

<b>Title:</b>	<b>PURCHASE ORDER TERMS AND CONDITIONS</b>
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Mkomani Clinic Society, trading as Bomu Hospital (**Bomu**)  
**Purchase Order Terms and Conditions**

**Agreement and Definitions**

These Purchase Order Terms and Conditions (**T&Cs**) apply to all Bomu purchase orders for goods or services (**PO**) to the exclusion of any other terms that the supplier of goods or supplier of services to Bomu referenced in such PO (**Supplier**, seeks to impose or incorporate including any terms or conditions which are implied by law, trade custom, practice or course of dealing (**Customs**) or contained in Supplier's invoice, emails or other documents or communications (**Communications**). Supplier accepts these T&Cs without deviation or reservation, and Supplier waives any right it might otherwise have to rely on any Customs or Communications. The PO shall be deemed to be accepted upon Supplier doing any act consistent with fulfilling the PO. For the purposes of these T&Cs, references to products shall include all goods of any kind (including any software (regardless of whether or not it is supplied on any physical medium) and any deliverables created in the course of any services by Supplier) the supply of which are memorialised in a PO (**Goods**). Additionally, references to services shall be any services rendered to Bomu or its designee by a Supplier and shall include the maintenance or support of any software if such services are memorialised through an PO (**Services**). Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1. Price. The price of the Goods or Services shall be the price set out in the PO, and no extra charges or adjustments to price or any charge, surcharge, or fee will be valid unless accepted by Bomu (in Bomu's sole discretion) in writing 45 days prior to such proposed change. The price shall include the costs of packaging, insurance and carriage of the Goods and the VAT for which Bomu shall additionally be liable to pay at the rate dictated by the Kenya Revenue Authority (**KRA**), subject to the receipt of a Valid Invoice. A **Valid Invoice** means an invoice from Supplier that: (i) is in the KRA approved ETIMS format, (ii) reflects (a) the PO's order number, (b) Supplier's invoice number, (c) the

Supplier's VAT registration number (if applicable), and (iii) any supporting documents that Bomu may reasonably require.

2. Payment. Terms of payment are net60 days after the later of (i) completion of delivery of Goods or performance of Services or (ii) receipt of Valid Invoice. Payment shall be made to the bank account nominated in writing by the Supplier and received by Bomu. If the Valid Invoice uses a foreign currency, Bomu may elect to pay in the stated currency or in Kenya Shillings using the prevailing bank market rate in Kenya.

3. Fitness of Goods. The Supplier shall ensure that the Goods: (i) correspond with their description and include the correct batch number; (ii) are of good quality; (iii) are fit for the purposes intended and for which they are held out by the Supplier (and, in this regard, Supplier recognizes that Bomu is relying on Supplier's expertise, skill and judgment in making the forgoing determination); (iv) where they are manufactured Goods, are free from defects in design, material and workmanship and remain so for 6 months after delivery; (v) do not expire earlier than nine (9) month from the date of acceptance by Bomu, and (vi) comply with all applicable statutory and regulatory requirements, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. (**Fit** means Goods meeting all of the standards enumerated in (i) – (vi) above in this clause 3.)

4. Delivery of Goods/Services. Supplier shall supply the quantity and type of Goods, or the nature of the Services, specified in the PO and in Fit condition on the delivery date included in the PO or a date otherwise previously agreed to by Bomu in writing (**Delivery Date**). For Goods, Supplier shall ensure that: (i) the Goods are properly packed and secured in a manner to enable them to reach the delivery location in good condition (including using refrigeration as directed by the manufacturer of the Goods, if applicable) (ii) are accompanied by a delivery note which reflects the date of the order (provided that if the Supplier uses a system-generated delivery notice and such system cannot reflect the order date, Bomu waives such order date requirement in this 4(ii)), Bomu's order number and the type and quantity of Goods in the delivery; and (iii) if Goods are being delivered with an Instalment Approval, the outstanding balance of Goods actually be delivered as stipulated in the PO (**Delivery Requirements** shall mean 4(i) – (iii) in the aggregate). Supplier shall not deliver Goods in instalments without Bomu's prior written approval (**Instalment Approval**). Time shall be of the essence for all delivery dates. Except for delays or defaults beyond Supplier's control and not due to Supplier's acts and omissions, Supplier is liable for all delays and defaults in deliveries.

