

CHILDREN'S HOSPITAL OF ORANGE COUNTY – TERMS AND CONDITIONS

1. PURCHASE ORDER TERMS

These TERMS AND CONDITIONS are applicable to any PURCHASE ORDER issued to SELLER by Children's Hospital of Orange County, hereafter "HOSPITAL," for goods, materials, equipment, software, or other deliverables ("Product"). The PURCHASE ORDER, including these TERMS AND CONDITIONS and Exhibits, if any, represent the entire agreement between HOSPITAL and SELLER (collectively, the "Agreement"). This Agreement will not be superseded by any documents from SELLER. HOSPITAL will not be bound by any additional or different terms, whether printed or otherwise, in SELLER's quotation or in any other communication from SELLER to HOSPITAL, unless specifically agreed to in writing, by HOSPITAL's authorized representative.

2. ENTIRE AGREEMENT

This entire Agreement is limited to this Agreement and no purported revisions of, additions to or deletions from this Agreement shall be effective, whether in SELLER's proposal, invoice, acknowledgement or otherwise, and no local, general or trade custom or usage, shall be deemed to effect any variation herein unless expressly agreed to in writing by HOSPITAL's representative. Delivery of any goods or services or acceptance of any payment, pursuant to this Agreement shall constitute acceptance by SELLER of this Agreement subject to and in strict accordance with all of its terms and conditions. An acceptance stating additional or different terms shall not become part of this Agreement unless accepted in writing by HOSPITAL.

3. PACKING, MARKING AND INVOICING

A packing list shall be included with each shipment. All invoices, packing lists, bills of lading and each separate package within each shipment shall clearly reference piece number, HOSPITAL's PURCHASE ORDER number and SELLER's packing slip number. Additionally, in instances of multiple carton shipments, each package is to be clearly marked. A specific deliver to, side mark and/or project name reference, if provided by HOSPITAL, must appear on all packages, labels, packing lists and invoices. All packing lists are to be itemized, inline with SELLER's quotation and invoice format. Individual invoices shall be issued for each separate shipment. The date for calculating early pay discounts on invoices, if any, shall commence on the date the Product is accepted by HOSPITAL or the date of the receipt of a proper invoice, whichever is later. HOSPITAL reserves the right to apply agreed discounts for early payment, even if not stated on the invoice. All invoices must be in duplicate and be mailed to: ATTENTION: ACCOUNTS PAYABLE, P.O. BOX 5700, ORANGE, CA 92863.

4. TIME AND PLACE OF DELIVERY; BUYER'S INSPECTION; ACCEPTANCE OF PRODUCT

Deliveries will be accepted only during regular daytime business hours, unless otherwise requested in writing by HOSPITAL. Monday through Friday, 0630-1530. No deliveries are accepted on holidays. Time is of the essence of this Agreement. Delivery will be made as specified on the PURCHASE ORDER. HOSPITAL is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of SELLER'S failure to deliver as and when promised, HOSPITAL reserves the right to cancel its order, or any part thereof, and SELLER agrees that HOSPITAL may return all or part of any shipment so made, and may charge SELLER with any loss or expense sustained as a result of SELLER'S such failure to (1) deliver timely, as promised, Products and/or services, or (2) deliver Products and/or services in correct quantities, of acceptable quality and performance in accordance with the provisions of this Agreement. If SELLER fails to deliver Products and/or services within the time specified, HOSPITAL may procure similar Products and services and SELLER shall be liable to HOSPITAL for any excess costs for the procurement of the Products and services. The remedy herein reserved is not exclusive, but is in addition to any other rights and remedies provided by law or under this Agreement. HOSPITAL shall have a reasonable time after delivery to inspect Products and work covered by this PURCHASE ORDER and payment by HOSPITAL prior to its inspections will not constitute acceptance of same. HOSPITAL does not assume the burden of 100% inspection, if partial inspection reveals that any portion of the shipment does not conform to the provisions hereof, the entire shipment may be rejected and, at the option of HOSPITAL, returned. In the event of a rejection and a return of articles or materials, SELLER shall, within ten (10) days of the return, issue a credit, or a cash refund, as specified by HOSPITAL. Freight charges accruing from rejected materials are fully SELLER'S responsibility.

