

Ventilators Plus Inc
Terms and Conditions of Purchase

1. ACCEPTANCE OF TERMS. Supplier shall comply with all terms set forth herein and on the purchase order to which these terms are attached or are expressly incorporated by reference (including any part numbers, descriptions, specifications, samples, drawings and other documents referred to herein, transmitted on the Purchase Order) (collectively, this “**Purchase Order**”). This Purchase Order is an offer to purchase the goods and/or services described herein (collectively, the “**Products**”). Unless otherwise stated on the face of this Purchase Order or in a separate written agreement between the parties, the terms herein shall prevail over conflicting terms. ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS OF THIS PURCHASE ORDER. This Purchase Order shall be irrevocably accepted by Supplier upon the earlier of Supplier’s: (a) issuance of any acceptance or acknowledgement of this Purchase Order; (b) delivery of any Products ordered; or (c) commencement of the work called for by this Purchase Order, in any manner.

2. PRICES, PAYMENTS, AND TAXES.

2.1 Prices. The price of the Product(s) is set forth on the face of this Purchase Order. All prices shall not be higher than those appearing on the face of this Purchase Order, and (a) shall be equal to or less than contracted pricing, or (b) if no contracted pricing exists, then pricing shall not exceed the lowest price last charged by Supplier for a purchase of equal quantity, or current prices quoted or charged to any other Buyer of Supplier purchasing the same volume or quantity of Products as Buyer. Supplier shall not add any additional fees or charges to invoices including, but not limited to, the following: minimum order fees, handling or processing fees, credit card fees, expediting fees, drop ship fees, or any other charges or fees; Buyer shall not be responsible for any such fees or charges added later as a line item to an invoice.

2.2 Payment Terms. Unless otherwise stated on the face of this Purchase Order, the ordinary net date (“Net Date”) shall be thirty (30) days from the Payment Start Date, where the “Payment Start Date” is the later of the received date of the Products in Buyer’s receiving system upon receipt at Buyer’s dock or the date of receipt of a valid invoice by Buyer that complies with the terms of this Purchase Order. Unless otherwise stated on the face of this Purchase Order, all sums to be paid by Buyer under this Purchase Order will be in United States Dollars (“USD”). Buyer shall not be responsible for delayed payment resulting from invoices which were not timely sent by Supplier.

2.3 Taxes. Provided Buyer furnishes Supplier with a tax exemption certificate or other evidence of exemption, Buyer shall not be responsible for any federal, state and local income, sales, use, excise, ad valorem and property taxes related to the Products and shall not pay any medical device excise tax for which Supplier is responsible.

3. DELIVERY. Time is of the essence of this Purchase Order. Supplier shall comply with the lead time for delivery of the Products (i.e., the time between receipt of a Purchase Order by Supplier and the scheduled delivery date) as specified on the applicable Purchase Order. Any agreed minimum order quantities (MOQ) shall be set forth on the face of the applicable Purchase Order. Supplier agrees to notify Buyer immediately in writing if Supplier has any reason to believe that any quantities of Products will not be delivered or completed as ordered, and/or any shipment will not be made as scheduled. If any shipment of Products is not made in time for delivery on the date and in the quantities set forth in this Purchase Order or Supplier fails to deliver all the Products as scheduled, Buyer may: (a) require delivery by fastest method at Supplier’s cost; (b) return to Supplier some or all of the Products in said shipment at Supplier’s risk and expense (including all freight, warehousing, handling, shipping, and transportation costs); (c) direct Supplier to make an expedited shipment of additional or replacement Products, with the cost of the expedited shipment to be paid by Supplier.

4. CHANGES, CANCELLATION, & RESCHEDULES. Buyer may, upon written notice to Supplier, change shipping and delivery instructions, cancel or reschedule this Purchase Order, with or without cause, in whole or in part, at any time upon written notice to Supplier. Buyers’ sole liability upon any such termination shall be limited to: (a) the unpaid purchase price of Products (otherwise conforming to the requirements of this Purchase Order) that have been delivered or shipped to Buyer on or before the date of cancellation. Any other modifications must be in writing signed by Buyer and Supplier.

