSENCE AS TO THE PERFORMANCE OF THIS ORDER.** Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence.

In the event of termination for cause, the Buyer shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to the Buyer for any and all rights and remedies provided by law. If delivery is not made within the time specified herein, Buyer may purchase such goods elsewhere and charge Seller the difference in price and/or Buyer may cancel the entire Order or any undelivered portion thereof. Payments due Seller may be offset against sums owed by Seller to Buyer.

If it is determined that the Buyer improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

6. TERMINATION FOR CONVENIENCE. In addition to any other rights which Buyer may have, the Buyer reserves the right to terminate this Order, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, the Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with Government cost accounting standards or contract cost principles for this purpose. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Upon any termination of this Order by Buyer, for any reason, in no event shall Seller be entitled to lost opportunity costs, unabsorbed overhead or anticipated profits as a result of such termination. Buyer's maximum liability for canceling this Order shall not exceed the date of sale price of the Order.

7. BANKRUPTCY. Buyer also may cancel this Order in whole or in part if Seller is adjudicated a bankrupt, if a petition under the Bankruptcy Act is filed against Seller, if Seller makes an assignment for the benefit of creditors, if a receiver of the property of Seller is appointed or if an action under any law for the relief of debtors is taken in respect of Seller.

8. PATENT, COPYRIGHT AND TRADEMARK INDEMNIFICATION. Seller warrants that it will defend at its expense the allegations of any suit against Buyer or Buyer's customers respecting infringement of any U.S. or other Letters Patent, or violation of any copyright or trademark, covering all or part of the goods or materials furnished under this Order, its manufacture and/or its use, or Seller shall procure for Buyer or Buyer's customers the right to continue to use such goods or materials, or replace it with substantially equivalent non-infringing or non-violating materials. Buyer shall reasonably notify Seller of any charge of and suit for such infringement and tender to Seller the defense of such allegations, Buyer having the right to be represented in such defense at its own expense.

Seller shall indemnify ClinicalRM's customer, i.e. the Government and its officers, employees and agents, against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Purchase Order, provided the Seller is reasonably notified of such claims and proceedings.

9. OVER-SHIPMENT. Materials shipped in excess of quantity ordered may be returned at Seller's expense, which expense shall include, without limitation, packing and freight charges and Buyer's labor costs, or, alternatively, at Buyer's option, Buyer may charge Seller an amount not to exceed Twenty Five Dollars (\$25) per package, plus shipping costs.

10. TITLE & RISK OF LOSS. Unless otherwise specified on the face of this Order, all risk of loss or damage to the goods or materials furnished under this Order shall pass to Buyer upon delivery at Buyer's premises. Title to items furnished under this Order shall pass to Buyer upon acceptance, regardless of when or where Buyer takes physical possession.

11. WARRANTY. Seller expressly warrants that all goods and materials specified in this Order shall conform to the specifications, drawings, samples or other description upon which this Order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. Inspection, test, acceptance or use of such goods or materials shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, test acceptance and use. This warranty shall run to Buyer, its successors, assigns and customers and the user of its products and shall survive termination or cancellation hereof. Seller agrees to replace or correct defects (including labor and transportation) in any goods or materials not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conformity. In the event of failure by Seller to promptly correct defects in or replace non-conforming goods or materials, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for costs incurred by Buyer thereby. The warranties and remedies contained in this Order supplement the warranties and remedies provided by the Uniform Commercial Code, which warranties and remedies shall not be disclaimed or limited in any way by Seller.

12. INDEMNITY. Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses, either direct, indirect or consequential (including attorneys' fees) arising out of, in any way except from Buyer's negligence, from any defect in the goods or materials purchased hereunder or from any act or omission of Seller, its agents or employees. This indemnity obligation of Seller shall survive the expiration or termination hereof.

13. INDEMNIFICATION BY GOVERNMENT. In the event any supply or service acquired under this Order is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Seller or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. § 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

This paragraph 11 does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

14. DATA. Seller shall not use or disclose to any third party any data, designs or other information belonging to or supplied by or on behalf of Buyer, except in the performance of this or other orders for Buyer. Upon Buyer's request, such data, designs or other information and any copies thereof shall be returned to Buyer. Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of Buyer's orders, Seller shall insert the substance of this provision in its orders. Any knowledge or information which Seller has disclosed or may hereafter disclose to Buyer incident to this Order, shall not, unless agreed in writing by Buyer, be deemed to be confidential or proprietary information, and accordingly will be acquired free from any restriction. No employee of Buyer has authority to make any agreement, express or implied, limiting the use of or providing for the confidentiality of information received by him/her, unless such agreement is made in writing and signed by the President of Buyer.