5. ROUTING, RISK OF LOSS AND SHIPMENT

SELLER shall comply with specific routing instructions provided by HOSPITAL, such as inside prearranged and scheduled deliveries. In the case of leased equipment and/or serialized assets, SELLER must provide HOSPITAL's Purchasing Department with proof of delivery, including the serial numbers of all devices, components and peripherals delivered. Shipping F.O.B. will be "DESTINATION," with risk of loss and/or damage passing from SELLER to HOSPITAL upon receipt of delivery at HOSPITAL, and title shall pass from SELLER to HOSPITAL on the later of acceptance by HOSPITAL or final payment for Products and/or services, even if Products are specifically manufactured. SELLER shall bear the responsibility of insuring and tracking all Products until receipt of delivery at HOSPITAL. Freight for all shipments, if negotiated as billable, shall be prepaid and billed at SELLER'S actual freight fees, free of any superfluous "shipping and handling" fees.

6. HAZARDOUS GOODS

Where the Products comprise or include substances hazardous to health, SELLER will supply HOSPITAL with all data necessary to allow HOSPITAL to form a suitable and sufficient assessment of the risks and of the steps which need to be taken in order to meet the requirements of all applicable laws and regulations. Additionally, Material Safety Data Sheets, by OSHA requirements 29 CFR 1910.1200, shall be provided by SELLER in advance of delivery of Products for all hazardous chemicals to the attention of HOSPITAL'S Safety Officer.

7. PAYMENT TERMS

Payment will be made following receipt and acceptance of the Products and receipt, in proper form and substance, of all documentation required by this Agreement. SELLER shall furnish to HOSPITAL any analysis or breakdown of the price as HOSPITAL may reasonably request. HOSPITAL will pay SELLER all undisputed amounts within 30-days of receipt of the invoice. HOSPITAL is entitled to adjust any payments for rejection or non-acceptance of Products or any setoff or counterclaim arising out of any of HOSPITAL'S PURCHASE ORDERS with SELLER. Should SELLER reduce its prices for goods of equal quality in like quantity, following the issuance of HOSPITAL'S PURCHASE ORDER, and prior to SELLER shipping the Products; HOSPITAL shall receive the benefit of such lower price on all shipments made while the lower price is effective. HOSPITAL shall not be responsible for any penalties, interest payment or other charges not included in the PURCHASE ORDER. SELLER shall supply to HOSPITAL, upon request, an executed waiver of liens and claims in form reasonably satisfactory to HOSPITAL. SELLER agrees to indemnify, defend and hold harmless HOSPITAL from and against any and all liens and encumbrances arising out of SELLER'S performance of this Agreement or arising out any claim for payment by any laborer, subcontractor or supplier of SELLER.

8. ASSIGNMENT

SELLER shall not assign its rights or delegate its performance hereunder, not any interest herein, without HOSPITAL'S prior written consent and any attempted assignment or delegation without such consent shall be void.

9. TERMINATION

HOSPITAL, at its option, may terminate this Agreement, in whole or in part, at any time, by giving written notice to SELLER. Upon such notice of termination, SELLER shall discontinue all work, cancel all commitments pertaining hereto and take any necessary action to protect property in SELLER'S possession in which HOSPITAL has an interest. Settlement shall be made by HOSPITAL for any labor or material expended by SELLER in performance of this PURCHASE ORDER prior to termination unless such termination shall have resulted from SELLER'S default of its obligation as specified herein. SELLER must provide supportive documentation for any labor and material expended prior to termination. HOSPITAL may audit all elements of any termination claim. SELLER shall notify HOSPITAL immediately and HOSPITAL may terminate this Agreement immediately in the event that SELLER becomes insolvent, files for bankruptcy, is adjudicated bankrupt or has a receiver appointed for substantially all of its assets.

