

**STANDARD PURCHASE ORDER TERMS & CONDITIONS (UNITED KINGDOM): UPDATED 2012**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. If the Purchaser and the Seller (or their respective Affiliates) have executed alternative contractual terms or a master agreement governing the purchase of the Products and Services set out in the Purchase Order, then those alternative terms shall apply instead of these Terms and Conditions.
- 1.2. In these Terms and Conditions, the following definitions apply:  
**"Affiliates"** means any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with either the Purchaser or the Supplier, including without limitation, and by example only, as a subsidiary, parent, holding company or joint venture alliance partner;  
**"Confidential Information"** means any business, technical, operational, product, customer or personnel information of the Purchaser, the Supplier or their respective Affiliates, which is disclosed or obtained by the other in connection with the provision of the Products and/or Services;  
**"Cure Date"** has the meaning set out in clause 10.2;  
**"Data Protection Legislation"** means the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive in the country in which the Products and/or the Services are to be provided;  
**"Delivery"** means delivery of the Products and/or the performance of the Services, to the address specified for delivery in the Specifications or in the Purchase Order, as the case may be;  
**"Disclosing Party"** has the meaning set out in clause 11.1;  
**"Documentation"** means the documentation relating to the Products and/or the Services, to be provided by the Supplier under clause 6.1;  
**"Losses"** means all losses, claims, liabilities, costs, expenses and damages of any nature;  
**"Personal Data"** has the meaning set out in the Data Protection Legislation;  
**"Price"** means the amount in the relevant currency specified in the Purchase Order as the price for the Products and/or the Services;  
**"Products"** means any item, goods, deliverable, materials or otherwise set out or referenced in the Purchase Order to be provided by the Supplier pursuant to these Terms and Conditions;  
**"Purchase Order"** means the Purchaser's purchase order concerning the Products and/or Services to be delivered under these Terms and Conditions, with a unique identifying number. The Purchase Order unique identification number must be quoted on all Supplier invoices for the Products and/or the Services Delivered to the Purchaser for payment to occur;  
**"Purchaser"** means the ConvaTec group company specified in the Purchase Order, which may include without limitation, ConvaTec Holdings UK or any of its subsidiaries;  
**"Purchaser's Personal Data"** has the meaning set out in clause 12.1;  
**"Receiving Party"** has the meaning set out in clause 11.1;  
**"Services"** means the services set out or referenced in the Purchase Order to be provided by the Supplier pursuant to these Terms and Conditions and, including services to install or maintain the Products;  
**"Specifications"** means the Purchaser's statement of requirements concerning the scope and performance specifications applicable to the Products and/or Services;  
**"Terms and Conditions"** means these terms and conditions, which may be amended from time to time by the Purchaser unilaterally and by notice in writing to the Supplier. Any amendments of these Terms and Conditions shall apply only to orders for Products and/or Services placed after the effective date of such amendment;  
**"Warranty Period"** means the period of 12 months commencing on Delivery of the Products, unless a different warranty period is mandated by applicable law in which case such period shall be the warranty period for the Products.

**2. SCOPE**

- 2.1. In exchange for the Purchaser paying the Price, the Supplier shall provide the Products and/or the Services in accordance with these Terms and Conditions.
- 2.2. Unless otherwise agreed in writing by the Purchaser or set out in the Purchase Order, these Terms and Conditions shall prevail over any other terms and conditions, business terms, purchase conditions or order acknowledgement provided by the Supplier.
- 2.3. The Supplier acknowledges that it provides the Products and/or the Services to the Purchaser on a non-exclusive basis. Nothing in these Terms and Conditions shall restrict the Purchaser's ability to obtain products and/or services the same as or similar to the Products and/or Services from any third party.
- 2.4. Nothing in these Terms and Conditions commits or guarantees any future purchases of the Products and/or the Services.
- 2.5. The Products and/or the Services are purchased for the benefit of the Purchaser and its Affiliates.

**3. DELIVERY**

- 3.1. Except as otherwise agreed in the Purchase Order or the Specifications, the Supplier shall deliver the Products and/or the Services to the Purchaser no later than 30 calendar days after the date of the Supplier's receipt of the Purchase Order. Time is of the essence in effecting Delivery.

