

PO STANDARD TERMS AND CONDITIONS

Definitions:

- (1) **Buyer** means Eastern Maine Healthcare Systems, its subsidiaries or affiliates, which includes each of the entities listed on the Eastern Maine Healthcare Systems website (www.emhs.org) (“EMHS”), which is updated regularly.
- (2) **Patient Information** means (i) any individually identifiable health information, including, without limitation, Protected Health Information or “PHI” which refers to any and all individually identifiable health information, and/or (ii) any personally identifiable information which is not PHI and includes information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to an individual patient of Buyer.
- (3) **Supplier** means a person or organization from whom EMHS is purchasing Products and/or Services.

Standard Terms and Conditions; Controlling Effect: Supplier accepts and is bound by these Terms and Conditions, which are incorporated by reference into the Purchase Order (“PO”), compliance with which is an express condition of Buyer’s obligation to pay. These terms shall apply to all Buyer orders, whether such order is communicated by PO, EDI, internet e-commerce, facsimile, orally, or any other method, or whether reference is made to this document. If Supplier is not in agreement with the PO pricing or these Terms and Conditions, Supplier must notify Buyer prior to shipment of Product or performance of Services via fax number provided on the PO. No contractual acceptance by EMHS shall be effective which varies these Terms and Conditions or which proposes additional terms unless such varied or additional terms are memorialized in writing and executed by both parties. Where such varied or additional terms and conditions are silent or ambiguous, these Terms and Conditions shall apply and control.

Shipment and Delivery: Unless otherwise specified on the PO, all shipments of Supplier’s Products and Services direct from Supplier shall be FOB Destination, with all costs of shipping, insurance and handling paid by Supplier. All shipments shall comply with the Eastern Maine Healthcare Systems Freight Management Program requirements listed on the EMHS website. The destination is specified on the face of the PO as the ‘SHIP TO’ address, with delivery to be made during normal business hours, Monday through Friday, unless otherwise specified. All other fees or costs, including handling, pick-up fees, taxes, minimum order fees or overhead allocations are not permitted and will not be paid by Buyer.

Inspection and/or Rejection: All Products and Services shall be subject to a reasonable inspection and approval upon receipt by Buyer. This provision shall in no way limit the remedies available to Buyer at equity or law.

- (1) **Products.** In the event that Buyer, after such inspection, rejects Supplier’s Products due to the discovery of nonconforming, broken or damaged Products or the packages containing the Products, Buyer shall have the right, in its sole discretion, to return all or any portion of the damaged Products and receive either a full credit of the purchase price or a timely replacement of the damaged Products. All shipping, transportation,

handling and insurance costs related to the rejected and replacement Products shall be paid by Supplier.

- (2) **Services.** Buyer shall have a minimum of thirty (30) days after completion of all Services to inspect and/or evaluate the Services provided and reject any unsatisfactory Services.

Payment Terms: Unless otherwise specified on the PO, payment for the Products and Services is due within forty-five (45) days of Buyer's receipt of Supplier's complete invoice. All invoices must include the price specified on the face of the PO and the applicable PO number to be processed for payment. Supplier shall itemize all charges for the Products and/or Services on the invoice.

