

MEDTRONIC XOMED, INC.

**PURCHASE ORDER
TERMS AND CONDITIONS**

ENTIRE AGREEMENT; CONFLICTING TERMS. This Purchase Order contains the complete, final and exclusive agreement between Medtronic Xomed, Inc. ("Medtronic") and the party identified as Supplier on the face of this Purchase Order ("Supplier") regarding the goods or services ordered hereunder ("Goods and/or Services"). Except as otherwise explicitly agreed by Medtronic in writing, conflicting, different or additional terms are expressly rejected and acceptance of this offer is expressly limited to the terms stated in this Purchase Order. No course of dealing or usage of trade or actual course of performance shall be relevant to explain or supplement any terms used herein. Any shipment or delivery of Goods (including licenses for software, copyrighted items, etc.) or performance of Services shall constitute acceptance of the terms and conditions of this Purchase Order regardless of any purported substitution or addition of terms and conditions by Supplier. Acceptance by Medtronic of any shipment from Supplier shall not constitute acceptance of any such different or additional terms and conditions.

INDEPENDENT AGREEMENTS. The terms and conditions set forth herein shall not apply in any respect if a separate and complete agreement between Medtronic and Supplier regarding the Goods and/or Services is in effect.

QUANTITIES. The specific quantity ordered must be delivered in full and not be changed without Medtronic's prior written consent. Any different quantity without such consent is subject to Medtronic's rejection and return at Supplier's expense.

PRICE. The price for each Good and/or Service shall be the price as shown for such Good and/or Service indicated on the face of this Purchase Order. Any change in price without Medtronic's prior written consent is expressly rejected. No additional charges of any kind, including charges for boxing, packing, cartage or other extras will be allowed except with Medtronic's prior written consent.

PAYMENT. Unless otherwise agreed, payment shall be due net 30 days from the date of delivery plus five (5) days, or from the date of receipt of correct invoice, whichever date is later. Unless otherwise agreed, Medtronic shall be entitled to a two percent (2%) discount off payments remitted within fifteen (15) calendar days from the date of delivery of the Goods or performance of Services, or from the date of receipt of correct invoice, whichever date is later.

TAXES. Except for state sales and use taxes, the price for the Goods and/or Services includes all taxes, fees, and charges that may be imposed with respect to the purchase of the Goods and/or Services.

DELIVERY. Time is of the essence in the performance of this Purchase Order, and any delay in delivery shall constitute a material breach. Title shall transfer to Medtronic upon delivery of the Goods to Medtronic. Unless otherwise agreed, shipment of the Goods shall be FOB destination with Supplier bearing the risk of loss and cost of delivery.

INVOICING. All packages, packing slips and invoices must be plainly marked with the Purchase Order number shown on the face of this Purchase Order and such other information as Medtronic may request from time to time. Supplier shall state separately on its invoice the amount of state sales and/or use tax applicable to the sale of Goods and/or Services.

INSPECTION. Medtronic is entitled to inspect the Goods and/or Services (including the performance of tests) before or after receipt and reject them for failure to conform to this Purchase Order, regardless of whether any payment has been made by Medtronic, whether the nonconformity substantially impairs the value of the Goods and/or Services, or whether the nonconformity may be cured by Supplier. Medtronic has the right upon reasonable notice to enter Supplier's facilities to inspect the production of Goods and/or performance of Services, without precluding subsequent inspection and rejection of Goods and/or Services. If the inspection discloses, in Medtronic's good faith opinion, that Supplier's ability to meet the requirements of this Purchase Order is questionable, Medtronic may treat such circumstance as a material breach and terminate this Purchase Order without liability to Supplier. If Goods tendered pursuant to this Purchase Order are nonconforming, Medtronic may return all of the Goods to Supplier, at Supplier's expense, for first priority repair, replacement or a refund at the election of Medtronic.

INDEPENDENT PARTIES. Agents, employees, or other persons selected or directed by Supplier to perform this Purchase Order shall not be agents or employees of Medtronic, whether or not a separate charge is made for their services. Supplier agrees to indemnify, defend and hold harmless Medtronic from and against any claims arising out of the acts of Supplier, its employees, agents or contractors and against liability for taxes in connection with the services performed by Supplier, its employees, agents or contractors.

INSURANCE. Any insurance purchased by Supplier to cover loss or damage to the Goods in transit to Medtronic shall be solely at Supplier's expense. If Supplier is performing Services, Supplier shall maintain a reasonable amount of insurance covering the risks associated with such Services, and upon request name Medtronic as an additional insured and provide evidence of the same to Medtronic.