**4. PRICE AND PAYMENT**

- 4.1. Unless otherwise agreed in writing with the Purchaser, the Price:  
 (a) is fixed and is not subject to any increased cost as a result of currency fluctuations;  
 (b) is inclusive of all requirements including without limitation all packing, labelling, customs, freight and transportation duties or charges;  
 (c) is exclusive or inclusive of VAT as stated in the Purchase Order and any applicable VAT shall be paid by the Purchaser at the prevailing rate prescribed by applicable law;  
 (d) to the extent that it requires the reimbursement of out-of-pocket expenses, such expenses shall be agreed by the Purchaser in advance and the agreed out-of-pocket expenses shall be invoiced to the Purchaser at the Supplier's cost without additional mark-up or margin; and  
 (e) constitutes fair market value for the Products and/or the Services and does not constitute bribery or any other form of inappropriate inducement according to and under applicable law.
- 4.2. Subject, where applicable, to the satisfactory completion of any milestones or unless an alternative invoicing schedule is agreed in writing by the Purchaser, the Supplier shall invoice the Price following Delivery and send such invoice to the Purchaser's nominated invoice address indicated on the Purchase Order. The Purchaser shall pay all undisputed amounts within 50 calendar days from the date of the Supplier's legally valid and correct invoice. If the payment due date falls on a day which is not a business day, then the payment due date shall be the first business day following the payment due date.
- 4.3. The Purchaser may reasonably dispute the legal validity, accuracy or correctness of the invoice and may withhold payment on the disputed portion (including on the entire portion, where the legal validity of the entire invoice is disputed) until the dispute is resolved. Clause 4.4 shall not apply to any payment withheld by the Purchaser pursuant to this clause. The Supplier shall provide the Purchaser with the invoice and where applicable, such information as the Purchaser may reasonably require to substantiate the Price.
- 4.4. If the Purchaser fails to pay an undisputed invoice by the due date for payment, described in clause 4.2 above, the Supplier may charge interest on the unpaid amount at the rate 4% above the base rate and compounded annually from time to time of National Westminster Bank Plc from the due date until the date of actual payment.

**5. TITLE AND RISK IN PRODUCTS**

- 5.1. Risk in the Products passes to the Purchaser on Delivery. Full title to the Products free of prior rights or interests of any person, passes to the Purchaser on payment of the Price (or portion of the price) that corresponds to the Products actually Delivered.

**6. DOCUMENTATION**

- 6.1. The Supplier shall provide the Purchaser with all documentation relative to the Products and/or Services customarily provided by the Supplier or as otherwise agreed. All such documentation shall be sufficient to enable the Purchaser to receive the full benefit of the Products and/or the Services, including without limitation documentation sufficient to operate, to make full use of and/or to maintain the Products without further reference to the Supplier.

**7. CANCELLATION, REJECTION AND OTHER PERFORMANCE FAILURES**

- 7.1. If the Products and/or Services fail to materially comply with the Specifications, the Purchase Order, and/or the Supplier's published technical, functional or operational specifications, then without limitation to the Purchaser's statutory rights upon Delivery or if Delivery is delayed by more than 7 calendar days after the due date for delivery, then the Purchaser may:  
 (a) notify the Supplier in writing that, with immediate effect, the Purchaser terminates all or the relevant part of the Purchase Order for the Products and/or Services;  
 (b) reject the affected Products or if in the Purchaser's opinion the delay or failure is severe, all of the Products including those previously supplied.
- 7.2. If the Purchaser rejects or terminates all or part of the Products and/or Services under clause 7.1, the Supplier shall accept the return and immediately credit or refund to the Purchaser the total Price paid and any costs incurred by the Purchaser in returning the Products to the Supplier.

**8. WARRANTIES AND INDEMNITIES**

- 8.1. Without limitation to any statutory rights or warranties according to applicable law, the Supplier warrants that:  
 (a) upon Delivery the Products and/or Services materially comply with the Specifications and the Purchase Order, and shall continue to materially comply with the Specifications and the Purchase Order during the Warranty Period;  
 (b) the Products conform to their description and are materially free from defects in design, materials, workmanship and installation;  
 (c) the Products are of satisfactory quality and reasonably fit for their purpose and use;  
 (d) the Products are new and have not been used by any person, unless otherwise agreed in writing by the Purchaser;  
 (e) it will comply with all applicable laws in supplying the Products and/or Services;

