



## STANDARD TERMS AND CONDITIONS OF PURCHASE

The Terms and Conditions contained herein shall apply to all orders submitted by, and all invoices and offers, accepted by Pallidus, Inc., a Delaware corporation, with a place of business at 30 Corporate Circle Suite 101, Albany, NY 12203 ("COMPANY").

**1. PURCHASE ORDER** The Purchase Order (hereafter "PO") includes the purchase order form, instructions, drawings, plans, specifications, regulations, data and other documents (to the extent incorporated herein by reference) and these Terms and Conditions of Purchase. This PO contains the entire agreement between Buyer and Vendor/Supplier, superseding any and all other communications/agreements, written or oral, relating to the subject matter hereof. Notwithstanding the language herein, in the event of any conflicting terms between this P.O. and a mutually-signed written Agreement between the Vendor/Supplier and Buyer, the mutually-signed written Agreement shall govern.

**2. VENDOR/SUPPLIER'S ACCEPTANCE** This PO may be accepted only on the exact terms and conditions set forth herein. Vendor/Supplier is bound by same when it executes and returns an acknowledgment copy to Buyer. If Vendor/Supplier fails to return such copy, but proceeds to render and/or deliver to Buyer any of the goods/services ordered herein, Buyer has the option to refuse acceptance of same and not be obligated therefore, or to accept the goods/services, thereby binding Vendor/Supplier to the price, terms and conditions of this PO. Vendor/Supplier assumes all risks of performance in accordance with the provisions hereof and certifies that it has made all examinations and investigations and possesses the facilities and capabilities required for full performance of this PO. No usage of trade or course of dealing shall serve to alter or supplement the terms and conditions herein stated.

**3. CHANGES** Buyer reserves the right to change specifications, requirements, and/or delivery schedules, such modifications being binding when in writing and signed by Buyer. No change in price will be effective against Buyer and no waiver or modification of any of the terms and conditions herein will be binding unless in writing and signed by an authorized representative of Buyer.

**4. SHIPPING AND DELIVERY** It is of the essence that all packaging shipped to Buyer be numbered and accompanied by packing slips reflecting those numbers, which are then correlated to bills of lading and invoices. Vendor/Supplier will pack goods at Vendor/Supplier's expense and arrange for damage free delivery made F.O.B. Buyer's facilities at the address shown on this PO, or as otherwise stated thereon. Vendor/Supplier assumes all risks for failure to ship in accordance with the routing instructions set forth on this PO. Time is of the essence; if delivery of items or rendering of services is not completed as agreed upon herein, Buyer reserves the right, without liability, and in addition to its other rights and remedies, to terminate this PO, by notice effective when received by Vendor/Supplier as to stated items not yet shipped/services not yet rendered, and to purchase substitute items/services elsewhere and charge Vendor/Supplier with any damages incurred, whether special, direct, indirect, incidental or consequential. Unless otherwise expressly stated on the front of this PO, the specific quantity ordered herein must be delivered in full to be charged. Unauthorized quantities shipped are subject to rejection and return at Vendor/Supplier's expense. Items delivered in advance of schedule, without Buyer's consent may, at Buyer's option (a) be returned at Vendor/Supplier's risk and expense for redelivery at the scheduled time, or (b) have payment for same withheld until the date it otherwise would have been due.

**5. RISK OF LOSS** Vendor/Supplier assumes the following risks, in addition to all other risks Vendor/Supplier assumes by law or pursuant to the express terms of this PO: (a) all risks of loss or damage to items until their delivery to and acceptance by Buyer; and (b) in the event Buyer rejects items or revokes its acceptance of items, all risks of loss or damage shall be deemed to rest with Vendor/Supplier.

**6. PRICES AND INVOICES** Buyer shall not be obligated to pay any prices higher than stated on this PO; any price reduction (on any item/s on this PO) made subsequent to the placement of this order will apply to this PO. Unless otherwise specifically stated and agreed to in writing by Buyer, no extra charge or charges for boxing, crating, freight or storage, will be accepted, and all taxes will be paid by

Vendor/Supplier. When the cost of tools involved in the manufacture of items covered by this PO are included in the price per unit, such tools become the property of Buyer upon completion of performance of this PO. Any cash discount period shall extend from the later of Buyer's receipt of the items ordered hereunder or the date of invoice.

**7. INSPECTION** Goods purchased are subject to Buyer's inspection and approval. Buyer reserves the right to reject and refuse acceptance of items not in accordance with the applicable instructions, specifications, drawings, data or other descriptions furnished by Buyer, or with Vendor/Supplier's samples (if any), and with Vendor/Supplier's express and implied warranties. Items not accepted will be returned to Vendor/Supplier at Vendor/Supplier's expense. Buyer Payments made prior to inspection and approval shall not constitute acceptance thereof and are without prejudice to any and all claims that Buyer may have against Vendor/Supplier.

