

PURCHASE ORDER TERMS AND CONDITIONS

1. General. This Purchase Order ("Order") for the goods and/or services covered by the Order, and any supporting documentation and or manuals related to same (collectively, "Goods"), together with any agreements or other documents specified in the Order ("Agreements"), and including these Purchase Order Terms and Conditions ("Terms and Conditions"), constitutes the complete and final agreement of Nationwide Children's Hospital. ("Buyer") and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. The vendor to whom this Order is addressed ("Seller") may not add to, modify, supersede or alter except by written agreement signed by Buyer's authorized representative and its affiliates. Acceptance of shipment, payment or other similar act of Buyer shall not constitute acceptance of Seller's terms and conditions, objection thereto being given hereby. Buyer's failure to object to any such terms shall not constitute a waiver by Buyer, nor constitute acceptance by Buyer of such terms and conditions. Any shipment, delivery or other tender of performance of Seller shall be taken as Seller's acceptance of these Terms and Conditions despite any provisions of Seller's that may suggest or explain otherwise. In the event of conflict between this Order and the Agreements, the provisions of the Agreements will prevail.

2. Order Changes. Buyer shall have the right at any time to change an Order as to delivery, quantity or shipment. Seller's receipt of Buyer's notice of change without response received by Buyer within ten (10) days, or shipment or other performance reflecting the change, whichever occurs first, shall be Seller's acceptance of the change without any price or other adjustment to the Order. Without Buyer's prior written consent, Seller shall make no changes, alterations, or substitutions affecting the Goods.

3. Packaging and Transportation. Seller will pack, label and ship all Goods in a commercially reasonable manner selected by Seller which will ensure the timely, safe and conforming delivery and the lowest transportation cost in the absence of specific instructions in the Order. All deliveries shall be accompanied by an itemized packing list, and no charge will be paid by Buyer for packing, boxing or cartage unless specified on the Order. Buyer's count of the Goods will be final as to all shipments. The Order number must appear on all invoices, packaging, packaging lists and other related correspondence.

4. Delivery. Delivery times and quantities specified for Goods are of the essence and Seller shall deliver the Goods F.O.B. Buyer's place of delivery (destination) designated on the face of this Order. Notwithstanding the preceding sentence, title to and risk of loss of the Goods shall remain with Seller until the Goods have been accepted by Buyer. Seller will inform Buyer immediately of any occurrence which will or is expected to result in delivery at a time or a quantity not specified in the Order, and also of corrective measures Seller has taken to minimize the effect of such occurrence. In the event of delivery not in compliance with the times and quantities specified in the Order, unless Buyer has given notice of cancellation as to the late Goods, Seller will ship Goods at the earliest possible moment and by the fastest practicable and available means, but without any increase in any shipping costs to Buyer. Unless Buyer has given Seller an extension of time in writing, Buyer may reject or return at Seller's expense and risk of loss any delivery of Goods or part thereof which occurs after the delivery date. Three (3) copies of operating manuals, electrical and mechanical schematics and current parts list for Goods must be delivered prior to payment of any invoice.

5. Inspection. All Goods shall be subject to final inspection by Buyer which shall be made within a reasonable time after receipt, irrespective of day of payment, and any Goods which are not fully satisfactory to Buyer may be rejected by notice to Seller. Rejected Goods are to be replaced with conforming Goods within the fastest reasonable time after notice of rejection, or at the option of Buyer, the quantity of Goods may be reduced by the number of rejected Goods.

6. Price, Taxes and Payment. Seller shall furnish the Goods at the price or prices stated in this Order, F.O.B. Buyer's place of delivery (destination), freight included, and any increases in any stated price will only be effective if agreed to in writing by Buyer. Unless otherwise specified in the Order, all prices shall be inclusive of applicable taxes, excises, duties, quotation fees, and in compliance with any ceiling or other limitation on price established by any governmental authority. Buyer's state exemption certificate number is 25-17943-96. Buyer and Seller will cooperate in obtaining such certificates or other evidence of inapplicability of or exemption from any sales, excise or other taxes to which either party may be entitled. Unless otherwise specified in the Order, payment terms for Goods shall be net forty-five (45) days. All shipments and deliveries of Goods shall an attached invoice as well as a duplicate copy of such invoice sent to Buyer's Accounts Payable Department.