5. ACCEPTANCE AND RETURNS. Products delivered are subject to final inspection and acceptance by Buyer and/or Buyer’s customer to determine compliance with the requirements of this Purchase Order. Buyer may, at its option, and at Supplier’s cost, return for credit, refund, replacement or repair, any Products that do not conform to the requirements of this Purchase Order. Non-conforming/Rejected Products may be stored by the Buyer at the Supplier’s risk for a period of up to fifteen (15) days from the date of such information to the Supplier and the Supplier shall arrange for either the return or disposal of the Products at Supplier’s cost.

Ventilators Plus Inc
Terms and Conditions of Purchase

6. RETURNS; RESTOCKING. For a period up to ten (10) business days after original receipt of the Products by Buyer or its customer, Buyer shall be permitted to return Products for full reimbursement, less a restocking fee that is standard and reasonable within the industry (Note: such restocking fee is not intended to apply, and thus is not applicable, for warranty, non-conforming returns and/or any other returns attributable to Supplier's fault, as described herein). Any disputes or problems that Supplier may have regarding a return being acceptable must be reported to Buyer with sufficient documentation and detail within ten (10) business days of receipt of the returned Products, or the returned Products will be deemed accepted, at which time Supplier shall issue credit to Buyer; if an invoice had not been issued, such invoice may be cancelled as an alternative to the issuance of a credit.

7. MODIFICATIONS TO PRODUCTS. Supplier shall promptly notify Buyer of any modifications to any Products, changes in the manufacture procedures or Product specifications, including but limited to, any changes affecting the design or functionality of any Products. Prior to the sale of any modified Products to Buyer, Buyer shall have the opportunity to assess the modified Products for quality, sourcing, composition, and materials, if applicable. Supplier shall maintain control records concerning such changes as required by applicable laws and the requirements set forth in this Purchase Order.

8. WARRANTIES. Supplier warrants that all Products provided to Buyer pursuant to this Purchase Order conform to the applicable product specifications, part numbers, drawings, descriptions, or samples contained in this Purchase Order or otherwise previously provided and acceptable to Buyer. Supplier further warrants that it can and shall transfer to Buyer title to all Products free and clear of liens, encumbrances, or security interests. Supplier further warrants that Products will be: (a) free of defects in design, materials, or workmanship; (b) produced from equivalent materials of construction; (c) merchantable; and (d) fit for the purpose for which they are customarily intended. Unless otherwise provided in the Purchase Order or in writing by the parties, or under applicable law, the foregoing warranties shall remain in effect for one (1) year from the date of delivery to Buyer.

9. INTELLECTUAL PROPERTY.

9.1 General. Each respective party shall exclusively own all intellectual property it had prior to the commencement of this Order.

9.2 Supplier Intellectual Property. Buyer shall have an unrestricted license to use, have used, modify, have modified, distribute, have distributed, sell, and have sold all Products purchased under this Purchase Order. Supplier shall not assert any Supplier Intellectual Property against Buyer and its customers or suppliers, in any Products furnished under this Purchase Order.

9.3 Suppliers Marks. Supplier grants to Buyer a non-exclusive, perpetual, irrevocable, worldwide, paid-up, royalty-free license to use Supplier's trademarks, service marks, and trade names on, or in connection with, any of Buyer's marketing, sale, maintenance, repair, licensing, operation, and distribution of the Products. Use of Supplier Marks includes use: (a) in any advertising, (b) on Buyer's websites, and (c) in any documentation or marketing materials for the Products or any Buyer product that incorporates the Supplier's Products.

9.4 Suppliers Content. For purposes of this Section, "Content" is defined as all past, present and future images, text, information, intellectual property and/or other materials on Supplier's website and/or which Supplier provides to Buyer or permits Buyer to collect from Supplier or Supplier's website, including, but not limited to, photographs of parts, equipment and other items. Supplier hereby grants to Buyer a non-exclusive, perpetual, retroactive, assignable, irrevocable, royalty-free, license to search and collect Content from Supplier's website or other platforms, pages or materials which Supplier provides or makes publicly available, and to display, copy, distribute and/or create derivative works of such Content, or portions thereof, for the purpose of selling products in the world-wide medical industry (the "License"). In conjunction with the License, Supplier represents and warrants to Buyer that: (a) the Content is accurate and not confidential; (b) Supplier owns all right, title and interest in the Content including, without limitation, any intellectual property associated therewith; and (c) Buyer's use of the Content in accordance with the License will not violate or infringe upon the rights of any third party including, without limitation, those pertaining to intellectual property.

