

METHODIST HEALTHCARE PURCHASING TERMS AND CONDITIONS

DEFINITIONS

PURCHASER shall always be understood to refer to Methodist Healthcare Purchasing, or Materials Management, as the sole agent for purchases by Methodist Healthcare and its subsidiaries, divisions, successors, assigns, and customers. SELLER shall always be understood to refer to any of the following: vendors, merchants, middlemen, distributors, manufacturers, developers, contractors brokers, partnerships of any sort, limited liability companies, financial institutions, and the vendors of any of the forgoing organizations, providing goods or services, both tangible and intangible, to Methodist Healthcare and its subsidiaries, divisions, successors, assigns, or customers.

ACKNOWLEDGEMENT

Purchase orders including the terms and conditions hereof, expressly limit acceptance by SELLER to the items stated herein. Any additional or different terms proposed by SELLER are rejected unless expressly assented to by PURCHASER in writing.

PACKING LISTS

Packing lists which refer to the purchase order numbers must be furnished with each shipment outside of the container in which this shipment is made. All expense for packing is to be borne by SELLER.

MARKING

The purchase order number must appear on all invoices, packages, shipping cases, shipping documents and correspondence.

INVOICING

All invoices must be sent with shipment and/or after shipment is made to the address shown on the faces of purchase orders.

INSPECTION

All goods are subject to inspection by PURCHASER on delivery, notwithstanding prior payment or inspection.

EXTRA CHARGES

No extra charges will be allowed by PURCHASER for packing, skids, pallets, reels or cartage unless so specified in this purchase order.

TRANSPORTATION CHARGES

- (a) Freight or express charges must be prepaid when price is F.O.B. destination.
- (b) The SELLER must pay transportation charges both ways on any and all rejected material, regardless of whether such material is rejected for non-compliance with specifications or because it is otherwise defective material.
- (c) All parcel post shipments are at the risk of SELLER unless insured by SELLER.

INDEMNIFICATION

The SELLER covenants and agrees to indemnify and to hold harmless the PURCHASER against all claims, suits, actions causes of action or proceedings, and against all loss and damages whatsoever, by reason of any alleged infringement of patents, or for patent royalties involved in consequence of the purchase and use of items listed on purchase orders, or by reason of SELLER'S violation of any duty, obligation, or law in the manufacturing, handling, shipping, or selling of the goods. The PURCHASER shall give prompt notice to the SELLER of any suits brought or proceedings begun against it, and shall permit the SELLER, by counsel, to defend such suits, and shall give such information as it may possess to reasonably enable the SELLER to defend such suits.

SAFETY REQUIREMENTS

An authorized representative of SELLER shall certify to PURCHASER in writing a minimum of 7 days prior to delivery that all equipment and/or items shown on purchase orders meet current and all subsequent N.F.P.A. (National Fire Protection Association) safety standards and Occupational Safety and Health Act safety standards as set forth by the Department of Labor in Federal Register Volume 36, No. 105 part II dated Saturday, May 29, 1971, if the items shown on purchase orders are subject to the above mentioned safety standards.

SALES TAX

This organization is sales tax exempt and is duly qualified as an exempt institution under Section 67-6-322 of the Tennessee Code Annotated. All purchases of tangible personal property, intangible personal property, or services under purchase orders have been

authorized by the governing body of the institution and said purchases are for the use and consumption of the institution and not for the use or consumption of private individuals.

DELIVERY

It is understood that time is of the essence under this agreement. PURCHASER may, by written notice, terminate this order in whole or in part if SELLER fails to make delivery of the goods within the time specified on the purchase order, or any extension thereof granted by PURCHASER by written amendment to the agreement.

RISK OF LOSS

Irrespective of the F.O.B. point named, the SELLER will bear the risk of loss until the goods are delivered, inspected and accepted by the PURCHASER.

PRICE

The SELLER warrants that the prices charged for services or articles described on purchase orders are not in excess of prices quoted or charged to other customers for similar quantities of like items under similar delivery requirements. If, during the term of this agreement, lower prices are quoted or charged to other customers of SELLER for similar quantities of like items under similar delivery requirements, then the lower prices so quoted or charged shall be substituted for the prices contained on the purchase order.

PAYMENT

Payment is not due until acceptance after final inspection. Final inspection and acceptance will be made within a reasonable time after delivery. Unless otherwise provided on the purchase order, PURCHASER will not accept C.O.D. shipments. Time in connection with any cash discount offered will be computed from the latest of the following dates: the scheduled delivery date, or the date an acceptable invoice is received. Payment is deemed made for purposes of earning the discount on the date of mailing of the PURCHASER'S check.

