

## PURCHASE ORDER TERMS AND CONDITIONS

The following terms and conditions are made a part of the written purchase order ("Purchase Order" or "Order") to which they are attached regarding the purchase of certain goods ("goods" or "merchandise") and/or services by Albany Med Health System d/b/a Albany Medical Center ("AMHS")<sup>1</sup> from the seller ("Supplier") named in the Purchase Order. These terms and conditions are incorporated by reference into all written and electronic Orders between AMHS and Supplier as if expressly set forth therein. The terms and conditions contained in this Purchase Order merge with and supersede all previous or contemporaneous understandings, representations, terms and conditions by either party, whether in oral, written, electronic or other form, and shall not be modified, amended, revised, transferred, conveyed or assigned by either party except upon mutual written agreement signed by both parties' respective authorized agents.

1) **SPECIFICATIONS.** Merchandise and services must conform to AMHS's specifications and/or samples provided by Supplier, or both, if there are both, and shall be delivered at the times and in the quantities herein specified. This Purchase Order and all monies due hereunder are non-assignable by Supplier without the written consent of AMHS. No Order shall be valid unless it is issued by AMHS's authorized representative. AMHS is not obligated to recognize any claim based on a verbal order.

2) **OFFER AND ACCEPTANCE.** This Purchase Order constitutes an offer on the part of AMHS to Supplier upon the conditions and terms and at the prices stated herein, and in order to constitute a binding contract upon AMHS, this offer must be accepted by the Supplier on the express understanding that no variation in the terms of the Order will be valid or binding on AMHS without its express written approval. Commencement of performance by Supplier pursuant to this Order shall constitute acceptance by Supplier. Any conditions stated by Supplier in acknowledging receipt of this Order shall not affect AMHS's offer as represented by this Order and shall not be binding on AMHS if in conflict with or addition to any of the provisions of this Order.

3) **NO VARIATION.** No acceptance shall be effective which varies, supplements or conflicts with the terms of these Purchase Order Terms and Conditions. Any such conflicting or supplemental terms shall be deemed to be rejected in the absence of AMHS's express written approval on the face of the Purchase Order or in an attachment thereto signed by AMHS's authorized representative. Any such approval, and any execution on behalf of AMHS of any agreement or other document proffered by Supplier, shall constitute acceptance and agreement by AMHS only as to such approval's or agreement's (a) description of goods and/or services ordered; (b) pricing terms, delivery terms and quantities related to such goods and/or services; and (c) any added term and/or condition to the extent that such added term and/or condition does not conflict with these Purchase Order Terms and Conditions.

4) **SHIPPING.** AMHS reserves the right to dispute any additional charges imposed for shipping, handling, packaging or insurance. Merchandise shipped by freight or express will be marked, packed, and described so as to

obtain the lowest rate possible except where otherwise specified by AMHS in writing, and penalties and/or increased charges due to failure to do so will be charged to Supplier. Shipping instructions will be provided on the Purchase Order along with AMHS preferred freight management terms.

5) **RISK OF LOSS.** Acceptance of and risk of loss with respect to all goods purchased hereunder is subject to AMHS's inspection and approval at destination within a reasonable time after arrival, notwithstanding prior payment to obtain cash discount or any other benefit. Title to the goods shall pass to AMHS only upon their actual receipt and acceptance by AMHS. The risk of loss or damage prior to completion of delivery to and acceptance by AMHS shall be and remain upon Supplier, and any such loss or damage to goods or materials ordered hereunder shall not release Supplier from any obligation hereunder unless directly and solely caused by AMHS's negligence or other wrongful conduct during inspection.

6) **REJECTED GOODS.** AMHS may return rejected merchandise or hold same at Supplier's risk and expense, and may, in either event, charge the Supplier with the cost of transportation, storing, shipping, unpacking, examination, repacking, reshipping, and other like expenses and charges. In the event Supplier ships more than six days after either the shipping date shown on the shipping instructions, or the date indicated to AMHS by Supplier (whether oral or written), AMHS reserves the right to return any and all merchandise in original standard packaging to Supplier and charge the Supplier with the cost of transportation, shipping, reshipping, and other like expenses and charges.

7) **DELIVERY.** AMHS shall not be obligated to make any payment until the merchandise and any documents of title thereto (with all necessary endorsements thereon) shall have been delivered to and accepted by AMHS at its appointed destination. Notwithstanding the terms of any document of title to the merchandise, AMHS shall be entitled to inspect all goods before making payment therefor and/or to exercise whatever other rights AMHS may have hereunder or at law or in equity. Delivery shall not be complete until the merchandise has been actually received and accepted.