**8. WARRANTIES** By accepting this PO, Vendor/Supplier warrants that the items and services will be in full conformity with Buyer's specifications, drawings, data or other descriptions furnished or specified by Buyer, or with Vendor/Supplier's samples, if applicable, and that all items furnished will be new, fit for the use intended by Buyer, merchantable, of good material and workmanship and free from defect, and all services furnished will be performed in a skillful and workmanlike manner. Vendor/Supplier warrants that all items purchased under this PO do not infringe any U.S. or foreign letters patent resulting from the use or sale of the items purchased (except for infringement necessarily resulting from adherence by Vendor/Supplier to specifications or drawings other than those of Vendor/Supplier's design or selection originally submitted to Vendor/Supplier by Buyer) All warrants, both express and implied, will survive acceptance and inspection of, and payment for, the furnished items and/or services by Buyer. These warranties are in addition to any warranties of additional scope given to Buyer by Vendor/Supplier. All warranties of Vendor/Supplier, both express or implied, shall extend to, and be jointly and severally enforceable by, Buyer, its successors, assigns, customers and all third parties to whom any of the items or services furnished may be sold or transferred, regardless of whether such items or services remain in the same form or are owned by the enforcer of the warranty at the time of suit.

**9. COMPLIANCE** Vendor/Supplier warrants and covenants that it is, and during the term of performance of this PO will continue to be, in compliance with all federal, state and local laws and regulations applicable to Vendor/Supplier's performance hereunder. Vendor/Supplier will indemnify, defend and hold Buyer harmless of, from and against any and all claims, liabilities, losses, damages or expenses resulting from Vendor/Supplier's breach or alleged breach of this paragraph. By acceptance of this PO, Vendor/Supplier expressly certifies its compliance with the requirements of the Federal Occupational Safety and Health Act (P.L. 91-956), as amended; Executive Order 11246 (41 CFR 60-1 and 60-2), as amended, relating to equal employment opportunity and facilities; Executive Orders 11458 and 11625 (41 CFR 1-1.13) and P.L. 95-507, relating to the utilization of minority owned, small and small disadvantaged business enterprises; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and Executive Order 11701 (41 CFR 60-250), relating to the employment of veterans; the Rehabilitation Act of 1973, as amended, and Executive Order 11758 (41 CFR 60-741), relating to the employment of handicapped persons, related rules and regulations of the Department of Labor and the Office of Federal Contract Compliance Programs, and all rules, regulations and orders issued thereunder. Vendor/Supplier further certifies that all items or services provided hereunder shall have been produced in accordance with all requirements of the Fair Labor Standards Act of 1938, as amended. The Vendor/Supplier certifies that it will not export or re-export any information, materials or equipment received hereunder unless it complies fully with all regulations of the United States relating to such export and re-export. This information, materials or equipment shall be handled in strict accordance with the U.S. export administration regulations, and the Vendor/Supplier agrees to comply with all applicable federal, state and local laws including (but not limited to) the Regulations of the U.S. Department of Commerce relating to the Export of Technical Data, insofar as they relate to activities to be performed under this Agreement. In addition to the above any diversion contrary to U.S. Law is prohibited.

**10. LIENS** Vendor/Supplier, for itself and on behalf of its subcontractors, material men and employees, and for all other persons performing any labor or furnishing any materials hereunder, hereby waives the right to file mechanics or any other liens, and agrees that it shall, as a condition precedent to final payment, deliver to Buyer a satisfactory release of all liens arising hereunder.

**11. INSURANCE** During the performance of any work hereunder, Vendor/Supplier and all of its subcontractors shall be considered independent contractors and shall effect and maintain liability, property damage and workers compensation insurance policies which shall (excluding workers compensation) designate Buyer and its officers, directors, employees, agents (individually and collectively, the "Buyer") as additional insured and be primary and required to respond and pay prior to any other available insurance coverage. All such insurance coverage shall be with companies and in amounts satisfactory to Buyer, and Vendor/Supplier shall, before the performance of any work required hereunder, furnish Buyer with satisfactory evidence of such insurance. Should Vendor/Supplier fail to provide or maintain any of the above insurance coverages, Vendor/Supplier shall indemnify, defend and hold harmless the Buyer of, from and against any claim, loss, damage, liability or expense (including attorneys' fees and related expenses) even if such claim arises in whole or in part, or is alleged to arise in whole or in part from the negligence of the Buyer, to the full extent that such losses would not have been incurred by any of the Buyer Parties if the Vendor/Supplier had provided for and maintained the insurance coverages set forth herein.