7. Order Cancellation. Buyer may at any time terminate an Order in whole or in part by written notice, whereupon Seller shall terminate work pursuant to the Order. In the event of a cancellation, for reasons other than the bankruptcy or insolvency of Seller, Buyer and Seller agree as follows:

(A) Specialized Goods. If Goods ordered hereunder are made specifically for Buyer and cannot be sold to other purchasers, upon termination by Buyer, Seller shall advise Buyer of the quantities of applicable work and material on hand and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller based on such termination may be made for the amount of the Order price of finished work plus the cost to Seller (excluding profit or losses) of work in process and raw material, less (1) the agreed value of any items used or sold by Seller, and (2) the reasonable value or cost (whichever is higher) of any defective or damaged work or material. Buyer will make no payments for finished work, work in process or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's requirements. Payment under this clause shall constitute Buyer's only liability in the event an Order is terminated.

(B) Standard Goods. If Goods ordered hereunder are normally carried in inventory by Seller (as distinguished from subsection (A) above), Buyer shall not have liability for termination of this Order, in whole or in part, prior to actual shipment and within ten (10) days after receipt of Goods by Buyer, except that in such latter situation Buyer shall return such Goods to Seller at Buyer's expense. In no event shall Buyer be liable for any restocking or similar fees if Goods are returned to Seller within thirty (30) days of Buyer's receipt of such Goods.

8. Warranties. Seller warrants that the Goods furnished pursuant to the Order will: **(A)** be not less than merchantable and fit for the particular purpose(s) known by or disclosed to Seller; **(B)** be new and unused, or if refurbished in accordance with Buyer's written approval, and free from defects in materials and workmanship, in conformance with submitted samples of same, safe, not subject to any past or present recall, withdrawal or governmental investigation or inquiry, and in conformance with all certifications or other statements made by Seller or its agents or contained in Seller's advertising or promotional material; **(C)** comply with all applicable federal, state and local laws, regulations, rules, standards, ordinances, orders and the like, including by way of illustration and not of limitation, the

Occupational Health and Safety Act, the Fair Labor Standards Act, any law or order pertaining to discrimination and equal employment opportunity; and **(D)** be free from all lawful claims of any person of any description, including all security interests, liens and encumbrances. Payment by Buyer shall not constitute acceptance of the Goods or waive any rights of Buyer under the Order. In the event that any Goods are not in compliance with the warranties stated herein, Buyer may at Seller's cost and expense, and without limitation or exclusion of any other right or remedy, return the defective Goods to Seller at Seller's risk of loss for a full refund by Seller and/or, at Buyer's option, require Seller to repair, correct or replace the defective Goods.

9. Indemnification. Seller agrees, at its sole expense, to indemnify, hold harmless and defend Buyer, its successors and assigns, parents, subsidiaries, affiliated companies, directors, officers, agents and employees from and against any and all loss, damage, liability, suit, claim, demand, cost and expense (including reasonable attorneys' fees) arising out of or in connection with any infringement or alleged infringement of any patent or copyright or misappropriation of any trade name, trademark or trade secret based on the assembly, sale, lease or use of the Goods supplied hereunder, including, but not limited to, claims, demands, or lawsuits based upon unfair competition by reason of the sale or use of the Goods by Buyer. Seller further agrees, at its sole expense, to indemnify, hold harmless and defend Buyer, its successors and assigns, parents, subsidiaries, affiliated companies, directors, officers, agents and employees from and against any and all loss, damage, liability, suit, claim, demand, cost and expense (including reasonable attorneys' fees) arising out of or in connection with the Goods, and Seller's performance hereunder, including, without limitation: **(A)** any accident, illness, personal injury or death to any employee or agent of Seller or Buyer or to any other person; **(B)** any damage, loss or destruction to property, whether property of Seller or Buyer or any other party, except to the extent that any such accident, illness, injury, death, damage, loss or destruction is caused by the gross negligence or willful misconduct of the Buyer; **(C)** any and all property damage and damages related to personal injury and/or death while Seller is on Buyer's premises; **(D)** the failure of Seller's agents to comply with applicable rules governing security, maintenance and safety at Buyer's premises; or **(E)** any non-compliance with all applicable federal, state and local laws, regulations, rules, standards, ordinances, orders and the like, including by way of illustration and not of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, any law or order pertaining to discrimination and equal employment opportunity. In furtherance of the foregoing, Seller hereby expressly waives any and all statutory and/or constitutional immunity to which it might be entitled as an employer in compliance with the State of Ohio's workers' compensation laws or under any other employee benefit statutes or similar laws of any jurisdiction.

