



## NOVOTECH INC. STANDARD TERMS AND CONDITIONS

Definitions As used throughout this Order, including provisions incorporated by reference, the following terms shall have the meaning set forth below:

- (a) "Buyer" means Novotech Inc. the legal entity issuing this order.
- (b) "Buyer's Authorized Procurement Representative" means the authorized Purchasing Agent, Subcontract Manager, or Contract Manager representing Buyer.
- (c) "Contractor" means "Seller".
- (d) "Goods" means supplies or services provided by Seller.
- (e) "Government" means the Government of the United States of America.
- (f) "Order" means the contractual instrument (e.g. Agreement, Purchase Order or Subcontract) into which these General Provisions are incorporated.
- (g) "Seller" means the person, firm or corporation executing this Order with Buyer and which will furnish the Goods provided for herein.
- (h) "Work" means the subject of this Order, and therefore may include, without limitation, goods (e.g., materials, equipment, products, hardware, software, or information) or services (whether or not ancillary to the sale of goods) or both furnished by Seller to Buyer in performance of and pursuant to this Order.
- (i) "Customer" means end user of the purchased from or manufactured by Novotech.

1.0 **Pricing & Billing:** Customer must pay for the Product and Services in the amounts and at the time(s) specified in the Customer Purchase Order. In addition, Customer shall be responsible for the cost of shipping the Product, and for any sales tax payable on account of the sale. Seller shall promptly calculate shipping charges based upon delivery to Customer.

2.0 **Interest:** Any amount payable to Seller and not paid when due shall bear interest from the date due at the rate of one and one-half (1.5%) percent per month or the maximum permitted by applicable law, whichever is less. All costs of collection, including reasonable attorney's fees, shall be paid by Customer.

3.0 **Default:** Customer shall be in default of this agreement upon any of the following events: (A) Customer fails to pay any sums hereunder when due and such failure continues for ten (10) calendar days; (B) a breach of the terms, conditions, warranties or representations of this Agreement, or any other agreement between us; (C) any execution or writ of process is issued in any action or proceeding to seize or detain the Equipment; (D) a proceeding in bankruptcy, receivership or insolvency has been instituted by or against Customer; or (E) Customer becomes insolvent or unable to pay Customer debts when due.

4.0 **Remedies:** Upon a default by Customer, we shall have the right to: (A) retake immediate possession of the products without any process of law and may enter upon any premises where the products may be and remove them without notice of our intention to do so, without being liable in any action or other proceeding by Customer; and sell the products at public auction or private sale (notice thereof being expressly waived by you), applying the proceeds first to the costs of collecting and selling them, then to the amounts owed to Novotech, and (B) exercise any other remedy at law or equity.

5.0 **Inspection:** All products will be subject to prompt inspection upon receipt by Customer, which shall be no more than seven (7) calendar days from receipt. Customer may reject any products that do not

comply with the Seller Customer Purchase Order or the Seller products specifications or which contain defective materials or workmanship, but you may do so only within the seven (7) calendar days following receipt of the products, irrespective of date of payment.

**6.0 Warranties:**

- a) **Product Warranty.** Seller provides a one (1) year warranty for its Product from the date of shipment.
- b) **Limitation on Product Warranty.** Seller will not cover any misuse, excessive wear and tear on any of the parts or the Product. Customer must return it to Seller for inspection, testing and either repair or replacement, at its option. If the Customer undertakes to make any repairs, improvements, alterations, modifications, any and all warranties will be voided.

**7.0 Disclaimer of Implied Warranties:** Except for the express warranties set forth in Section 6.0 above, Seller makes no warranty, express or implied, regarding the Product or Services.

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN SECTION 4 ARE THE ONLY WARRANTIES MADE BY SELLER WITH RESPECT TO THE PRODUCTS AND SERVICES. SELLER DISCLAIMS ALL WARRANTIES THAT MAY BE IMPLIED OR ARISE BY CUSTOM OR TRADE USAGE, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER'S EXPRESS WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF, SELLER RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS.**