- (1) **Invoice Dispute.** In the event that Buyer reasonably disputes any expense amount which appears on an invoice issued by Supplier, Buyer shall not be required to pay that portion of said amount which Buyer reasonably disputes until the dispute is resolved. Such nonpayment by Buyer shall not constitute a breach of Buyer's obligations of payment to Supplier and the parties shall work together in good faith to resolve the dispute in a timely manner.
- (2) **Prompt-Pay Discount.** Buyer is entitled to a prompt-pay discount as specified on the PO. Buyer may automatically apply the applicable prompt-pay discount to the payment amount.
- (3) **Decrease in Pricing.** In the event of any industry-wide or Supplier decrease in Supplier's published pricing, Supplier will reduce the price of Products and Services by the same percentage reduction as such industry-wide or Supplier price decrease.
- (4) **Tax.** Buyer is either an entity exempt from sales tax, in which case the Products and Services purchased by Buyer pursuant to the PO are not subject to sales and/or use tax in the majority of states, or Buyer is an authorized reseller from whom Supplier is not required to collect sales tax. In either event, no sales tax will be collected from Buyer unless Buyer's sales tax status materially changes. Buyer's tax exemption or reseller's certificate(s) are available to Supplier upon request. Medical device excise taxes are the responsibility of Supplier and will not be paid by Buyer.
- (5) **Cancellation:** Buyer reserves the right prior to shipment of Product or performance of Services, to cancel the PO in its entirety or in part by verbal notice followed by written confirmation.
- (6) **Not to Exceed Amount:** The PO may include a term specifying a "Not to Exceed Amount" or "NTE". In that event, absent written agreement to the contrary executed by both parties, Buyer shall not be liable for any amount in excess of the Not to Exceed Amount, and Supplier shall not issue any bills in excess of that amount.

Warranties: For all Products and Services provided pursuant to the PO, Supplier warrants to Buyer, its successors and users of the Products and Services as follows:

- (1) All Products will conform with the Product description provided to Buyer by Supplier and Buyer's PO description, will be of good material and workmanship, will be free from defects in material and workmanship, and will be merchantable and fit for the purpose intended;

- (2) All Services shall be rendered in a timely and reliable manner by qualified personnel and at a generally recognized professional level of quality in Supplier's industry;
- (3) Use of the Products and Services shall not unlawfully infringe upon the copyright, patent or other proprietary rights of others;
- (4) The Products are free of liens and encumbrances and Supplier has the legal right to transfer title of the Products;
- (5) The Products shall have been properly stored, labeled, handled, crated and shipped by Supplier;
- (6) No slave, prisoner or any other form of forced or involuntary labor is used in the supply of Products and Services; and
- (7) The Products and Services conform to applicable federal and state laws, rules, regulations and standards, including any applicable standards of the Food and Drug Administration, Centers for Medicare & Medicaid Services, and the Joint Commission.

Access to Books and Records: Supplier agrees that if the transaction is determined to be a contract or subcontract within the meaning of the Medicare statutes and regulations, Supplier will, until the expiration of four (4) years after the furnishing of the Products or Services, allow the Secretary of the Department of Health and Human Services and the Comptroller General, or any of their duly authorized representatives, access to the contract documents, and any books, documents and records necessary to certify the nature and extent of costs incurred by Buyer.

If Supplier carries out any of the duties of the PO through a subcontract with a value or cost of \$10,000 or more over a twelve month period, with a related organization, such subcontract shall contain a similar clause.

Supplier shall furnish Buyer with a copy of any correspondence, filings, notices or other documents sent by Supplier to the Attorney General of any state or any federal agency or the Solicitor General or Attorney General of the United States concerning the Services provided under the PO.

Exclusion from Governmental Programs: Buyer has issued the PO with the understanding that Supplier is not excluded from participating in the Medicare or Medicaid program and not ineligible to participate in any governmental program. Supplier shall immediately notify Buyer in the event Supplier becomes debarred or suspended from any governmental program. Buyer may cancel the PO in its entirety or in part by verbal notice followed by written confirmation in the event Supplier is listed by a federal or state agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs or if Supplier permits any employee or sub-supplier who is so listed to perform Services on behalf of Buyer.

Deficit Reduction Act—Medicaid Requirements: Buyer is a recipient of Medicaid funds and subject to the Deficit Reduction Act. Buyer's Deficit Reduction Act policies are available to Supplier and Supplier will cooperate with Buyer to detect and prevent waste, fraud and abuse and protect whistleblowers.

Protection of Confidential Information: Buyer may disclose information regarding Buyer, its business or its patients (“Confidential Information”) to Supplier in connection with the Products or Services. Buyer shall retain title to all such Confidential Information and Supplier agrees not to disclose to third parties any of Buyer’s Confidential Information or use such information itself for any purpose other than providing the Products and Services, without Buyer’s prior written approval. Supplier shall not use Buyer’s name in any advertising or publicity without Buyer’s prior written approval. If Supplier has access to Patient Information or is considered a Business Associate under the law, Supplier will execute and comply with Buyer’s Business Associate Agreement.