10. Insurance. Seller will maintain insurance, in amounts customary in Seller's industry, with reputable and financially responsible insurance companies, insuring against all public liability, including injury and death to persons, products' liability and damage to property, arising out of or related to the Goods or Seller's performance hereunder, and shall furnish Buyer, upon request, certificates of such insurance authenticated by the issuing company. Except as otherwise agreed by Buyer, Seller will insure all shipments of Goods for full value. Seller will also maintain workers' compensation insurance covering all employees and will provide certification of such insurance if requested by Buyer.

11. HIPAA and Protected Health Information. Seller understands and agrees that Buyer is required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") to enter into business associate agreements with any Seller who may have access to patient information or any other data that constitutes "Protected Health Information", as that term is defined in HIPAA and the regulations promulgated pursuant thereto ("PHI"). Sellers hereby agree that Seller will keep confidential any PHI it receives and that it will comply (to the extent applicable) with the requirements of HIPAA regarding the privacy of PHI. Sellers and any subcontractor engaged by Seller to provide Goods or to perform services under this Agreement shall enter into a business associate agreement. PHI shall be protected perpetually in accordance with this Section 11 from the date of disclosure and thereafter.

12. Confidential Information. Buyer and Seller agree **(A)** to protect the Confidential Information of the other with at least the same degree of care used to protect its own most confidential information; **(B)** not to use (except for purposes described herein), publish or disclose to third parties such Confidential Information; and **(C)** upon the request of the other party, to promptly deliver to the other party all written copies of its Confidential Information. "Confidential Information" shall include all confidential and proprietary information related to Buyer, all patient data, operating and technical data, and all other business or other proprietary information relating to Buyer, whether or not identified as confidential, which is disclosed to Seller by Buyer, or is developed by Seller or agents for Buyer's benefit. Seller is not permitted to use Buyer's name or any trademark, trade name, logo or service mark of Buyer in any advertising or publicity without the prior written consent of Buyer, except Seller shall not be precluded from verbally identifying Buyer to third parties as a client of Seller. All required consents may be given or withheld at Buyer's sole discretion.

13. Force Majeure. Buyer or Seller may suspend performance during the occurrence of an excusable delay, which shall mean any delay not occasioned by the fault or negligence of the delayed party which results from the acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. If an excusable delay occurs, Seller will give notice to Buyer within five (5) days of any such occurrence, and if such inability to perform continues for more than ten (10) days after the date of notice, Buyer may terminate the Order, and any costs incurred by Seller in connection with any such termination will be borne by Seller.

14. Miscellaneous. The laws of the State of Ohio shall govern this Order regardless of any conflict or choice of law provision which may otherwise apply. The venue for the adjudication of any matter under this Agreement shall be Franklin County in the State of Ohio. If any provision is or becomes invalid or unenforceable under any law of mandatory application, it is the intent of the parties that such provision will be deemed severed and omitted from this Order, the remaining portions of this Order to remain in full force and effect as written. Without Buyer's prior written consent, Seller shall not advertise or publish in any manner that Seller has furnished Goods to Buyer. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach. Seller may not assign this Order or any of its duties hereunder.