



## MicroCare Corporation standard purchase order terms and conditions

**1. ACCEPTANCE; AGREEMENT.** The purchase order, including these Terms and Conditions of Purchase (collectively, these "Terms") is an offer by MicroCare, its subsidiaries and/or affiliates ("Buyer") to purchase the goods ("Goods") and/or services ("Services" (the Goods and Services are sometimes collectively, the "Deliverables") described in the purchase order from the person or entity to whom the purchase order is addressed ("Seller"). These Terms are the only terms and conditions which govern the purchase of Deliverables by Buyer and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms; provided, however, if a written contract signed by both parties is in existence covering the Deliverables covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms may be amended or cancelled only by written agreement signed by both parties. These Terms expressly limit acceptance to these provisions. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of these Terms is hereby deemed material and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in these Terms. Unless otherwise stated herein, Seller's acknowledgment of Buyer's order, shipment of Goods or commencement of any work or performance of any Services shall constitute acceptance by Seller of these Terms.

**2. PRICING.** Seller will furnish the Deliverables at the prices stated on the face of the purchase order. If prices are not stated on the face of these Terms, Seller will offer its lowest market prices subject to written acceptance by Buyer. Unless otherwise provided on the face of the purchase order, the prices are firm and shall include all packaging and freight to the specified delivery point; applicable taxes and other government charges including, but not limited to, all sales, use, or excise taxes; and all customs duties, fees, or charges. To the extent value added tax (or any equivalent tax) is properly chargeable on the supply to Buyer of any Deliverables, Buyer will pay the tax as an addition to amounts otherwise due Seller under these Terms, if Seller provides to Buyer a value-added tax (or equivalent tax) invoice. To the extent Buyer has not received from Seller all applicable forms regarding compliance with applicable tax law, Buyer reserves the right to deduct from any payment to Seller pursuant to these Terms those amounts that Buyer, in its sole discretion, deems to be required to be withheld. Upon the agreement of the parties to reduced pricing for the Deliverables, such pricing shall immediately apply to all Goods in consignment, stocking or replenishment arrangement with Seller, all undelivered Deliverables, all open and unfilled purchase orders, and all future purchase orders.

This Order must not be filled at a price higher than shown on the face of the Order. If no price is set forth on the front of the Order, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, goods and services ordered under this Order will not be billed at a higher price than last quoted or charged without Purchaser's specific written authorization.

**3. INVOICING; PAYMENT.** Invoices shall be rendered on completion of services or delivery of goods and shall contain the Purchase Order Number, item number, description of goods or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to one, and only one, purchase order. Unless otherwise requested by Buyer, invoices shall (a) be rendered separately for each delivery; (b) cover not more than one order; and (c) be rendered with order number noted thereon. Except as otherwise provided herein, Buyer shall pay Seller's undisputed invoices within thirty (30) days of receipt of the invoice.

**4. DELIVERY.** Unless otherwise stated on the face of this PO, the following terms shall apply. Time is of the essence with respect to the Deliverables. If the Deliverables are not commenced by the specified starting date or completed within the specified time, Buyer may, in addition to any other rights or remedies it may have, terminate the order, without liability, for Deliverables not yet provided and purchase substitute deliverables and charge Seller for any extra costs. If, in order to comply with Buyer's specified delivery date, Seller must ship by a more expensive way than specified herein, Seller shall pay any increased costs. Seller assumes all responsibility and liability for any shipments covered by this purchase order requiring any government import clearance. All Goods, unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the Goods in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits. Seller will provide Buyer with (a) the Harmonized Tariff Schedule number, country of origin information or certificates, manufacturer's affidavits, applicable free trade agreement ("FTA") certificates, and any other documents or information Buyer may require to comply with international trade regulations or to lawfully minimize duties, taxes, and fees, and (b) FTA certificates for all Goods that qualify under one or more FTAs. Seller will provide Buyer all information necessary to substantiate the Goods' qualification under an FTA. Seller will exert reasonable efforts to qualify the Goods under FTAs.

**5. TITLE & RISK OF LOSS.** Seller shall assume and pay for any loss or damage to the Goods ordered by Buyer from any cause whatsoever until the Goods are delivered to Buyer at the Seller's designated delivery location. Title to Goods shall pass to Buyer upon delivery to Buyer's designated delivery location.