CHANGES. Medtronic is entitled, at any time, to change the specifications for the Goods and/or Services or any other matters relating to performance of this Purchase Order; provided that the price and/or delivery schedule may be equitably adjusted with Medtronic's prior written consent to reflect additional costs and/or schedule adjustments required by the changes. Any claim for adjustment is waived unless made in writing within thirty (30) days after receipt of Medtronic's written change order. Supplier shall not make any change or deviation to Goods and/or Services covered specifically by this Purchase Order, except with Medtronic's prior written consent. Upon approval by Medtronic, Inc. of the initial design, any process changes, design changes or deviations considered by Supplier must be submitted to Medtronic in writing for review. If changes are submitted for approval, the information submitted must include a complete description of the change and the effect the will have on all characteristics of the product. Upon request, Supplier shall submit samples of the proposed product for evaluation and approval by Medtronic.

SUSPENSION OF WORK. Medtronic may, at any time, direct Supplier to suspend all or any part of the work for not more than 180 days. In the event of a suspension, Medtronic may, in its discretion, reimburse Supplier for reasonable and actual additional costs incurred solely and directly as a result of the suspension, provided that a detailed claim with supporting documentation of such costs is submitted to Medtronic within thirty (30) days after the end of the suspension. Supplier agrees to provide Medtronic a good faith estimate of suspension costs upon request.

WARRANTY SPECIFICATIONS. Supplier warrants that the Goods and/or Services will be in exact accordance with the specifications, drawings and other instructions attached to this Purchase Order or to which Medtronic and Supplier subsequently agree in writing. Further, Supplier warrants that the Goods and/or Services will be free from defects in materials, workmanship and design (except to the extent such defective design is attributable to Medtronic). This warranty shall not be deemed waived by Medtronic's acceptance of or payment for the Goods and/or Services.

COMPLIANCE WITH LAWS. Supplier represents and warrants that the Goods and/or Services were not manufactured or performed, and are not being sold or priced, in violation of any federal, state, or local law, executive order, or administrative ruling. Without limiting the generality of the foregoing, Supplier represents and warrants that it complies with the following provisions of federal law which are hereby incorporated by reference into this Purchase Order: (1) the Federal Food, Drug and Cosmetic Act, as amended, and all applicable regulations and Executive Orders issued thereunder; (2) the Civil Rights Act of 1964, as amended, and all applicable regulations and Executive Orders issued thereunder; (3) the Fair Labor Standards Act, as amended, and all applicable regulations and Executive Orders issued thereunder; (4) FAR [48 C.F.R.] 52.222-26 and 41 C.F.R. 60-1.4, relating to Equal Opportunity; (5) FAR 52.222-35 and 41 C.F.R. 60-250.5, relating to Affirmative Action for Disabled Veterans and Vietnam Veterans; (6) FAR 52.222-36 and 41 C.F.R. 60-741.5, relating to Workers with Disabilities; and (7) FAR 52.222-41, relating to the Service Contract Act, as amended. Supplier agrees to indemnify, defend, and hold harmless Medtronic from and against any and all claims, costs, damages, judgments, losses and expenses (including attorneys' fees) incurred or resulting directly or indirectly by or to Medtronic as a direct or indirect result of the breach of any representation or warranty made by Supplier herein. Medtronic is a holder of U.S. Government contracts and is subject to certain additional statutory, regulatory, and contract requirements by virtue thereof. If this Purchase Order is issued under a U.S. Government prime contract or a subcontract under a U.S. Government prime contract, Supplier agrees to comply with all statutory, regulatory, and contract requirements applicable to the prime contract or subcontract, copies of which may be furnished to Supplier upon Supplier's request.

INTELLECTUAL PROPERTY PROTECTION AND RIGHTS. Supplier warrants that the Goods (including but not limited to software) do not infringe upon any third party's intellectual property, including patents, copyrights, trademarks or trade secrets, and that Supplier has all necessary rights to sell or license the Goods. Supplier agrees to indemnify, defend and hold harmless Medtronic, its successors, assigns, customers, and users of its products from and against all claims, costs, damages, judgments, losses and expenses (including attorneys fees) arising from the infringement or alleged infringement of any such intellectual property in connection with such Goods, unless infringement occurs solely as a result of the incorporation of specifications provided by Medtronic.