5. Inspection and Rejection. Bomu will endeavour to inspect and reject the Goods within seventy-two (72) hours following Bomu's receipt of the Goods from the carrier, but in no event shall Bomu have the right to conduct such inspection or to reject such Goods later than five (5) business days following carrier delivery. Notwithstanding the foregoing, if a Good has a latent defect that may not be determined by a customary inspection, Bomu shall retain the right to reject such Goods within forty-eight (48) hours of Bomu discovering such latent defect. Payment for Goods delivered or Services performed shall not constitute an acceptance of such Goods and Services. If Bomu finds that any of the Goods and Services delivered are not Fit, do not meet the Delivery Requirements or do not conform to the PO, Bomu may (in addition to its other rights and remedies): (i) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense (ii) require Supplier to replace the unfit, non-conforming Goods and Services with conforming Goods and Services at Supplier's sole cost or to provide a full refund of the price of the rejected Goods (if paid); (iv) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; (v) recover from the Supplier any costs incurred by Bomu in obtaining substitute goods from a third party or any other costs, expenses or damages that are directly attributable to the Supplier's failure to carry out its obligations under the PO.

6. Transportation. Title and risk in the Goods shall only pass to Bomu on its acceptance of the Goods. Supplier shall ensure that all shipping documents (packing slips, bill of lading, etc.) include Bomu's purchase order number(s). For the avoidance of doubt, Bomu shall have no obligation to pay "Handling" and "Shipping and Handling" transfer fees, or any other similar fees or charges in any circumstances.

7. Invoices. Supplier will provide a Valid Invoice for Goods and services to the attention of Bomu's Accounting Department, promptly after receiving Bomu's PO and after supplying the goods or services.

8. Taxes. All prices and fees payable are inclusive of VAT and all other taxes, duties and expenses (if any), which shall be paid at the rate and in the manner for the time being prescribed by law subject to receipt of a Valid Invoice pursuant to paragraph 1, above which reflects VAT and any other tax relating to the Goods for which Bomu is liable under Kenya law. Any other amounts payable under law arising out of the PO and not reflected on the Valid Invoice shall be borne by the Supplier and not recharged to Bomu.

9. Interest. If Bomu fails to make any payment due to the Supplier under an PO by the last due date for payment in breach of these T&Cs, then the Supplier shall be entitled to charge interest on the

outstanding sum at the rate of one-half a percent (.50%) per annum above Kenya's Central Bank Rate (CBR) from time to time, in accordance with and subject to the following provisions: (i) interest shall only be payable on sums that are not being disputed in good faith by Bomu; (ii) interest shall accrue from the later of the last due date for payment and the date that the Supplier notifies Bomu in writing of the overdue sum and that it intends to charge interest on that amount; and (iii) interest shall not be payable on any overdue sum unless the Supplier has notified Bomu of its intention to charge interest on that sum within 60 days after the date on which the overdue sum has been paid. The parties agree that this constitutes a substantial remedy for non-payment and that Supplier shall not be entitled to claim interest on any late payment. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved on sums found or agreed to be due, from days after 14 days after the dispute is resolved until payment.

10. Set Off. Bomu may at any time, without notice to the Supplier, set off any liability of the Supplier to Bomu against any liability of Bomu to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the PO or these T&Cs.

11. Conflict of Interest. Supplier represents and undertakes that none of Bomu's employees, officers, member or directors are employees, officers, members or directors of Supplier or serve on any boards or committees of or in any advisory capacity with Supplier except as disclosed herein.

12. Representations & Undertakings. Supplier expressly represents and undertakes that all Goods furnished shall conform to all applicable specifications and descriptions for them (including without limitation any specified in the PO) that have been provided or made available to Bomu prior to execution of the PO, shall be of satisfactory quality and Fit including properly formed for their particular purpose, comply with all applicable Kenyan laws, rules, regulations and requirements of regulatory bodies, be appropriately certified and authorised for use in Kenya for the purposes for which they are to be used by Bomu (and Supplier shall provide Bomu with such evidence of this as Bomu may reasonably require on request), and will conform with all appropriate Kenyan standards and other international standards and specifications applicable to them. Supplier shall also ensure that on delivery, all Goods shall be new and unused and conform to any samples agreed by the parties. Supplier expressly represents and undertakes that all Goods furnished, and all Services performed shall be timely, of good material and workmanship and free from defects, whether latent or patent. Supplier expressly represents and undertakes that all Goods furnished shall not infringe the rights of any third party and be free from any claim of any infringement and that Supplier will convey clear title in the Goods to Bomu with full title free from all encumbrances. Title shall transfer

to Bomu on delivery (or on payment if earlier). Supplier shall ensure that Software shall not include any disablers, time-bombs, including encrypted software keys, Trojan horses or any other virus or other instructions of any kind designed to terminate or disrupt the operation of the software. Supplier shall further pass through to Bomu any manufacturer's warranties and indemnities for Goods provided under the PO. No inspection, acceptance or payment for Goods by Bomu shall constitute a waiver of any of these representations or undertakings.