**6. CONFIDENTIALITY; INTELLECTUAL PROPERTY.** All information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, or financial information, that: (a) has been or will be supplied to Seller by or on behalf of Buyer; or (b) Seller will design, develop, or create in connection with these Terms; as to individual items or a combination of components or both, and whether or not completed, and all derivatives of (a) and (b) that Seller has or will design, develop or create are deemed to be "Confidential Information" of Buyer. All Confidential Information is work made for hire and made in the course of services rendered. All rights to it belong exclusively to Buyer, with Buyer having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection. To the extent that exclusive title or ownership rights in Confidential Information may not originally vest in Buyer, Seller irrevocably assigns transfers and conveys to Buyer all right, title, and interest therein. Buyer's Confidential Information shall remain the property of Buyer. It may not be used by Seller for any purpose other than for performance under these Terms, may not be disclosed to any third party, and will be returned to Buyer upon the earlier of Buyer's written request or completion of the purchase order. If, with Buyer's prior written approval, Seller furnishes Confidential Information to a

Subcontractor, Seller will bind the subcontractor to confidentiality requirements substantially identical to this provision and Seller shall remain responsible to Buyer for any breach of this provision by its subcontractor(s). No disclosure, publicity description or other communication of any sort will be made by Seller to any third person of the fact of Buyer's purchase of Deliverables hereunder, these Terms, the substance of



any discussions or negotiations of these Terms, either party's performance under these Terms or the existence of any relationship between the parties.

**7. WARRANTIES.** Seller represents and warrants that (i) the Deliverables will (a) conform with the specifications, drawings, descriptions and/or samples furnished or specified by Buyer, (b) be free from defects in material, workmanship and design, (c) be of good merchantable quality and fit and sufficient for the purposes intended, (d) be free and clear of all liens, Claims, security interests or other encumbrances, (e) be free of alleged or actual infringement or misappropriation of any third party's intellectual property and proprietary rights; and (f) produced or provided in compliance with, and meet all requirements and standards of, all applicable foreign, federal, state, and local laws and regulations. As to services, in addition to any express or implied warranties, Seller warrants that (a) it possesses the requisite expertise, facilities and equipment necessary and appropriate to perform the Services, (b) the Services will be performed in a safe and workmanlike manner, and (c) the Services will be performed in accordance with the highest standards in the industry. All warranties shall survive termination of these Terms as well as any inspection, testing, delivery, acceptance and payment, or failure to inspect, test or discover any defect or other nonconformance. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Deliverables with the foregoing warranties. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

**8. COMPLIANCE WITH LAWS AND INTEGRITY.** Seller will comply with all laws, regulations and ordinances and Buyer's Supplier Code of Conduct ("SCOC") in the performance under these Terms, and the SCOC is incorporated by reference herein. Seller agrees to abide by and maintain an integrity and compliance program that encompasses at a minimum the standards of business conduct set forth in the SCOC and that effectively prevents and corrects ethical violations and maintains compliance with laws.

Upon request, in form and substance satisfactory to enable Buyer to meet its compliance obligations with regard to Regulation (EC) No 1907/2006 ("REACH"), Seller shall provide Buyer with complete information regarding the chemical composition of any Goods supplied under these Terms, including all safety information required under REACH and information regarding the registration or pre-registration status of any Goods pursuant to REACH promptly, but no later than thirty (30) days of receiving such request.

Absent Buyer's prior written consent, no Goods shall contain any of the substances identified in (a) Article 4(1) of the European Parliament Directive 2011/65/EU (the "RoHS Directive") as the RoHS Directive may be updated from time to time and as such Directive is implemented in any country, but only to the extent that the Directive applies to the commercialization, sale or use of such Goods, or (b) similar applicable laws or regulations (including, without limitation, the U.S. Department of Transportation and California Proposition 65), restricting the use of hazardous materials in such other jurisdictions to the extent that any such law or regulation applies to the commercialization, sale or use of such Goods. If such prior written consent is given, then Seller shall inform Buyer in writing of same, and properly warn, label, package and ship such hazardous materials in accordance with all applicable laws and regulations. Further, prior to shipment and upon request, Seller shall identify and provide to Buyer compliant material safety data sheet information and RoHS Directive information for covered Goods.

Goods shall comply with the restrictions set forth in the Montreal Protocol on ozone-depleting substances.

Seller shall be responsible for all costs and liabilities for or relating to the recycling of Goods pursuant to the most current version of European Parliament Directive 2012/19/EU (the "WEEE Directive") as the WEEE Directive may be updated from time to time and as such Directive is implemented in any country.

