

**TERMS AND
CONDITIONS OF
PURCHASE**

- 1) **ACCEPTANCE:** This order is for the purchase by Harmac Medical Products, Inc. ("HMP") and sale by seller ("Seller") of the goods or articles ("Articles") and/or services ("Services") described on "Purchase Order" hereof and is HMP's offer to Seller. Acceptance by the Seller of this purchase order shall be limited to all terms and conditions set forth herein. Any additional varying, conflicting or different terms or conditions that may be proposed by Seller are hereby expressly rejected by Seller and shall not become a part of the purchase agreement without HMP's written consent. Any acknowledgement hereof by Seller to HMP shall constitute Seller's acceptance of such order on solely the terms and conditions set forth herein. In the absence of such acknowledgement, commencement by Seller of the processing of HMP's order or delivery of the Articles and/or Services shall constitute Seller's acceptance of such order on solely the terms and conditions set forth herein.
- 2) **QUANTITY AND PRICE:** This order must not be filled in greater quantities or at prices higher than shown on Purchase order without written approval of HMP. If price is not shown on Purchase order, it is agreed that Seller will furnish the articles and/or Services at no higher price than last purchased by HMP.
- 3) **INVOICE:** Seller shall Email all invoices to accountspayable@harmac.com or mail to the Attention: Accounts Payable, Harmac Medical Products, Inc. 2201 Bailey Ave. Buffalo, NY 14211.
- 4) **WARRANTIES:** Seller expressly warrants that the Articles delivered hereunder will be merchantable, of good quality, free from defects in material and workmanship, suitable for their intended use, and will conform to all applicable specifications, drawings, samples, and descriptions; and if of Seller's design, will be free from design defect. In providing any Services, Seller expressly warrants that it shall perform such Services using commercially reasonable efforts and in a good and workmanlike manner which meets the highest professional standards. All warranties shall run to HMP, its customers and users of the Articles or the product in which the Articles or the Services may be incorporated and shall also be construed as reasons for which rejection or revocation of acceptance may be made by HMP. Any and all warranties shall survive any inspection, delivery acceptance or payment by HMP of or for the Articles or Services. HMP may reject any defective or non-conforming Articles. In such event, at HMP's option, (a) Seller shall, at Seller's cost, promptly repair or replace same, (b) HMP may return same to Seller, at Seller's cost, for a refund or credit for amounts previously paid by HMP, or (c) HMP may correct or replace same and Seller shall be responsible for the cost thereof. In addition, in such event HMP shall have the right to cancel any remaining unshipped portion of the purchase order without any obligation to the Seller. Seller further warrants that neither the articles nor the sale or use thereof will infringe any United States or foreign patent, trademark, copyright, trade secret or other proprietary or similar right. **NONE OF THE REMEDIES AVAILABLE TO HMP FOR THE BREACH OF ANY OF THE FOREGOING WARRANTIES SHALL BE LIMITED ACCEPT TO THE EXTENT AND IN THE MANNER (IF ANY) AGREED UPON BY HMP IN WRITING.**
- 5) **EXTRAS:** Charges for any extras must be approved in writing by HMP's Purchasing Department before being incurred.
- 6) **PREPAID SHIPMENT:** On all prepaid shipments chargeable to HMP, Seller shall attach a transportation receipt to each invoice.
- 7) **PACKING SLIPS ETC.:** Separate packing slips shall be included in each shipment showing order number, quantity, part number and description of the Articles contained therein. The PO# must appear on all packages, invoices, and correspondence. No packages or invoices will be accepted without it. A Packing Slip and Certificate of Compliance is required with each raw material shipment.
- 8) **PACKING AND DRAYAGE CHARGE:** No charge for packing or drayage will be allowed unless specifically authorized on Purchase order. Seller shall provide commercial packaging which is commercially reasonable, under normal conditions to protect the Articles in shipment and to identify the contents.
- 9) **INSPECTION:** All Articles are subject to inspection by HMP notwithstanding any prior payment. If it is impractical to make an inspection at the time of receipt, the foregoing shall apply to whenever inspection may reasonably be made.
- 10) **TOOLS, DIES, ETC.:** Unless otherwise expressly stated on purchase order to the contrary, all molds, dies, tools, special fixtures, jigs, patterns, and model, paid for by HMP, are to be used exclusively for the manufacture of Articles for HMP; are to be delivered to HMP on demand; are to be maintained in first class operative condition by Seller at Seller's expense and will be marked by Seller for identification as required by HMP.
- 11) **TERMINATION FOR CONVENIENCE:** HMP may cancel this purchase order in whole or in part at any time for HMP's convenience upon giving written notice to the Seller. In such event, HMP shall pay seller, and be responsible to Seller only for (a) the cost of the work performed prior to termination which has not already been paid by HMP and (b) a reasonable amount of profit on the work performed prior to termination.
- 12) **INDEMNITY:** Seller shall defend, indemnify and hold harmless HMP, its officers, directors, agents, employees, customers and users of the Articles or any product in which the Articles may be incorporated, from and against any and all liabilities, losses, claims, suits, actions, judgments, costs and expenses (including without limitation reasonable attorneys' fees) arising from or relating to