**8.0 LIMITATION OF LIABILITY.**

**OUR LIABILITY TO CUSTOMER UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNTS ACTUALLY PAID US UNDER THIS AGREEMENT. FURTHERMORE, SELLER SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY PERSONAL INJURY OR DAMAGE SUFFERED BY CUSTOMER IN CONNECTION WITH THE USE OF OUR EQUIPMENT UNDER ANY CAUSE OF ACTION, INCLUDING STRICT PRODUCT LIABILITY. WE SHALL NOT BE LIABLE FOR LOSS OF USE, INTERRUPTION OF BUSINESS, DAMAGE OR EXPENSE INCURRED IN CONNECTION WITH THE AVAILABILITY, OPERATION OR USE OF THE PRODUCT, OR ANY TECHNICAL MALFUNCTION THEREOF. SELLER SHALL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF SELLER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**9.0 Arbitration:** In the event of a dispute between the parties arising out of the interpretation of, or performance under this Agreement, such a dispute shall be submitted to binding arbitration in Boston, Massachusetts before a neutral arbitrator associated with JAMS in accordance with the JAMS rules for arbitration (found at [www.jamsadr.com](http://www.jamsadr.com)). The parties to this Agreement agree to be bound by the decision of the arbitrator and accept any decision as a final determination of the matter in dispute. The parties agree to divide the cost arbitration equally. Each party shall, however, be responsible for its own attorney's fees.

**10.0 Additional Terms- Seller Customer Order Form:** The Seller Customer Purchase Order and all of the terms and conditions thereof are incorporated herein. Any conflicting terms or conditions in any other documents supplied by Customer are expressly rejected and shall not be included in any contract with Seller.

- 11.0 **State Sales or Use Taxes:** Seller may be required to collect sales or use tax in the State wherein the Customer is located. Seller will collect and be responsible for remitting the appropriate taxes collected to the appropriate state and/or local tax authorities. Each Customer invoice shall clearly reflect such tax.
- 12.0 **Assignment:** Customer shall not assign this Agreement in whole or in part without the prior written consent of Seller. Subject to the foregoing, all terms, conditions, covenants and agreements contained herein shall inure to the benefit of, and be binding upon, any such successor and any permitted assignees of the respective parties hereto.
- 13.0 **Partial Invalidity:** In the event that any provision of this Agreement should for any reason be held invalid, unenforceable or contrary to public policy, the remainder of the Agreement shall remain in full force and effect.
- 14.0 **Governing Law:** This agreement shall be construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and shall be deemed to be fully and solely executed, performed, and/or observed therein. The parties hereto expressly consent to personal jurisdiction of The Commonwealth of Massachusetts in any action or proceeding brought in any court therein, state or federal.
- 15.0 **Force Majeure:** Neither party shall be liable for any failure to perform or for a delay in the performance of its obligations caused by circumstances beyond its reasonable control, including, but not limited to acts of God, acts of government or any agency thereof, strikes, lock-outs, trade disputes, shortages of material or energy, transportation embargoes, acts of public enemies, declared war, rebellion, sabotage, epidemic, quarantine restrictions, fire, storm, flood, earthquake, hurricane, tornado or any act, neglect or default of the other party.
- 16.0 **Notices:** Notices shall be deemed to have been given when delivered in person to the party for whom it is intended or when mailed by registered or certified mail to the address shown for the party in question on the face of this Agreement, or as modified.
- 17.0 **Entire Agreement:** This Agreement is intended to be the sole and complete statement of obligation of the parties as to the subject matter of this Agreement and supersedes all previous understandings, negotiations and proposals as to such matter. This Agreement, as executed and approved, shall not be modified unless in writing, expressly stating its intent to modify the terms of this Agreement and signed by the parties hereto.
- 18.0 **Acceptance and/or Rejection:** Buyer shall accept the Goods or give Seller notice of rejection within seven (7) calendar days after delivery, notwithstanding any payment or prior test or inspection. No inspection, test, delay, or failure to inspect/test or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Order or impair any rights or remedies of Buyer or Buyer's customers. Buyer may revoke acceptance of Goods if the Goods are not conforming and if Buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances. If Seller delivers nonconforming Goods, Buyer may require Seller to promptly correct or re-perform the nonconforming Goods. Redelivery to Buyer of any corrected or re-perform goods shall be at Seller's expense. In addition, Buyer may at its sole option (i) correct the nonconforming Goods, or (ii) obtain replacement Goods from another source at Seller's expense, and reduce the Order price by the costs to correct or obtain replacement. Seller shall disclose any corrective action taken. All repair, replacement and other correction and redelivery shall be completed within the original

delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct.

All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Order or otherwise.

19.0 **Work not terminated:** In no event shall Buyer be obligated to pay Seller any amount in excess of the Order price. Seller shall continue Work not terminated.