- (f) the Products and/or Services will comply with all applicable laws, regulations and industry standards and the Supplier's published technical, functional or operational specifications therefore;
- (g) all Services will be carried out by competent, suitably qualified and trained personnel;
- (h) the Products (and/or the Purchaser's and its Affiliates normal use of the Products) do not and will not at any time infringe the intellectual property rights of any third party;
- (i) it is not aware of any conflicts of interest which could materially adversely affect the Supplier's ability to supply the Products and/or Services as required by these Terms and Conditions;
- (j) it has the full and unrestricted right to Deliver the Products and/or the Services in accordance with these Terms and Conditions and all applicable laws; and
- (k) seller shall comply with the following standard: "Wooden pallets will be made from wood that is certified to be free of 2,4, 6-tribromophenol (TBP) and any other form of phenol-based fungicide treatment, and shall comply with the International Standards for Phytosanitary Measures Publication No. 15, 2009 Revision (ISPM 15) for heat treated only. While ISPM 15 currently provides for the use of Methyl Bromide (MB), the use of pallets fumigated with Methyl Bromide is also prohibited. All wooden pallets must display that they meet the requirements with a specified mark as shown in ISPM 15 Annex II. This requirement is effective immediately. Failure to meet this requirement may lead to rejection of shipments at the supplier's expense."
- 8.2. The Supplier shall indemnify the Purchaser from any Losses arising out of a breach by the Supplier of clause 8.1. In addition, if at any time during the Warranty Period, the Supplier becomes aware or the Purchaser notifies the Supplier of any failure of the Products and/or the Services to comply with clause 8.1(a) – (f), the Supplier shall promptly rectify that failure at no cost to the Purchaser.
- 9. LIABILITY**
- 9.1. Subject to clauses 9.2, 9.3 and the indemnification of any breach of the warranty set out in clause 8.1(h) which shall not be limited by this clause, the maximum total liability of the Purchaser to the Supplier, and of the Supplier to the Purchaser, for any Losses arising out of or in connection with the provision of the Products and/or Services is limited to the total Price.
- 9.2. Neither the Purchaser nor the Supplier shall be liable to the other party in connection with these Terms and Conditions for any lost profits, lost customers, loss of anticipated savings, loss of software or data or any other consequential or indirect loss falling within the same category.
- 9.3. Nothing in these Terms and Conditions excludes or limits either the Supplier's or the Purchaser's Losses for death or personal injury caused by its negligence or any other category of Losses which cannot be excluded or limited by applicable law.
- 10. TERM AND TERMINATION**
- 10.1. These Terms and Conditions bind the Parties relative to the Delivery of the Products and/or Services. Clauses 8, 9, 11, 12, 14.2 shall survive the Delivery of the Products and/or Services.
- 10.2. If the Purchaser has failed to pay an undisputed invoice for the Price by the due date and the Purchaser has not remedied that failure of payment within 14 calendar days of having receiving notice from the Supplier of the failure and the request that such failure be remedied (the "Cure Date"), then the Supplier may immediately cease further Delivery of the relevant Products or Services by notice in writing to the Purchaser.
- 10.3. The Purchaser may cancel the provision by the Supplier of any Products and/or Services remaining to be supplied by the Supplier to the Purchaser immediately by notice in writing to the Supplier:
- in the circumstances of clause 7;
  - if the Supplier is bankrupt or enters (voluntarily or involuntarily) into any sort of insolvency proceedings; and
  - if the Supplier fails to deliver the Products and/or Services within the time period and quality requirements stated on the Specifications, as supplemented and/or clarified by the relevant Purchase Order, and fails to remedy such failure to the Purchaser's satisfaction within 14 calendar days after receiving the Purchaser's request to remedy such failure.
- 10.4. Any cessation or cancellation under clauses 10.2 and 10.3 shall not relieve the Purchaser of the obligation to pay to the Supplier for the Products and/or Services provided prior to the effective date of such cessation, cancellation and termination.
- 11. CONFIDENTIALITY**
- 11.1. A party (the "Receiving Party") shall maintain in confidence the other party's (the "Disclosing Party") Confidential Information and shall not use the Confidential Information for any other purpose without the Disclosing Party's prior written consent.
- 11.2. The Receiving Party may use, disclose and/or store the Disclosing Party's Confidential Information:
- for the purpose of performing its obligations under these Terms and Conditions;
  - for any other purposes required by applicable law;
  - within its organisation and to its Affiliates or subcontractors on a "need to know" basis, provided all such recipients have executed a broad confidentiality undertaking with the Receiving Party sufficient to protect the Disclosing Party's Confidential Information in accordance with these Terms and Conditions.
- 11.3. For the avoidance of doubt, the obligations of confidentiality in this clause 11 do not apply to information that is:
- in the public domain other than through a breach of section 11.1 by the Receiving Party;
- rightfully disclosed by a third party or known to the Supplier prior to the date of the Purchase Order; or
  - required to be disclosed by law, regulation or by any applicable stock exchange listing rules.
- 12. DATA PRIVACY**
- 12.1. In providing the Products and/or Services, the Supplier shall comply with the Data Protection Legislation relating to Personal Data of the Purchaser's or its Affiliates customers, personnel or consultants obtained by the Supplier in connection with these Terms and Conditions (the "Purchaser's Personal Data").
- 12.2. Without limitation to clause 12.1, the Supplier shall:
- process the Purchaser's Personal Data in only on the instructions of the Purchaser and ensure that it is used only as necessary to carry out the Supplier's obligations under these Terms and Conditions;
  - ensure that the Purchaser Personal Data is kept secure and is not subject to any unauthorised or unlawful processing, accidental loss, destruction or damage; and
  - ensure that no Purchaser Personal Data is transferred outside the European Economic Area without the prior written consent of the Purchaser.
- 13. INTELLECTUAL PROPERTY**
- 13.1. The intellectual property rights of the Purchaser or the Supplier, as the case may be, which exist on the date the Supplier receives the Purchase Order, shall continue to be owned by or licensed to the party introducing such rights.
- 13.2. All intellectual property rights in the Products and/or the Services created specifically for and paid for by the Purchaser under these Terms and Conditions as part of the Price ("IPR"), shall be assigned to the Purchaser immediately upon their creation. In accordance with this objective, the Supplier irrevocably assigns to the Purchaser, including by way of future assignment, with full title guarantee, absolutely and free from all encumbrances, the Supplier's right, title and interest in any and all IPR, together with all accrued rights of action in respect of any past or existing infringements of such rights. The IPR are assigned for their worldwide exploitation, for the duration of term of protection and for all means, media, form or formats of exploitation, including without limitation, the right to reproduce, use, adapt, modify, transform, publish, distribute, publicly perform and communicate, translate and to prepare derivative works or to assign, sell or license such rights on an exclusive or non-exclusive basis.
- 13.3. The Supplier grants to the Purchaser and its Affiliates a non-exclusive, perpetual (or other maximum term permitted by applicable law), fully paid-up licence to use, copy, and store any of the Supplier's pre-existing intellectual property rights or third party rights, which form part of the Products and/or the Services and which are necessary for the Purchaser to receive the benefit of the Products and/or Services.
- 13.4. The Supplier shall, at the Purchaser's request, do all acts and execute all documents reasonably required to enable the Purchaser to obtain the full intended benefit of this clause 13.
- 13.5. Any use by the Supplier of the Purchaser's or its Affiliates' business or product names, logos and trademarks requires the prior written consent of the Purchaser. All such names, logos and trademarks shall remain the exclusive property of the Purchaser, its Affiliates and their licensors, as the case may be.
- 14. MISCELLANEOUS**
- 14.1. These Terms and Conditions supersede any prior and shall apply without regard to any subsequent understandings, discussions or agreements relating to the same subject matter, as well as any standard terms and conditions of the Supplier.
- 14.2. These Terms and Conditions are governed by the laws of England and Wales and are subject to the exclusive jurisdiction of English courts.
- 14.3. The Purchaser will notify the Supplier of any variation or alteration of these Terms and Conditions implemented by the Purchaser.
- 14.4. The Supplier may not assign and transfer or novate its obligation to supply the Products and/or Services pursuant to, or its rights arising from, these Terms and Conditions. The Purchaser may assign and transfer or novate its rights and obligations pursuant to or arising from these Terms and Conditions upon written notice to the Supplier of the occurrence of such assignment and transfer or novation.
- 14.5. If any provision(s) of these Terms and Conditions is illegal or unenforceable, such provision(s) will be severed and the rest may be enforced to the extent possible.
- 14.6. The Supplier and the Purchaser are independent contractors and neither they nor their respective personnel are in a partnership, joint venture, employment or agency relationship as a result of or in connection with the supply of the Products and the Services.
- 14.7. Except as expressly specified herein, no any third party shall have any benefit or right arising from these Terms and Conditions and the Contracts (Rights of Third Parties) Act 1999 is excluded accordingly.
- 14.8. Neither the Purchaser nor the Supplier will be liable for any Losses arising directly or indirectly from the failure or delay in performing its respective obligations under these Terms and Conditions to the extent and for the duration that such failure or delay is caused by circumstances outside its reasonable control.
- 14.9. These Terms and Conditions are provided in the English language only, which shall prevail for all purposes.