10. CONFIDENTIALITY

The contents of this Agreement and its existence shall be confidential and SELLER shall not, without first obtaining the written consent of HOSPITAL, in any manner otherwise advertise or publish the fact SELLER had contracted to furnish to HOSPITAL, the Products mentioned herein, or disclose to any person, firm, corporation or government agency the contents hereof. Notwithstanding the foregoing, HOSPITAL and SELLER may share confidential information related to this Agreement with HOSPITAL'S group purchasing organization(s), currently Child Health Corporation of America (CHCA) and Premier, Inc., and directly with members of CHCA and Premier, Inc., and in this instance only.

11. PATENTS AND COPYRIGHTS

In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application therefore, SELLER will indemnify and save harmless HOSPITAL from any and all loss, cost, or expenses on account of any and all claims, suits, or judgments for the use of such article in violation of a third-party's rights under such patent, copyright, or application.

12. LIENS AND ENCUMBRANCES

All Products purchased hereunder shall be free and clear of all liens, claims or encumbrances of any nature whatsoever.

13. INDEMNIFICATION

SELLER agrees to indemnify, defend, and hold harmless HOSPITAL, its officers, agents and employees, from any and all claims by any person whomsoever for injury to persons or damage to property caused by, or in any way arising out of, the furnishing of Products hereunder, except such claims as may result from the sole negligent acts or omissions of HOSPITAL, its officers, agents, or employees.

14. CERTIFICATION OF INSURANCE

Upon request, SELLER shall provide, show evidence acceptable to HOSPITAL, and maintain in full force and effect, an insurance policy or policies protecting SELLER and HOSPITAL, and their officers and employees, against any loss, liability or expense from personal injury, death, property damage, or otherwise arising or occurring from, or in connection with, the Products and/or services provided by SELLER, in an amount not less than \$3,000,000 for any one occurrence. HOSPITAL may, upon request, be an additional insured under such policies of SELLER. A certificate of insurance showing compliance with the foregoing requirements shall be furnished by SELLER to HOSPITAL upon HOSPITAL'S request.

15. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, and its performance, consummation and enforcement will be subject to all applicable California laws.

16. PRODUCT INVESTIGATIONS

Vendor agrees to cover all costs of third party investigations related to the Products pertaining to compliance with the Safe Medical Devices Act of 1990.

17. CORPORATE RESPONSIBILITY PROGRAM ACCEPTANCE

SELLER acknowledges that HOSPITAL'S Corporate Responsibility Program ("Program") applies to the services and obligations described herein and that all policies and procedures relating to this Program are available and should be reviewed by SELLER and designated staff of SELLER who are providing services to HOSPITAL. SELLER acknowledges that policies, procedures and handbooks are available for review by SELLER. This Program is intended to prevent compliance violations and to promote education related to fraud, abuse, false claims including but not limited to the Deficit Reduction Act provisions, excess private benefit, and inappropriate referrals. This Program requires, and SELLER hereby agrees, that any regulatory compliance concerns be promptly reported either to an appropriate HOSPITAL manager or through HOSPITAL'S Corporate Responsibility Hotline (714-289-4700). Further, SELLER represents and warrants that individuals providing services hereunder shall not at any time have been sanctioned by a health care regulatory agency and that any investigations of SELLER shall be promptly reported to a HOSPITAL manager or via the hotline (as above). Failure to abide by these compliance requirements shall give HOSPITAL the right to terminate this Agreement immediately at its sole discretion.

18. WARRANTIES

SELLER expressly warrants that all Products, parts and workmanship entering into performance of this order will conform to the provisions of this Agreement and that the Products will be of merchantable quality, fit for their particular purpose or application, of good workmanship and material, and free from defect. Such warranties shall survive inspection, test, acceptance and last for the term stated in Section 18.3 below. SELLER guarantees to HOSPITAL as to delivery hereunder that, as of the date of delivery, the merchandise listed herein, or any portion thereof, is on such date, of such construction and nature that the same conforms to all applicable laws and regulations. In the event any Products previously delivered to HOSPITAL become the subject of an advisory or actual recall, SELLER will accept the return of the Products and credit HOSPITAL for such substances, including shipping charges.