20.0 **Termination for Default:** Buyer may terminate all or any part of this Order by written notice to Seller if: (i) Seller fails to deliver the Goods within the time specified by this Order or any written extension; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure within ten (10) calendar days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspension its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue Work not terminated.

21.0 **Intellectual Property Indemnity:** Seller agrees to not incorporate Seller or third party intellectual property into the Work product of this Order without the express prior written permission of Buyer.

Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards, liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right and arising out of the Goods provided by Seller. Buyer and/or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnities. Seller will have no obligation under this Section 21.0 with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller.

For purposes of this Section 21.0 only, the term Buyer will include Novotech Inc., its subsidiaries, all officers, agents, and employees of Buyer.

22.0 **Indemnification:** Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees and agents from and against any and all actions, causes of action, liabilities, claims, expenses (including reasonable attorneys' fees and court costs), losses, damages, penalties, fines, forfeitures, suits, judgments, liens, awards and damages of any kind and nature whatsoever for (a) property damage, (b) personal injury, including death, and (c) all violations of applicable laws which arise out of, or are in any way related to Seller's or any of its suppliers' breach of obligations or responsibilities arising from this Order, or 2) failure to comply with all applicable Federal, state and local laws and regulations in the performance of this Order. Seller's obligation hereunder is not limited to insurance available to or provided by Seller or any of its suppliers. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or common law, to the extent of the indemnity set forth in this Section 22.0. This duty to defend, indemnify, and hold harmless extends to any suit, liability, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance by Seller or its agents, breach of warranty by Seller or its agents, any defective work performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder,

whether such suit, liability, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by Buyer. Buyer will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, subcontractors, and suppliers.

### **NOVOTECH INC. SUPPLIERS ONLY**

23.0 **Schedule:** Seller shall strictly adhere to the shipment or delivery schedules specified in this Order. Failure of the Seller to meet shipment or delivery schedules may be grounds for default termination. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii), if requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" clause. The added premium transportation costs are to be borne by Seller.

24.0 **Packing and Shipping:** All delivered supplies shall be preserved, packaged, packed and marked in accordance with instructions or specifications referred to or incorporated by reference in the Purchase Order. In the absence of such instructions or specifications, for domestic shipments, the shipment shall be made FOB (Buyer's Facility) utilizing best commercial practice adequate (i) to assure safe arrival at destination; (ii) for storage and for protection against the elements and transportation, (iii) to comply with carrier regulations appropriate to the method of shipment used, and (iv) to secure lowest transportation cost.

All shipments against the Purchase Order to be forwarded on one day via the same route must be consolidated. A packing list, showing Buyer's purchase order/subcontract number, Order item number and description of contents must be included in each package. Buyer's purchase order /subcontract number must appear on all packages, boxes, bills of lading, invoices, correspondence and other documents pertaining to this Order. The Government Contract number shown in the Schedule must appear on all of the Contractor's purchase orders and subcontracts hereunder.

If Contractor's deliveries fail to meet schedule, Contractor at its expense will use an expedited method of shipment requested and specified by Buyer until all deficiencies are corrected and deliveries are on schedule.

#### 25.0 **Termination**

**Termination for Convenience:** Buyer may terminate all or any part of the Purchase Order by written notice to Seller. In the event of such termination, Seller shall immediately cease all Work terminated hereunder and cause any and all of its suppliers and subcontractors to cease Work. Seller must submit all claims within sixty (60) calendar days after the effective date of termination. Buyer shall determine the amount due Seller on the Termination.

26.0 **Termination for Default:** Buyer may terminate all or any part of this Order by written notice to Seller if: (i) Seller fails to deliver the Goods within the time specified by this Order or any written extension; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure within ten (10) calendar days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspension its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue Work not terminated.

27.0 **Interest:** Should the Supplier anticipate difficulties that may prevent him from delivering on time or in the agreed quantities or quality, he shall notify the Purchaser thereof immediately, stating the reasons. Only in case a delayed shipment is more than 1 week, Novotech Inc., has the right to consider assessing a penalty of 0.5% for every seven (7) calendar days late on delivery of goods or services. The maximum penalty shall not exceed 5.0% of the value of the Purchase Order Line item. Buyer shall have the right to cancel all or a portion of the parts owed if parts are late or seller indicates the parts will be delivered late where Buyer's manufacturing is negatively affected.