15. CHANGES IN WRITING. This Order represents the final written expression of agreement between Buyer and Seller, constituting the entire contract between Buyer and Seller and superseding all previous communications, either oral or written. Any inconsistent or additional terms contained in any quotation or previous offer from Seller are hereby rejected unless expressly accepted in writing by Buyer within ten (10) days after delivery of this Order. In the event the terms and conditions of this Order are inconsistent in any manner with a quotation or proposal from Seller, this Order shall be deemed a counteroffer and Seller's subsequent delivery shall be deemed Seller's acceptance of such counteroffer on the terms and conditions contained herein. No terms and conditions other than those set forth herein and on the face of this Order shall be effective unless said changes are reduced to writing and signed by both parties. Shipment by Seller of goods or materials pursuant to this Order shall be deemed to be an acceptance by Seller of the terms and conditions of this Order. Any different terms and conditions in Seller's acknowledgment of this Order or Seller's invoice, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Buyer. Buyer specifically objects to the inclusion of any different or additional terms and conditions by Seller in acknowledging, confirming or accepting this Order. If Seller does include different or additional terms and conditions in its acknowledgment, acceptance, confirmation, invoice or other written form sent in response to this Order, neither Buyer's acceptance or delivery of all or part of the goods, nor Buyer's payment for the goods shall

constitute acceptance of such additional or different terms, but instead the terms and conditions of this Order shall govern. Neither this Order nor any interest herein shall be transferred or assigned by Seller without the written approval of Buyer. Seller may, however, assign its right to receive payment due as a result of performance of this Order to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727), provided that payment will not be made by a third party.

16. MISCELLANEOUS. Seller shall cause the work and materials contemplated hereunder to be performed and manufactured in strict conformity with federal, state and local laws and Seller agrees, upon request, to furnish Buyer a Certificate of Compliance with any or all such laws in such form as Buyer may require. The right and duties of the parties hereto shall be determined by the laws of the State of Ohio and this Order shall be construed and considered as a contract made and to be performed in the State of Ohio. Further, Buyer and Seller agree to submit to the jurisdiction of the appropriate local, state or federal courts within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party, except those rights accruing to the Government as specified herein. The failure of either party to insist on or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

17. DUTY TO PROCEED. The Buyer and Seller shall attempt to resolve any dispute by good faith negotiation. Pending resolution of any dispute, the Seller shall proceed diligently with performance of this Order and its performance shall be in accordance with the Buyer's written instructions.

18. CDA DISPUTES. In the event that any dispute arising hereunder gives the Buyer recourse against the Federal Government under a contract with the Government, the Buyer may, at its option, require Seller to cooperate fully with Buyer in prosecuting any such dispute and will be bound by the outcome unless Buyer fails to afford Seller a reasonable opportunity to participate in the resolution of the dispute. In the event such a claim is pursued against the Government, Seller agrees to provide a certification that conforms to the certification requirements of the Contract Disputes Act of 1978 (41 U.S.C. § 604), and each party agrees to bear their own costs in prosecuting the dispute. Nothing in this Order grants Seller a direct right of action against the Government.

19. AFFIRMATIVE ACTION. ClinicalRM is an equal opportunity employer. The Equal Opportunity Clauses required by Executive Order 11246, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212, Section 503 of the Rehabilitation Act of 1973, as amended, Executive Order 13201, as amended, and their implementing regulations at 41 CFR Chapter 60 are part of this Order and are binding upon Seller unless exempted by rules, regulation or orders of the Secretary of Labor. To the extent Seller is required to maintain an affirmative action program required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), Seller hereby certifies that it has developed and filed such a written affirmative action program.

20. SYSTEM FOR AWARD MANAGEMENT. To the extent Seller is required to complete the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>, Seller hereby verifies that its representation(s) and/or certification(s) are current, accurate, and complete as of the date of this Order, and that Seller is in compliance with all requirements to which it has certified.