 - a. the possession, use, operation or sale of the Articles by any person (whether for breach of warranty, strict liability in tort, negligence or otherwise), including without limitation, any claim that any Article caused property damage or caused death or personal injury to any person (b) any claim based on any act or omission to act of Seller, (c) any breach by Seller of any warranty (expressed or implied), (d) any breach by Seller of any term, condition or covenant set forth herein, or (e) any claim of a third party for infringement of any, United States or foreign patent, trademark, copyright, trade secret or other proprietary or similar right.
- 13) **WORK DONE ON HMP'S PREMISES:** If this purchase order covers labor, contract or construction work or work of any nature upon HMP's premises or premises of one of HMP's customers, Seller acknowledges and agrees that Seller has no authority to hire any persons on HMP's behalf and that Seller is performing all work as an independent contractor. Seller shall defend indemnify and hold harmless HMP, its officers, directors, agents and employees from and against any and all liabilities, losses, claims, suits, actions, judgments, costs and expenses, (including without limitation reasonable attorneys' fees), arising from or relating to which may be sustained by Seller's employees or HMP's employees or third persons, or member of the general public arising out of or in any way connected with services provided under this order whether performed on Purchaser's premises. Upon HMP's request, Seller will provide adequate insurance covering HMP against all such claims.
- 14) **DELIVERY:** Unless otherwise set forth Purchase order, delivery of the articles shall be made to the Buyer's place of business at 2201 Bailey Avenue, Buffalo, NY 14211. The time and rate of delivery of all Articles and Services to be delivered under this purchase order shall be as specified in Seller's quotation, or purchase order, if different from the quotation, HMP reserves the right to defer the time and rate of delivery specified in the order. Delivery dates specified herein are of the essence.
- 15) **GOVERNMENT CONTRACTS:** If the Articles or Services covered by this order are ordered by HMP under any U.S. Government contract, Seller agrees that any and all applicable Federal statutes and regulations applying to HMP as a contractor are accepted and binding upon Seller.
- 16) **COMPLIANCE WITH LAW AND REGULATIONS:** Seller agrees that all Articles to be furnished hereunder shall be manufactured, shipped and sold in compliance with any and all Federal, State and local laws now in effect or hereafter enacted or issued, including, but not limited to, the Fair Labor Standards of 1938, as amended, and Title VII of the Civil Rights Act and the rules and regulations thereunder.
- 17) **CONFIDENTIALITY:** The terms of this order are confidential between Seller and HMP, and Seller shall not disclose to any third party the terms and/or conditions hereof.
- 18) **BANKRUPTCY, ETC.:** If any proceeding under any bankruptcy or insolvency laws is brought by or against Seller, or a receiver is appointed or Seller makes an assignment for the benefit of creditors, or if Seller ceases to operate its business in the normal course (including the inability to meet its obligations as they come due), HMP may terminate this order without liability except for payments for Articles or Services previously provided for which purchases have not yet been paid, or which are subsequently received in accordance with the terms of this order.
- 19) **SPECIFICATIONS:** HMP shall have the right to modify any specifications at any time. Seller shall immediately notify HMP of any changes in Seller's costs caused by such changes and the parties shall use commercially reasonable efforts to agree on an equitable price and other adjustments therefor HMP shall at all times have title to all drawings and specifications furnished by it to Seller. Seller shall use such drawings and specifications only in connection with this order, and shall not disclose such drawings and specifications to any other person or entity. Seller shall return all drawings and specifications to HMP on HMP's request or completion or termination of this order.
- 20) **INVESTIGATION:** Seller is to conduct appropriate investigations into root cause and identify and implement CAPA associated with HMP complaints and / or rejection of supplier material within 30 days of notification. Seller agrees to assist HMP in investigating the root cause as well as establishing the appropriate corrective action for any failure/issue for any HMP complaint investigation related to the good or service provided to HMP.

- 21) DOCUMENT RETENTION: Seller is to maintain and follow a commercially reasonable document retention program and / or retain all documents related to the Articles or Services for mutually agreeable time period. No documentation related to HMP goods or services shall be discarded or destroyed without written approval from HMP.
- 22) MISCELLANEOUS: All notices and other correspondence shall be delivered to the respective parties as the addresses appear on the face of this order. The headings herein are for convenience only and should not be construed to limit or effect the provisions contained herein. The existence of any contract between HMP and seller and the terms thereof shall be determined and construed under the laws of the State of New York without reference to principles of conflicts of laws. Seller shall not delegate or assign any of its duties or rights under this order, and any proposed delegation or assignment shall be null and void. This order and any agreement resulting herefrom constitutes the entire agreement between Seller and HMP, and supersedes all previous understandings and writings regarding this transaction. This order and any agreement resulting herefrom cannot be modified or amended without the prior written consent of HMP. Any action to enforce, arising out of, or relating in any way to, any of the provisions of this order and agreement shall be brought and prosecuted in a court located in Buffalo, New York or the Western District of New York as is provided by law, and each of Seller and HMP consent to such Jurisdiction.