8) **PAYMENT.** Payment terms for this Purchase Order are negotiated and calculated based on the later of the Supplier invoice date or the date of acceptance of goods, and/or of the date of completion of services, as applicable, unless specifically agreed otherwise in writing on the face hereof. Acceptance by Supplier of the final payment on the contract price shall be and shall operate as a release of AMHS from all claims of Supplier arising out of or in connection with the Order.

9) **CHANGES.** This Purchase Order may not be modified, altered, or changed in any respect, without the prior written consent of AMHS and shall be binding upon the respective successors and assigns of the parties hereto. In the event of any variance between this Order and Supplier's invoice, packing slips, statements or correspondence, Supplier agrees that the terms, conditions, and provisions hereof shall control.

10) **RIGHT TO CANCEL.** AMHS may cancel this Order for cause at any time prior to completion of Supplier's obligations hereunder if Supplier fails to comply with the terms and conditions of the Order, or in the event of the happening of any of the following: 1) insolvency of Supplier; 2) filing of a voluntary or involuntary petition in bankruptcy; 3) the appointment of a receiver or trustee of Supplier; or 4) the execution of Supplier of an assignment for the benefit of creditors. AMHS shall not be liable for failure to take delivery of material or work or render any other performance in the event fire, accidents, labor difficulties, governmental actions, third-party failures or any other conditions beyond AMHS's control render it commercially impractical for AMHS to do so. AMHS may terminate this

<sup>1</sup> Albany Med Health System (AMHS) is the parent corporation of a health system servicing northeastern New York and western New England. As of the Effective Date, AMHS is the New York State Department of Health established active parent corporation and co-operator of the following hospitals in New York State: Albany Medical Center Hospital; The Columbia Memorial Hospital; Glens Falls Hospital; and The Saratoga Hospital. AMHS also has direction and control over the following additional health care entities, either directly or indirectly through its hospitals or other related entities: Albany Medical College; Saratoga Regional Medical, P.C.; Healthcare Partners of Saratoga, Ltd. d/b/a Malta Med Emergent Care; Columbia Memorial Regional Medical, PLLC; Glens Falls Medical PLLC; Visiting Nurse Association of Albany, Inc.; and Visiting Nurse Association of Albany Home Care Corp. AMHS may in the future have additional hospitals or other entities, directly or indirectly, that become part of the health system it operates. Hereinafter, references to AMHS or Albany Med Health System shall include its hospitals and other related entities unless the context indicates otherwise.



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Purchase Order without cause by giving Supplier at least sixty (60) days written notice before the effective termination date. Supplier shall be entitled to receive pro-rated compensation for satisfactory performance as of the termination date.

11) **PRICE DECLINES; PRICE WARRANTY.** Supplier shall give AMHS the benefit of any price reductions made by Supplier to specified shipping date or actual time of shipment, whichever is later. Supplier warrants that the prices for the goods covered by the Order are not less favorable than those currently extended to any other customer of Supplier for the same or similar goods in similar quantities. If Supplier reduces its price for such goods prior to final delivery of the goods to AMHS, Supplier shall issue a corresponding reduction in the price or prices provided for in this Purchase Order. AMHS's agreement to the price(s) specified under this Purchase Order shall entitle AMHS to the most current model/version of all goods associated with each such price unless specifically provided otherwise on the face of the Purchase Order.

12) **WAIVER.** No waiver by AMHS of any right or of any breach of any provision of AMHS's Purchase Order, or failure to act in a specific instance, shall constitute a waiver of any other right or breach of that or any other provision, nor shall it be deemed to be a general waiver of such right or provision or to sanction any subsequent breach thereof. The exercise of any right or remedy herein provided shall be without prejudice to the right of AMHS to exercise any other right or remedy provided herein or at law or in equity.

13) **ASSURANCE.** Acceptance of this Order constitutes an assurance that all merchandise delivered pursuant to this Order has been manufactured, produced, packaged, labeled, shipped, and if required, registered in accordance with, and in all aspects conforms to, all applicable federal, state, and local laws, rules, and regulations. **WARRANTY.** Supplier expressly warrants that all goods and work covered by this Order will be new and merchantable, of good material and workmanship and free of defect, be free of any liens, claims or encumbrances of any kind and are not comprised of any equipment or software other than the most current version thereof unless otherwise specifically agreed to by AMHS in writing. Supplier further warrants that all goods covered by this Order, which are the product of Supplier or are in accordance with Supplier's specification, will be fit and sufficient for the purposes for which they were manufactured and sold, and if Supplier knows or has reason to know of any other particular purpose for which AMHS intends to use such goods, the goods will be fit for such particular purpose. Supplier shall promptly notify AMHS of all recalls of supplies or equipment. Supplier hereby extends to AMHS any and all warranties received from Supplier's contractors and agrees to enforce such warranties on AMHS's behalf. All of the above warranties shall run to AMHS, its successors, assigns, customers and users of products sold by Supplier.