**12. CONFIDENTIAL AND PROPRIETARY INFORMATION** Any and all drawings, specifications, information and data furnished by Buyer to Vendor/Supplier (being "Buyer Confidential information") shall remain the property of Buyer, and shall be used by Vendor/Supplier only as and to the extent required for the performance of this PO, unless Buyer approves otherwise in writing. Vendor/Supplier shall, upon the completion of the PO, promptly return all Buyer Confidential Information to Buyer together with all copies or reprints then in Vendor/Supplier's possession and/or control. Vendor/Supplier shall make no further use, directly or indirectly, of any Buyer Confidential Information or any information derived therefrom, nor disclose any of the same to any third party. Vendor/Supplier will not, in any manner, advertise or publish the fact that Vendor/Supplier has contracted to furnish Buyer the items and services ordered hereunder and breach of this provision will entitle Buyer to cancel without liability. This confidentiality provision is in addition to, and does not alter, or affect, any prior confidentiality obligations or agreements that may exist between the parties.

**13. GENERAL INDEMNITY** To the fullest extent permitted by law, Vendor/Supplier shall indemnify, defend and hold harmless Buyer of, from and against any and all claims, liabilities, losses, damages and expenses (including attorneys' fees and related expenses) resulting from the fault or negligence of Vendor/Supplier arising out of or connected with the items/services furnished under this PO. The rights and obligations contained in this clause shall survive termination, expiration, or completion of this PO. Vendor/Supplier agrees to promptly assume the defense, and preparations for the defense, and costs therefore of any suit or threatened suit brought against Buyer. Vendor/Supplier's indemnification obligations under this PO shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Vendor/Supplier under any liability imposed by law, including, but not limited to workers compensation acts, disability benefits, or other employee benefit acts.

**14. PATENTS** Vendor/Supplier shall defend at its own expense all suits, actions or proceedings in which Buyer and/or any other of the Buyer Parties are made defendants for actual or alleged infringement of any U.S. or foreign letters patent resulting from the use or sale of the items purchased under this PO (except for infringement necessarily resulting from adherence by Vendor/Supplier to specifications or drawings other than those of Vendor/Supplier's design or selection originally submitted to Vendor/Supplier by Buyer), and Vendor/Supplier further shall pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the Buyer, and shall otherwise indemnify and hold the Buyer Parties harmless of, from and against any and all damages, liabilities, losses or expenses (including attorneys' fees and related litigation expenses) resulting to or incurred by them in any manner arising from any and all such claims, suits, actions or proceedings.

**15. FORCE MAJEURE** Fires, accidents, labor disturbances, war conditions, governmental acts, laws or regulations or other causes beyond the control of Buyer or Vendor/Supplier rendering Vendor/Supplier unable to deliver or Buyer unable to receive the items covered by this PO, will permit Buyer, at its option, to extend the time for performance or cancel this PO by written notice to Vendor/Supplier without liability of Buyer to Vendor/Supplier for same. Vendor/Supplier shall immediately give notice to Buyer whenever any actual or potential event delays or threatens to delay Vendor/Supplier's timely performance of this PO.

**16. SET OFF** Buyer shall have the right at all times to set off any amount which Vendor/Supplier owes to Buyer against any amount which Buyer owes to Vendor/Supplier in connection with this PO.

**17. ASSIGNMENT** Vendor/Supplier may not assign or delegate rights or duties under this PO without Buyer's prior written consent, and any such proposed assignment or delegation shall be void and of no effect.

**18. GENERAL CONDITIONS** (a) No delay or failure on the part of Buyer in exercising any right or remedy under this PO, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or of any other right or remedy. If Vendor/Supplier fails to comply with any delivery date hereon, any attempts by Buyer to expedite Vendor/Supplier's delivery shall not be deemed a waiver of Vendor/Supplier's default or an extension of such delivery date. (b) If any term of this PO or the application thereof shall be illegal, such illegality shall not affect any other term or condition hereon, and such other terms and conditions shall continue in full force and effect. (c) All rights and remedies of Buyer under this PO shall be cumulative and not exclusive, and shall be in addition to all other rights in law or equity, whether set forth herein or not. (d) The headings herein are inserted for convenience of reference only and shall not be construed to limit or affect the provisions contained herein. (e) Any written notice required under this PO may be given, by certified or registered mail, return receipt requested, established commercial next day delivery carrier (e.g., FedEx or UPS) fax and like forms of notice. (f) This PO shall be governed by, enforced and construed in accordance with the law of the State of New York (NY) without application of conflict of laws principles.