

The Children's Hospital of Alabama Standard Terms and Conditions

ACCEPTANCE AND ACKNOWLEDGEMENT

Acceptance of this Purchase Order by Vendor constitutes acceptance of all the terms and conditions. Any terms and conditions from the Vendor that have not been mutually agreed upon, and are in conflict with The Children's Hospital of Alabama ("Buyer") terms and conditions, the Buyer's terms and conditions will prevail. This Agreement may be modified by mutual consent, provided any and all modifications are in writing and signed by authorized representatives of both parties. These terms and conditions are included on this purchase order and is a binding agreement between the Vendor and the Buyer.

GENERAL TERMS AND CONDITIONS

INSURANCE

Vendor shall secure and maintain the following insurance coverage's:

- a. Workman's Compensation and Employer's Liability Insurance Coverage shall be applicable to all states in which work is to be performed, and limits shall be in accordance with statutory requirements for workman's compensation and \$100,000 per accident for employer's liability.
- b. Comprehensive Automobile Liability Insurance. Limits to be no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- c. Comprehensive General Liability or Contractor's Liability Insurance. Limits acceptable to The Children's Hospital of Alabama, but no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

All such policies of insurance shall contain a waiver of all right of subrogation by the insurer against The Children's Hospital of Alabama and its officers, directors, agents and representatives.

GOVERNING LAWS

This agreement will be interpreted and construed by the laws of the State of Alabama. Vendor will abide by all applicable state, local, and federal laws, regulations, and rules. Any action brought pursuant to or under this Agreement shall be brought in Jefferson County, Alabama or in The United States District Court for the Northern District of Alabama.

COMPLIANCE

The parties shall comply with all applicable laws, standards, rules, and regulations. The parties hereby incorporate the requirements of Section 202 of Executive Order 11246 as amended, the equal opportunity clause pertaining to all persons without regard to race, color, religion, sex, or national origin contained in 41 C.F.R. § 60-1.4 (a) (7). The equal opportunity clause pertaining to Special Disabled Veterans and Veterans of the Vietnam Era contained in 41 C.F.R. § 60-250.5. The equal opportunity clause pertaining to persons with disabilities contained in 41 C.F.R. § 60-741.5. The equal opportunity clause pertaining to Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans contained in 41 C.F.R. § 60-300.5. The requirements of Executive Order 13201, the employee notice clause contained in 29 C.F.R. § 470.2 (a) (4). The parties shall abide by The Joint Commission to the extent applicable to each as related to the services provided. The parties shall abide by Customer's Code of Conduct available on Customer's website: www.childrensal.org and Customer's policies relative to vendor registration and vendor access control to the extent applicable to each as related to the services provided hereunder.

INDEPENDENT CONTRACTOR

Vendor is an independent contractor and nothing shall be construed so as to make Vendor an agent or employee of The Children's Hospital of Alabama. Vendor represents and warrants that it shall be responsible for all employment, payroll and FICA taxes and withholdings for its employees and representatives providing services and Vendor shall indemnify and hold harmless The Children's Hospital of Alabama for the payment of all such taxes.

INDEMNIFICATION

a. Vendor will indemnify, defend, release, and hold Buyer, its Affiliates and their respective officers, directors, employees and agents, past, present and future, harmless from and against any liability, damages, losses, costs, judgments, fines, penalties or expenses, including legal expenses, arising out of claims, demands, actions, causes of action, proceedings or suits, whether in law or in equity (each a "Claim"), due to, arising out of, incidental to or in connection with:

- (i) Any acts or omissions of Vendor or Vendor Personnel except to the extent caused by Buyer's sole negligence,
- (ii) Any claim relating to the infringement or use of a third party's intellectual property rights by Vendor; or
- (iii) Any breach by Vendor of any of the terms of this Agreement.