14) **PROPRIETARY RIGHTS.** If the products to be supplied pursuant to this Order have been provided or designed in accordance with specifications furnished or originated by AMHS, any data, report, know-how, physical or intellectual property or other material prepared or produced in connection therewith ("deliverables") shall be "works made for hire" by Supplier for AMHS, and all title to and all rights in and to such deliverables shall vest in AMHS. To the extent the deliverables may not be deemed to be works made for hire, Supplier hereby assigns any and all rights in such deliverables to AMHS. All drawings, photographs, data and other written material or information supplied in connection therewith shall at all times remain the property of AMHS and be returned promptly upon AMHS's request. Supplier authorizes AMHS to sign and file a UCC-1 Financing Statement covering the foregoing described property of AMHS.

15) **INTELLECTUAL PROPERTY.** Supplier warrants that manufacture or use of the goods covered by this Order and the sale or offer for sale of such goods will not infringe any United States or foreign patent, copyright, trademark or any other intellectual property right of any third party ("IP Right"). Supplier agrees to defend, indemnify and hold harmless AMHS and AMHS's directors, officers, employees, successors, assigns, customers, and users of any and all goods purchased hereunder from and against all damages, claims, liabilities, losses, costs, expenses and losses (including, without limitation, court costs, reasonable attorneys' fees, penalties and punitive damages) arising out of or relating to any actual or alleged infringement of any such IP Right, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of such goods.

16) **INDEMNIFICATION AND INSURANCE.** Supplier agrees to hold harmless, defend and indemnify AMHS against any and all claims, demands or suits by any person and against related loss, damages or injury to property or persons, liabilities, costs and expenses (including reasonable attorney's fees), which may arise out of performance under this Purchase Order or the use, possession or ownership of the goods and/or services related thereto, caused or contributed to by either: (a) the actions or omissions (whether or not negligent) by Supplier or Supplier's agents or subcontractors including without limitation such acts or omissions, incident to the presence of the Supplier, its agents, and subcontractors upon AMHS's premises in the course of performance under this Purchase Order; or (b) defective, unsafe or non-conforming goods or services supplied by Supplier or Supplier's agents or subcontractors; (c) AMHS's voluntary or involuntary recall, recovery or withdrawal of products in compliance with any federal, state or local laws, orders or regulations; or (d) Supplier's use and possession of AMHS's property during performance under this Purchase Order. The term "AMHS" as used in this section includes AMHS as defined above, well as AMHS's officers, employees, agents, students, successors, assigns, customers, invitees and users. Supplier will at all times carry insurance acceptable to AMHS and sufficient to fully fund and support Supplier's indemnification obligation as provided in this section and shall provide certificates of all such insurance. All such insurance shall name AMHS as an additional insured for General Liability and Auto only and provide for at least thirty (30) days notice of cancellation or modification.

17) **GOVERNING LAW.** This Purchase Order shall be governed by and interpreted under the laws of the State of New York. Supplier agrees to the exclusive jurisdiction of the state or federal courts in New York State in any action or proceeding arising under this Purchase Order without regard to choice or conflict of laws principles and agrees that any and all actions or causes arising hereunder shall be venued in Albany County, New York.

18) **CONFIDENTIALITY.** Supplier shall consider all specifications, plans, instructions, samples and other information furnished by AMHS, or prepared by Supplier specifically for AMHS in connection with this Purchase Order, to be confidential and shall not, without AMHS's prior written consent or except as required by law, disclose such information to any third party or use such information for any purposes other than performing this contract, or issue any news release, advertisement, publicity, or promotional material regarding this Order, its purpose or content or Supplier's relationship hereunder with AMHS. Notwithstanding the above, AMHS may disclose the pricing available under this Purchase Order to benchmarking services and AMHS's Group Purchasing Organization, if such organizations agree in writing not to disclose the identity of AMHS when disclosing price data.

19) **ELECTRICAL STANDARD.** All electrically connected merchandise ordered hereunder shall meet the current specifications described in NFPA Code 99: Standard for Health Care Facilities, and NFPA 101: Life Safety Code,



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published by the National Fire Protection Association. If any specification is not met, AMHS reserves the right to either return the merchandise at Supplier's expense, or alter the merchandise to conform with these specifications. Such alternations shall not be considered a violation of the Supplier's or manufacturer's warranties.