10. CONFIDENTIAL INFORMATION AND PUBLICITY. Supplier shall hold in strict confidence any proprietary and/or confidential information disclosed by Buyer and make no use of such information other than as authorized by Buyer. Supplier shall not disclose proprietary and/or confidential information to any third parties, in whole or in part, without the express written consent of Buyer. Supplier shall protect Buyer's information with the same degree of care as it uses to protect its own

Ventilators Plus Inc
Terms and Conditions of Purchase

proprietary and confidential information, but in no case less than a reasonable degree of care. Supplier shall use due care to prevent its employees, agents, representatives, and affiliated organizations from disclosing Buyer's information to any unauthorized person. Advertising and promotional material (including the use of Buyer's name) must be approved by Buyer in writing prior to release; such approval may be withheld by Buyer in its sole discretion. Supplier shall not, directly, or indirectly disparage Buyer or Buyer's relationship with its customers, or, whether for the benefit of itself or for a third party, induce or encourage any customer or client of Buyer to sever or reduce its business relationship with Buyer.

11. INDEMNIFICATION.

11.1 General Indemnity. Supplier shall indemnify, defend and hold harmless Buyer, its customers, and their respective officers, directors, agents and employees, from and against any and all loss, cost, liability, penalties, judgments, damages and expenses (including, without limitation, reasonable attorneys' fees and other costs of litigation) suffered by Buyer and resulting from any of the following: (a) Products provided by Supplier; (b) Supplier's performance hereunder; (c) Supplier's negligent act or omission; and/or (d) a breach by Supplier of any representation or warranty contained herein. Such indemnification shall include, but not be limited to, any actual or alleged infringement of the intellectual property rights of any third parties.

11.2 Limitation of Liability. IN NO EVENT WILL BUYER BE LIABLE TO SUPPLIER FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, REVENUE, AND BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, EQUITY, PRODUCT LIABILITY, FUNDAMENTAL BREACH, OR OTHERWISE ARISING OUT OR RELATED TO THIS PURCHASE ORDER, REGARDLESS OF WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

12. INSURANCE. Supplier shall maintain worker's compensation, automobile and general liability insurance in effect and shall, promptly upon Buyer's request, provide evidence that it has obtained such insurance. Supplier shall at its cost maintain insurance of such types and coverage limits as would customarily be maintained by a prudent supplier of similar goods and services in Supplier's industry. In no event shall such coverage be less than the following minimums: (a) workers' compensation insurance as required by applicable law; (b) comprehensive commercial general liability insurance with limits of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate; (c) professional liability and errors and omissions liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate. All insurance shall be primary and non-contributory to any insurance maintained by Buyer. Supplier waives any right of subrogation that it or its insurance carriers may have against Buyer with respect to claims submitted by Supplier's employees under Supplier's worker's compensation insurance.

13. ASSIGNMENT AND SUBCONTRACTING. Neither party may assign, subcontract, delegate or otherwise transfer these Terms and Conditions or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in these Terms and Conditions, without the other party's prior written consent. Supplier shall not subcontract any of the rights granted by this Purchase Order, delegate any of its duties under this Purchase Order, or contract with any other person or entity to provide the Products covered by the Purchase Order without Buyer's prior written consent. Any attempt to assign, subcontract, delegate or transfer without such consent shall be null and void.

14. GOVERNING LAW AND VENUE. This Purchase Order and Terms and Conditions shall be construed and interpreted in accordance with the laws of the State of California. Supplier consents to the exclusive venue of the state and federal courts in California and waives any objection based on improper venue or inconvenient forum.

15. NOTICES. All notices, requests, and other communications, which Supplier is required or desires to give to Buyer, shall be directed purchasing department via e-mail at purchasing@ventilatorsplus.com. Or notices can be in writing and shall be sent by United States mail or commercial overnight delivery to VENTILATORS PLUS INC, 541 Tamarack Avenue, Brea, CA 92821. Notices hereunder will be deemed to have been given and will be effective upon actual receipt by the other party, or, if mailed, upon the earlier of the fifth (5th) day after mailing or actual receipt by the other party.