WARRANTY

SELLER warrants that all items delivered under purchase orders shall be free from defects in workmanship, material and manufacture; shall comply with requirements of this order, including any drawings, specifications or proposals incorporated by reference or samples furnished by the SELLER; and shall be free from defects in design. SELLER further warrants that all items purchased under purchase orders shall be of merchantable quality and shall be fit and suitable for the purposes for which such goods are ordinarily intended. The foregoing warranties are conditions to orders and are in addition to all other warranties, express or implied, and shall survive any delivery, inspection, acceptance or payment by the PURCHASER. All warranties shall accrue to the benefit of the PURCHASER, its successors, assigns, customers and any third party injured in person or property by reason of any breach thereof. If any warranties specified herein or otherwise applicable are breached by SELLER, PURCHASER may, at its election: (1) require SELLER to correct, at SELLER'S sole expense, any defect or nonconformity by repair or replacement, or (2) return any defective or nonconforming goods to the SELLER at the SELLER'S expense and recover from the SELLER the price thereof. The foregoing remedies are in addition to all other remedies at law or equity or as contained in this order and shall not be deemed to be exclusive.

WAIVER

The failure of the PURCHASER to enforce at any time any of the provisions of this order shall in no way be construed a waiver of such provisions, nor shall such failure in any way affect the right of the PURCHASER thereafter to enforce each and every provision of this order.

MODIFICATIONS

The PURCHASER may at any time, by a written order and without notice to sureties or assignees, suspend performance under a purchase order, increase or decrease the ordered quantities, or make changes within the general scope of the order in any one or more of the following: (a) applicable drawings, designs, specifications, or proposals; (b) method of shipment or packing, and (c) place of delivery. If any such change causes an increase or decrease in the cost of or time required for performance of the order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be modified ONLY by writing accordingly upon presentation written by SELLER to PURCHASER of a claim for adjustment; and if additional funds are necessary, only after PURCHASER'S approval of additional funds for the amount of the adjustment. No claim by the SELLER for

adjustment to a purchase order shall be valid unless asserted within twenty (20) days from the date of receipt by the SELLER of the modification or change; provided, however, that such period may be extended upon written approval of the PURCHASER. Nothing in this clause shall excuse the SELLER from performance under a purchase order as changed or modified.

TERMINATION

PURCHASER may, by written notice, terminate this order in whole or in part if the SELLER fails to perform any of the provisions of an order or so fails to give adequate assurance of performance upon written demand by PURCHASER after reasonable grounds for insecurity arise. In the event of termination, pursuant to this clause, PURCHASER may, at its election, procure, upon such terms and in such manner as PURCHASER may deem appropriate, items and/or services similar or substantially similar to those described in an order. The SELLER shall be liable to the PURCHASER for any excess costs occasioned PURCHASER thereby. The SELLER shall continue to performance of the order to the extent not so terminated. The rights and remedies of the PURCHASER under this clause shall not be exclusive and are in addition to any other rights or remedies provided by law or by an order.

MEDICARE WARRANTIES

It is the policy of Methodist Healthcare ("MH") and its subsidiaries not to contract or have business relationships with individuals or entities that have been excluded from federal healthcare programs by the U.S. Department of Health and Human Services Office of Inspector General, and to routinely verify that an individual or entity with which it contracts or does business has not been excluded from federal healthcare programs. Vendor hereby agrees that if it is excluded from participation in federal healthcare programs, it will immediately notify MH in writing of such exclusion. Vendor agrees that it has an affirmative obligation to verify whether any of its employees or subcontractors have been excluded from federal healthcare programs and warrants that it will routinely verify their status and will immediately notify MH in writing if it determines that any of its employees or subcontractors have been excluded from federal healthcare programs. Vendor agrees that if MH learns that Vendor or any employee or subcontractor of Vendor has been excluded from participation in federal healthcare programs, MH may immediately terminate, without penalty, any contracts or other business arrangements it has with Vendor upon written notice to Vendor.

NON-DISCRIMINATION

All goods and/or services to be provided pursuant to an order shall be provided in a non-discriminating manner, without regard to race, color, national origin, or handicapping condition.

JURISDICTION

The laws of the State of Tennessee shall control the construction of provisions and performance of purchase orders and SELLER agrees to submit to the jurisdiction of the courts of the State of Tennessee regarding any dispute arising hereunder.

CONFIDENTIALITY

SELLER agrees to keep confidential any information designated by PURCHASER to be confidential or which SELLER should reasonably believe to be confidential (a) which is given to SELLER by PURCHASER, or (b) to which SELLER has access by virtue of the negotiation, execution and performance of an order.