OWNERSHIP AND USE. All ideas, inventions, copyrightable subject matter (including computer or other electronic data files, drawings, and other materials), and other items prepared by Supplier or arising specifically in connection with this Purchase Order (including tooling), and all items furnished by Medtronic, shall be the property of Medtronic and no reproductions or property interest shall be retained by Supplier. To the extent allowed by law, copyrightable subject matter created by Supplier shall be deemed "work made for hire." In all cases, Supplier agrees to assign and hereby assigns its rights in all such ideas, inventions, copyrightable subject matter and items to Medtronic. Such items shall only be used for the benefit of Medtronic and shall not be disclosed to any other party. Such property while in Supplier's custody shall be at Supplier's risk and shall be returned to Medtronic in the same condition as received, ordinary wear and tear excepted.

CONFIDENTIALITY. Supplier may not disclose to any third party (other than a government or judiciary body, as required by law), or use to the detriment of Medtronic, the existence or details of this Purchase Order or any agreement or arrangement with Medtronic, or any information Supplier receives or learns about Medtronic in connection with or as a result this Purchase Order, except as is necessary to perform this Purchase Order.

ELECTRONIC DATA INTERCHANGE. As used in this Purchase Order, the term "Electronic Data Interchange" or "EDI" shall be broadly construed to include and encompass internet-based and traditional EDI systems. Supplier and Medtronic agree that communication utilizing EDI pursuant to applicable law [including the Florida Uniform Electronic Transactions Act] shall be permitted under this Purchase Order and shall be legally effective and enforceable. Supplier and Medtronic shall each adopt an electronic identification consisting of symbol(s) or code(s) that will be included in each EDI communication. Transmission of an EDI communication including such symbol(s) or code(s) will verify the identity of the party originating the communication. EDI communications will be deemed received when accessible and legible to the receiving party. Supplier shall institute and adhere to security procedures to ensure that all EDI communications are authorized and to ensure that all business records and data are protected against loss, alteration, destruction, or access by unauthorized parties.

SOFTWARE LICENSES. If software is licensed under this Purchase Order, except as explicitly agreed to the contrary by Medtronic in writing, the license is worldwide, perpetual, royalty-free and granted in favor of Medtronic and its affiliates, which may make a reasonable number of copies of the licensed software. A Medtronic affiliate is an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Medtronic. Control shall mean owning or having the right to exercise fifty percent or more of the voting power of the entity. Supplier represents and warrants that there is no unauthorized code in any of the hardware or software supplied by Supplier and that any support/maintenance by Supplier will not introduce unauthorized code into the hardware or software. Unauthorized code means any virus, trojan horse, worm or other software routines designed to permit unauthorized or undocumented access, to disable, erase or otherwise cause harm to software, hardware or data.

TERMINATION. Medtronic may terminate all or any part of this Purchase Order without cause by providing Supplier at least ten (10) calendar days' notice in advance of the effective termination date. In the event of termination by Medtronic without cause, Medtronic's liability shall be limited to the price of, and Supplier shall deliver to Medtronic, Goods and/or Services scheduled for delivery and/or performance during the period ending on the effective termination date. Medtronic shall not be liable to Supplier for any damages, costs or charges in respect of such termination without cause. Supplier hereby waives any right that it may have to specific performance under this Purchase Order. Medtronic may immediately terminate upon notice all or any part of this Purchase Order without obligation to Supplier upon the occurrence of any of the following causes: (a) a material breach of any term of this Purchase Order by Supplier, including, but not limited to, untimely shipment of Goods, or shipments of Goods which do not conform to this Purchase Order, (b) the filing by or against Supplier of any insolvency or bankruptcy proceedings or proceedings for reorganization, receivership or dissolution; or (c) any material adverse change in the condition of Supplier, which Medtronic in good faith believes to impair the likelihood that Medtronic will receive timely and full performance of this Purchase Order.

LIMITATIONS. Any actions or claims by Supplier under this Purchase Order for breach, nonperformance or otherwise shall be commenced within twelve (12) months after the occurrence giving rise to the action or claim. **WAIVER.** Medtronic's rights hereunder may not be waived except by written instrument signed by an authorized agent. Medtronic's waiver of a breach of this Purchase Order in one instance shall not be deemed a waiver with respect to any other breach. **SUCCESSORS; ASSIGNS.** This Purchase Order shall be binding upon the representatives, successors and assigns of the parties; provided that Supplier may not assign this Purchase Order in whole or in part without the prior written consent of Medtronic and any such purported assignment shall be void. **APPLICABLE LAW; JURISDICTION.** The terms and conditions of this Purchase Order and the resolution of any disputes arising out of it shall be governed by and interpreted in accordance with the laws (without giving effect to conflicts of law principles) of the State of Florida. The parties agree to submit to the jurisdiction of the courts of Florida for all matters relating to this Agreement.

MARKING: All merchandise on this order will be marked conspicuously, legibly, and permanently in English with the country of origin of the goods.