MicroCare is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

**9. INSPECTION.** All goods and services will be subject to inspection and test by Purchaser at all times and places, including the period of manufacture and in any event prior to final acceptance. Final acceptance or rejection of the goods or services will be made as promptly as practical after delivery except as otherwise provided in this Order, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods or services as are not in accordance with this Order nor impose liabilities on Purchaser for them. Purchaser's payment for the goods shall not constitute its acceptance of the goods. Goods rejected and goods supplied in excess of quantities ordered may be returned to the Seller at Seller's expense. Payment, if any, made for any goods rejected hereunder shall be promptly refunded by Seller.

**10. INDEMNIFICATION.** Seller, shall indemnify, hold harmless and defend Buyer, its affiliates and their respective successors and assigns, and its customers ("Indemnitees") against all lawsuits, damages, losses, costs, expenses, claims, liabilities, judgments, fines, settlements or penalties, whether direct, indirect, incidental, consequential, or otherwise, including all attorney's fees and litigation costs (collectively, "Claims") for: (i) personal injury, property damage, and other damage, arising out of, relating to, or in connection with, the Deliverables; (ii) Seller's actual or alleged negligence, act or omission; (iii) Seller's failure to comply with all these Terms or any other agreement between Buyer and Seller, or (iv) any Recall. Seller shall not enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld. This indemnification is in addition to the warranty obligations of Seller. Indemnitee may participate in the defense or negotiations to protect its interests.

**11. INTELLECTUAL PROPERTY INDEMNIFICATION.** For Deliverables provided under this purchase order, Seller will, at its expense, defend and indemnify the Indemnitees from and against any and all Claims, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict incurred by or demanded from Indemnitee arising out of, or relating to any



alleged: (a) patent, copyright, or trademark infringement; (b) unlawful disclosure, use, or misappropriation of a trade secret; or (c) violation of any other third-party intellectual property right, and from expenses incurred by Indemnitee in defense of such allegations, or proceeding if Seller does not undertake the defense thereof. Seller will not enter into any settlement without Buyer's prior written consent, which will not be unreasonably withheld. Indemnitee may participate in the defense or negotiations to protect its interests. If any injunction or restraining order is issued, Seller will, at Buyer's option and Seller's expense, obtain for Indemnitee either the right to continue using and/or selling the Deliverables or replace or modify the Deliverables to make them non-infringing; without any loss of functionality.

**12. INSURANCE.** Seller shall obtain and at all times during which this Agreement is in effect maintain at its cost the following insurance with insurers having a current A.M. Best rating of "A- VIII" or better: primary comprehensive or commercial general liability insurance with limits of at least USD\$1 million per occurrence and USD\$2 million annual aggregate combined single limit for bodily injury and property damage, including coverage for: (i) Products and Completed Operations liability;(ii) Blanket Contractual liability; and (iii) Cross Liability endorsement or Severability of Interest clause. In addition, Seller is responsible for maintaining an adequate level of insurance to cover any potential losses due to damage to Buyer property under Section 19. All insurance required by this Section must cover Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, members, managers, employees and agents as additional insureds. Before providing any Deliverables, Seller will provide to Buyer evidence that Seller maintains the described insurance, and that the coverage will not be changed without thirty (30) days' advance written notification to Buyer. Except where prohibited by law, Seller will require its insurers to waive all rights of recovery or subrogation against Buyer, its subsidiaries and affiliated companies, and its and their respective officers, directors, shareholders, members, managers, employees, and agents. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation on or satisfaction of the indemnification obligation herein.

**13. LIENS.** Seller hereby waives and releases any and all liens, Claims and rights to (a) mechanic's, construction and similar liens under applicable Laws, and on (b) the monies or other considerations due or becoming due from the Buyer on account of Deliverables furnished or to be furnished by the Seller. Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance under these Terms and shall indemnify Buyer against all costs, loss or liability incurred by Buyer as a result of any failure by Seller or any other person to comply with this provision.

**14. CHANGES.** Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, a mutually agreed upon equitable adjustment shall be made.

**15. SET OFFS.** Buyer has the right to set off against any amounts due Seller hereunder from any amounts owed to Buyer by Seller arising from this or any other transaction.

**16. RECALL.** In the event that Buyer determines, in its sole discretion, that any defect, nonconformance or deficiency in any of the Deliverables requires a field campaign, recall or similar action ("Recall"), to repair, replace, or remediate any Goods or any of Buyer's products in which Goods are incorporated, or re-perform any Services, Seller shall be liable to Buyer and its customers for all Claims.