13. Indemnification. Supplier shall indemnify, hold harmless and, at Bomu's discretion defend. Bomu (including all directors, officers, members, employees, affiliates, and agents) from and against all damages, costs (including, but not limited to court costs and legal fees), loss, or cause of action for any claims arising from or relating to acts or omissions of Supplier (including its own suppliers/incoming distributors, if any and/or other subcontractors), breach of any of the Supplier's obligations under the PO, breach of Supplier's representations and warranties in these T&Cs, breach of applicable laws, rules or regulations, alleged or actual, latent or patent, defective Goods or Services, and any claim of infringement of any third party intellectual property rights (including but not limited to, patent, trademark, trade secret, designs, database rights and copyright) resulting from action under the PO, any unauthorized access, use, or disclosure or misappropriation of Bomu's Confidential Information (including, but not limited to personal data and patient information). If Bomu's use of any Product or Services is or is likely to be enjoined as an infringement of any third party intellectual property rights, Supplier shall, at Supplier's option and expense, either: (i) procure for Bomu the right to continue to use the Product or Services under the terms of the PO; or (ii) replace or modify the Product or Services (without adversely affecting its functionality and performance) so that it is non-infringing. If these options do not adequately protect Bomu's interests, in Bomu's sole discretion, Bomu may elect to terminate the PO and Supplier shall refund to Bomu all consideration paid by Bomu under it to the date of termination.

14.. Insurance. Supplier will maintain such public liability insurance, including, but not limited to, products liability insurance and other insurance that will protect Bomu against such damages, claims, liabilities, costs, losses and expenses.

15. Applicable Law. The terms and conditions of all POs and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter shall be governed by and construed in accordance with the laws of Kenya without regard to its conflict of laws provisions. All actions brought under or in connection with any PO (including non-contractual disputes or claims) shall be brought in the courts of Kenya in Mombasa.

16. Cancellation/Termination. Bomu may terminate or cancel an PO, in whole or in part, at any time upon written notice to Supplier. Bomu will remain obliged to pay for Goods shipped or Services performed by Supplier prior to receipt of Bomu's notice, subject to the terms of these T&Cs.

17. Confidentiality & Data Protection. Supplier shall keep confidential and not disclose to any person any confidential information obtained from Bomu and/or concerning the business, affairs, clients or suppliers of Bomu or its affiliates. Where Supplier processes personal data in connection with the Services and/or Goods then the Supplier shall comply with all privacy and data protection laws applicable to the processing of that personal data. In addition, where the Supplier processes personal data as a processor on behalf of Bomu then Supplier shall comply with the terms of Bomu's standard data processing agreement provided to Supplier by Bomu.

18. Use of Name. Without prior written permission, Supplier (including its subcontractors, employees, or agents) may not use Bomu's name or trademarks as an endorsement or otherwise release information relating to the order.

19. Assignment. Supplier may not assign or subcontract any of its rights or obligations under the PO.

20. Compliance with Laws. The parties shall comply with all applicable laws, rules and regulations. In the event any part of the PO is determined to breach applicable laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the provisions which are in violation. In the event the parties are unable to agree to new or modified terms as required to bring the PO into compliance, either party may terminate the PO upon written notice to the other party.

21. Third Party Rights. Bomu shall be entitled (acting on behalf of its affiliates) to recover any losses suffered by its affiliates as a result of any breach of Supplier's obligations as if they had been suffered directly by Bomu. Except for the previous sentence (which shall be enforceable by Bomu's affiliates) and for the indemnification rights set out in these terms, the contracts formed through the use of these terms shall not give rise to any third-party rights.

22. Compliance Related Changes. The parties recognize that the law and regulations may change or may be clarified, and that the terms of the PO may need to be revised, on the advice of counsel, in order to remain in compliance with such changes or clarifications, and the parties agree to negotiate in good faith revisions to the terms that cause the potential or actual violation or noncompliance. In the event the parties are unable to agree to new or modified terms as required to bring the PO into compliance, either party may terminate the PO on written notice to the other party.