18.1 Documentation and Demonstration

Upon HOSPITAL'S request, SELLER shall:

- Within two (2) business days, provide HOSPITAL with documentation necessary to prove that the Product(s) fulfill the Warranty set forth herein; and
- If appropriately required, and upon request, within ten (10) business days, physically demonstrate at HOSPITAL'S place of business, and with the specific Product (s), demonstrate that such Product(s) fulfill the Warranty set forth herein.

18.2 Repair and Replacement of Product(s)

If at any time during the term of this PURCHASE ORDER, it is reasonably determined by HOSPITAL that the Product(s) do not fulfill the Warranty set forth herein, SELLER shall repair or replace the Product(s) at no additional charge to HOSPITAL within ten (10) business days of verbal or written notification. In the event that HOSPITAL determines that SELLER cannot repair or replace the Product(s) to fulfill the Warranty set forth herein, HOSPITAL may terminate this PURCHASE ORDER immediately. Upon such termination, SELLER agrees to refund all monies paid under this PURCHASE ORDER within fifteen (15) business days.

18.3 Term

The Warranty set forth herein shall expire on midnight of the final date marking the end of either the manufacturer's stated warranty term, or SELLER'S contracted warranty term, whichever is the later.

18.4 Indemnification

Notwithstanding any other indemnification provisions contained herein, SELLER shall indemnify, hold harmless and defend HOSPITAL from any and all loss, liability, claim, lawsuit, injury, loss, expense, or damage whatsoever, including but not limited to, attorney's fees and court costs, arising out of, incident to or in any manner occasioned by the performance or nonperformance by SELLER, its agents, employees, servants, or subcontractors, or by the negligence, improper conduct or intentional acts or omissions of such indemnifying parties, its agents, employees, servants or subcontractors.

19. ENVIRONMENTAL LAW COMPLIANCE

SELLER, as applicable, has been and is in compliance with all Environmental Laws. For purposes of this Section, "Environmental Laws" shall include all constitutional provisions, statutes, ordinances or other laws, duly enacted and enforceable rules or regulations, any binding interpretations or orders of any governmental entity relating to polluting the environment including any emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, pesticides or industrial, infectious toxic or hazardous substance (including friable asbestos) or waste into the environment (including ambient air, surface water, groundwater, land surfaces, subsurface strata) through processing, generation, distribution, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or industrial, infectious, toxic or hazardous substances or wastes. SELLER will promptly notify HOSPITAL of any material environmental condition upon SELLER'S awareness of it.

20. STATE and FEDERAL REPORTING GUIDELINES

SELLER acknowledges that the State of California may impose a withholding tax on services provided, by out of state companies. It is the responsibility of SELLER to file State form 587, 588 or 590 and a W-9 with HOSPITAL'S Accounting Office, prior to being paid for services rendered. 587's, 588's, 589's and W-9's may be faxed to (714) 532-8580, Attention: Accounts Payable; or mailed to HOSPITAL, Attention: Accounts Payable. Forms may be obtained from the following websites: FTB.ca.gov (587,588,589); IRS.gov (W-9)

21. DISCLOSURE OF INTERESTS

In order to permit compliance with federal anti-referral statutes and regulations commonly known as Stark I, II and III (42 U.S.C. Section 1395nn), as those statutes and regulations may be amended from time to time, SELLER shall provide to HOSPITAL, upon acceptance of this Agreement, with information sufficient to disclose any ownership, investment, or compensation interest, or arrangement of HOSPITAL physicians or any HOSPITAL physician's immediate family members, in SELLER or any of SELLER'S affiliates, parent companies and/or subsidiaries. Such information shall be provided by completing and signing HOSPITAL'S Disclosure of Interest Form, which may be obtained from HOSPITAL'S Purchasing Department. In addition, SELLER shall immediately inform HOSPITAL of any other arrangements between a HOSPITAL physician and SELLER or any of SELLER'S affiliates, parent companies and/or subsidiaries that may present a conflict of interest or materially interfere with a HOSPITAL physician's performance of her/his duties.