In furtherance of the foregoing indemnity, Vendor hereby expressly waives any and all statutory and/or constitutional immunity to which, but for this waiver, it might be entitled (i) as an employer in compliance with any applicable state's or jurisdiction's workers' compensation laws or (ii) under any other employee benefit statutes or similar laws of any jurisdiction.

b. With respect to indemnification claims, Vendor will further take any and all actions necessary to ensure that Buyer will be able to continue to purchase and use the Services, including acquiring the necessary consents or licenses at Vendor's sole cost and expense. In addition, Buyer may require Vendor to modify either or both the Services or Deliverables or to source either or both of the Services or Deliverables from another Vendor to prevent any claims of infringement, which modification or re-sourcing will be at the sole cost and expense of Vendor. To the extent that Vendor is unable to take any of the actions described above, Vendor will refund all monies paid by Buyer for the infringing Services and Deliverables.

c. Buyer will have the right, at its option, upon notice to Vendor, to tender its defense to Vendor and to select and retain such counsel as Buyer deems necessary to represent them in connection with any liability indemnified under this Agreement, subject to approval of cost by Vendor or Vendor's insurer. Any fees and expenses of Buyer's counsel (i.e., cost of defense) shall be solely assumed by Vendor if Buyer tenders its defense to Vendor, provided, however, Buyer, at Buyer's expense, may elect to participate in any such litigation, negotiations and settlements with counsel of its own choosing. Vendor will not have the right to settle any claim if such settlement arises from or is part of any criminal action or proceeding, or contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of Buyer without the prior written consent of Buyer.

RECALLS

Vendor, shall determine whether any Product must be withdrawn or recalled from the market. To the extent legally required, Vendor shall notify all regulatory authorities of any such withdrawal or recall. All costs of withdrawals or recalls (including costs incurred by Buyer while assisting Vendor) shall be borne by Vendor, except in the case of recalls or withdrawals caused solely by the negligence or willful malfeasance of Buyer, its Affiliates or subcontractors. The Vendor shall credit Buyer for the cost of the recalled or withdrawn Product and Buyer's reasonable costs incurred with such withdrawals or recalls.

TAX EXEMPTION

Vendor will not charge sales or property tax. Buyer's tax certificate of exemption is available by request from the Vendor.

CONFIDENTIALITY

Customer agrees not to disclose the terms and conditions of this Contract to a third party without the prior written consent of Vendor with the following exceptions: Customer will not need prior written consent to reveal pricing, terms and conditions to Customer's staff, physician (employed or privileged), payers, Customer's group purchasing organization and consultants who have been retained to reduce costs. Neither party will make any press release nor other public announcement regarding this Contract without the other party's prior written consent except as required under applicable law or by any governmental agency.

HIPAA

The parties shall abide by the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as it exists from time to time, as applicable. To the extent required by the provisions of HIPAA and the regulations promulgated there under and as such regulations exists at any time during the term of this Agreement, the parties will protect to the fullest extent possible any and all Protected Health Information as defined by HIPAA that it obtains as a result of providing services under this Agreement.

WARRANTIES

Vendor represents, warrants and covenants that:

- a. Vendor is duly organized and authorized to enter into this Agreement and perform all obligations set forth in this Agreement
- b. All Services will meet and comply with all applicable laws, ordinances, statutes, rules or regulations (collectively, "Laws")
- c. All Services will be of the highest standard of care, skill, diligence and competence and will be performed in a professional and conscientious manner, free from defects in material and workmanship;
- d. Vendor has sufficient expertise and experience to perform the Services in a first class manner and possesses all license and professional certificates required by applicable Laws to perform the Services;
- e. All Services and Deliverables will be free of lawful claims of any party;
- f. No Deliverable may violate or in any way infringe upon any proprietary right, trade secret, trademark, patent, copyright or any other rights of any third party, and there are no existing, pending or to the knowledge of Vendor, threatened claims relating to the violation or infringement of such rights of any third party.
- g. The Services and Deliverables will conform to the specifications described in the Order and will be free from defects.
- h. Vendor will act carefully and will cause its Subcontractors to act carefully, to avoid the risks of bodily harm to persons or damage to any property.