20) TRANSFER OF TITLE. When goods are purchased F.O.B. Supplier or shipping point, it is agreed between Supplier and AMHS that goods covered by this Order shall not be considered as delivered and title thereto or responsibility therefore shall not pass until after the goods reach AMHS's place of destination indicated thereon.

21) INDEPENDENT CONTRACTOR. Supplier agrees that any and all services under this Purchase Order shall be performed by Seller, its employees, agents, suppliers or subcontractors as independent contractors, and not as employees of AMHS, and that such persons doing work hereunder shall not be considered or represent themselves as employees or agents of AMHS.

22) FEDERAL HEALTH PROGRAMS. Supplier warrants that it is authorized to participate fully in Federal Health Care programs as defined by 42 U.S.C. §1320a-7b(f), which includes State health care programs as defined by 42 U.S.C. §1320a-7(h), and that it has not been excluded or suspended from participation in, or otherwise rendered ineligible to participate in, Federal Health Care programs.

23) INVESTIGATIONS. Supplier shall immediately notify AMHS upon notification from a federal, state and/or local government agency that Supplier is being investigated, or that Supplier is charged with violations that may result in its exclusion or suspension from Federal Health Care programs, and/or that it is being excluded from participation in or otherwise rendered ineligible to participate in Federal Health Care programs. Upon any such exclusion or a finding of ineligibility, this Purchase Order shall terminate immediately. Supplier agrees to indemnify and hold harmless AMHS for any and all claims asserted, costs, damages, losses and penalties assessed with respect to misrepresentations made or failure to disclose regarding the above.

24) HEALTH CARE FRAUD, WASTE AND ABUSE. AMHS has in effect a compliance program including a policy providing information regarding certain federal and state laws pertaining to health care fraud and abuse, as well as information regarding the processes AMHS has to detect and prevent health care fraud, abuse and waste. Such policy, as well as updates and changes to the policy, may be accessed at: <https://www.albanymed.org/about-the-albany-med-health-system/public-policies-notices-and-terms/>. Questions related to the policy may be directed to the Corporate Compliance and Audit Department, 518-262-4692. Concerns potentially implicating the compliance program and the laws cited herein may be reported anonymously to AMHS by calling 518-264-TIPP. Supplier shall be subject to the requirements of AMHS's compliance program to the extent the services provided under this Purchase Order are related to the risk areas set forth in 18 NYCRR § 521-1.3 (e.g., billings, payments, ordered services, credentialing, etc.) and only within the scope of the contracted authority and affected risk areas. To the extent that Supplier is subject to AMHS's compliance program, Supplier's failure to adhere to the compliance program requirements shall be considered a material breach of this Purchase Order subject to termination of this Purchase Order for cause by AMHS.

25) FEDERAL FUNDS. If this Purchase Order is being placed by AMHS, in its capacity as a recipient of federal funds, to Supplier as a contractor for or subrecipient of any such federal funds, then all applicable procurement provisions contained in Appendix II to The Uniform Rules under 2 C.F.R. §

200.326 are hereby incorporated into this Purchase Order as if fully set forth herein, and Supplier shall include or incorporate such provisions in any agreement with any subcontractor or other subrecipient which provides any goods or services in connection herewith.

26) BOOKS AND RECORDS. In the event that 42 U.S.C. §1395x(v)(1)(I)(i) is deemed applicable to this Purchase Order, the Parties shall make available upon the written request of the Secretary of Health and Human Services or the United States Comptroller General, this Purchase Order and such books, documents and records as are necessary to certify the nature and extent of costs incurred hereunder.

27) NO ADDED TAX-RELATED CHARGES. AMHS shall not be liable for any added charge attributable to any excise or other tax imposed upon Supplier in connection with its sale of any taxable medical device (as defined in Section 201(h) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321(h)), or any other taxable goods and/or services in connection herewith, except as specifically identified in this Purchase Order or in an attachment thereto signed by AMHS's authorized representative.

28) EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION COMPLIANCE. The Equal Employment Opportunity and Affirmative Action Clause, as set forth by the Department of Labor, 41 C.F.R. Section 60-1.4(a), is hereby incorporated by reference herein insofar as it is required by such regulations and unless exempted by applicable statutes, rules, regulations or orders. Supplier agrees, unless exempted, to incorporate by reference and abide by Executive Order 11246, and that Supplier and any subcontractor shall, to the extent they apply, abide by the requirements of 41 C.F.R. §§60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of their protected veteran status or disability and prohibit discrimination against all individuals based upon their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require affirmative action by covered prime contractors and subcontractors to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.