**17. FORCE MAJEURE.** Neither party shall be liable to the other for failure to accept the Deliverables if such failure or inability is due to causes beyond the party's reasonable control.

**18. TERMINATION FOR CAUSE.** Buyer may terminate its order without liability, in whole or in part, at any time, if (i) Seller fails to provide the Deliverables by the specified time or any extension thereof authorized by Buyer in writing; (ii) a petition initiating a proceeding under any applicable Law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller executes an assignment for benefit or creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; or (v) Buyer shall have any reasonable ground for insecurity with respect to Seller's ability to perform and Seller in unable to provide Buyer with adequate assurance of its ability to perform within ten (10) days after written request therefore by Buyer. Buyer's right under this section to terminate its order is not an exclusive remedy. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

**19. TERMINATION FOR CONVENIENCE OF BUYER.** Buyer may terminate its order at its convenience at any time by written notice to Seller. Buyer shall only be responsible for that portion of the order issued prior to the effective date of termination and shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products or unfinished raw materials not covered by a purchase order issued by Buyer.

**20. TOOLING.** Any tooling, molds, plates, provided by or specifically paid for by Buyer shall be considered Confidential Information, and remain the sole property of Buyer. Seller shall be responsible for maintenance of the tooling while in its possession and shall return tooling to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain tooling and acknowledges that its obligation to return tooling upon demand is unconditional. Seller grants Buyer the right to file liens and similar filings in any jurisdiction that Seller determines appropriate.

**21. AUDIT.** Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers to determine Seller's and its supplier's compliance with the order, quality of the Deliverables, compliance with Laws and these Terms.

**22. NOTICES.** Any and all notices or other communications required or desired to be given in connection with this order shall be given in writing and will be deemed effective upon electronic delivery to a valid email address; personal delivery, on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested; or one business day after deposit if sent by a nationally recognized courier serv of delivery, and in each case if addressed as set forth in the order (or such other addresses a party may designate in writing from time to time).

**23. BUYER INFORMATION.** BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION PROVIDED BY BUYER TO SELLER. ANY IMPLIED WARRANTIES THAT MAYEXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. Seller



acknowledges and agrees that any sales forecasts, quantity purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only.

**24. LIMITATION OF LIABILITY.** BUYER IS NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL) EVEN IF ADVISED, OR OTHERWISE AWARE, OF THE POSSIBILITY OF ANY SUCH DAMAGES. THE EXCLUSION OF SUCH DAMAGES IS INDEPENDENT OF, AND WILL SURVIVE, UNDER THESE TERMS AND CONDITIONS.

**25. WAIVER.** All waivers by Buyer shall be in writing. Failure of Buyer at any time to require Seller's performance of any obligation hereunder shall not affect Buyer's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

**26. GOVERNING LAW.** These Terms shall be governed by and construed under the laws of the State of Missouri, USA, without giving effect to its principals or rules of conflict laws. At Buyer's option, any controversy or Claim arising out of or relating to these Terms may be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules ("Rules"), which Rules are deemed to be incorporated by reference to this section, applying the laws of the State of Missouri, USA, without regard to principles of conflicts of laws. The place of arbitration shall be St. Louis, Missouri, USA, and the proceedings shall be conducted exclusively in English. The arbitral tribunal's judgment and award shall be final and binding and enforceable in any court of competent jurisdiction.

**27. MISCELLANEOUS.** Nothing in these Terms will be construed to place Seller and Buyer in an agency, employment, franchise, joint venture, or partnership relationship. Neither party has the authority to obligate or bind the other in any manner, and nothing contained in these Terms shall give rise or is intended to give rise to rights of any kind to any third parties. Neither party will make any representation to the contrary. Seller shall not assign Buyer's order or any monies due or to become due from Buyer hereunder without Buyer's prior written consent. Buyer's rights and remedies are cumulative, not exclusive, and in addition to any rights and remedies it may have under these Terms, any contract and at law and/or in equity. Provisions which by their nature should survive will remain in force after any termination or expiration. Terms and are included solely for the convenience of the parties.

**28. PACKAGING.** All goods must be packaged in the manner specified by Purchaser and shipped in the manner and by the route and carrier designated by Purchaser. If Purchaser does not specify the manner in which the goods must be packaged, Seller shall package the goods so as to avoid any damage in transit. If Purchaser does not specify the manner of shipment, route, or carrier, Seller shall ship the goods at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in this Order.