SUSPENSION AND DEBARMENT CERTIFICATION

Vendor certifies that neither Vendor, its principals, employees, nor subcontractors are listed by a federal agency as debarred, sanctioned, excluded, or otherwise ineligible for participation in federally funded healthcare programs. Vendor shall notify Customer's Corporate Compliance Officer immediately if this status changes.

NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

Vendor shall not make deny or confirm any news release advertisement prospectus proxy report to shareholders or public announcements concerning the subject matter of this order or any phase of a project hereunder without Buyer's prior written approval.

ACCESS OF INFORMATION AND RECORDS

The Vendor will provide Buyer information regarding any products Buyer acquires for general information or administration without any additional costs.

OPERATIONAL TERMS AND CONDITIONS

FREIGHT

Delivery of goods under this Purchase Order shall be FOB Destination. All freight charges will be deducted unless otherwise agreed to in writing. Vendor is responsible for all damages sustained during delivery. The risk of loss will remain with the Vendor until the goods are accepted by the Buyer.

PACKAGING

No charges allowed for boxing, crating, or packaging. All packaging will be required to contain the Buyer's name and Purchase Order number. A packing list must be included with each shipment, and within each package of a shipment. All packing lists are to be itemized and include Buyer's Purchase Order.

DELIVERY

Time is of the essence for this Purchase Order. Delivery shall be made both in full quantities and on the date specified on this Purchase Order. Orders not delivered or services not performed by the specified Delivery Date may be cancelled by the Buyer in total or any remaining part of this Purchase Order. In the event that the Vendor fails to deliver goods and perform services contained in this Purchase Order, the Buyer shall have an unrestricted right to reject any goods or services with no further obligation to the Vendor. In the event of an over shipment, Buyer will have the choice to accept the over shipment or reject any additional quantities other than what is listed on the Purchase Order. Any additional costs on rejected goods and services will be the Vendor's responsibility.

FINAL INSPECTION AND ACCEPTANCE

Buyer will have a reasonable time after delivery to inspect goods and services covered under this Purchase Order notwithstanding any prior payment or preliminary inspection. If inspection reveals that goods and services are not in accordance with the Purchase Order, the Buyer has the right to return goods to the Vendor and/or require Vendor to replace or correct the goods and services. If inspection discloses of any defective goods, Buyer may cancel any un-shipped portion of the order. In an event that goods and/or services is returned, replaced, or corrected will be at no cost to the Buyer. If applicable, Vendor must comply with FDA 510(k) and Good Manufacturing Practice (GMP)/Quality System requirements.

PRICE

Vendor represents and warrants that the price(s) for Goods and Services stated herein are no less favorable than those extended to any other customer for the same or similar goods or services in similar quantities. If Prices are higher than specified of the Purchase Order, Vendor will not ship but shall advise Buyer first.

PAYMENT TERMS

An itemized invoice is required for payment; invoice must agree with price and terms of this order. Discount is to be computed for receipt of each shipment or the correct invoice whichever is later, unless otherwise stated in order. Payment options will be 30 days for Credit Card/ACH, or Net 45 for Check. All options are based on date on receipt of an undisputed invoices. All invoices from Vendor must include the correct Purchase Order number. Any invoice missing or states the incorrect Purchase Order number and/or not delivered to the correct address will result in a delay of payment. Such delay will not penalize the Buyer.

EXECUTION OF PURCHASE ORDER

This Purchase Order may not be amended, modified, supplemented, cancelled, or discharged, except in writing signed by Buyer and Vendor.

TERMINATION

This Agreement can be terminated by Buyer without causes by giving a thirty (30) days prior written notice to Vendor.

SERVICE PROVIDER REGISTRATION REQUIRED/BACKGROUND CHECK/VENDOR MANAGEMENT

Vendor recognizes that The Children's Hospital of Alabama is a Pediatric Hospital whose patients are primarily children. Vendor represents and warrants that it has ensured that its personnel performing work on COA premises under this agreement are registered with COA's Vendor Management System, and are not listed in the Alabama Sex Offender Registry, National Sex Offender Registry, or Alabama Abuse Registry.