Vendor Code of Conduct: When conducting any business activities with Buyer, Supplier agrees to comply with the Eastern Maine Healthcare Systems Vendor Code of Conduct, available at <http://www.emhs.org/Resources/For-Vendors.aspx>. Any on-site Supplier personnel shall comply with Buyer’s requirements for on-site vendors, including registration and identification badges.

Equal Opportunity: Supplier shall comply with the provisions contained in 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60-300.5(a), and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered federal government Suppliers and sub-suppliers take affirmative action 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. As applicable, Buyer shall make its affirmative action plan for both protected veterans and qualified individuals with disabilities available to Supplier.

Infringement: Supplier shall, at Supplier’s expense, defend any suit or other proceeding brought against Buyer based upon an assertion that any item supplied by Supplier under the associated PO infringes on any U.S. patent, copyright or other intellectual property right; provided Buyer promptly notifies Seller and gives Seller appropriate authority, information and cooperation reasonably necessary for the defense of such proceeding. Supplier shall pay all costs awarded against Buyer in the event such defense is unsuccessful or a settlement is reached.

In the event that use of such item is enjoined, Supplier shall, at its own option and expense, either: (1) procure for Buyer the right to continue using the item; (2) replace the item with a functionally equivalent non-infringing item; (3) modify the item so that it becomes non-infringing; or (4) remove the item and refund the purchase price and any transportation costs thereof.

Training: To the extent that Supplier will provide training to Buyer’s employees in the use of Supplier’s Products and Services, Supplier agrees that such training will take place in a manner and at a location conducive to learning and the exchange of information, and that the training staff will have the proper qualifications and expertise to conduct the training. Supplier agrees to reimburse Buyer for reasonable, pre-approved expenses associated with the training attended by Buyer’s employees, including without limitation, modest hotel accommodations, meals, and

transportation to and from the training site. Buyer will submit pre-approval requests and documentation of such expenses to Supplier.

Under Product Supply: In the event of Buyer issues a PO to Supplier and Supplier is unable to fulfill the terms of the PO as requested by Buyer, then:

1. Buyer may purchase or lease products equivalent to the Products from other sources;
2. Any Buyer purchases from an alternative source will not affect the Buyer's pricing (e.g., purchases from an alternative source will be considered contracted sales for the purposes of calculating Buyer's tiered pricing compliance) or the terms of any pricing agreement in effect between Buyer and Supplier;

The remedies set forth in this Section are in addition to any other rights and remedies Buyer may have resulting from such failure to fulfill a PO.

Indemnification: Supplier shall defend, indemnify and hold Buyer, its trustees, officers, directors, employees, agents and insurers (including the trustee of any self-insurance fund) harmless from any claims, injury, loss, liability, damages and expenses whatsoever (including without limitation reasonable attorneys' fees and litigation costs) to the extent arising out of or relating to: (i) the negligent acts, omissions or willful misconduct of Supplier, its employees or agents; (ii) the breach of any representation, warranty, covenant or agreement of Supplier's; (iii) a defect or alleged defect in the Products sold or consigned by Supplier, including without limitation, defects relating to manufacturing, improper testing, design, quality of service, labelling and instructional materials; (iv) a deficiency in the warnings and instructions provided with or supplied by the product manufacturer with respect to the Products or a failure by Supplier to comply with those warnings and instructions; or (v) any misrepresentation made by Supplier in connection with the promotion, marketing, consignment, use, safety, or efficacy of the Products.

Miscellaneous: The relationship between the parties is that of an independent contractor, and neither Supplier, nor Supplier's agents or employees, shall be deemed to be agents or employees of Buyer. Supplier remains responsible for the performance of any sub-suppliers and the acts or omissions of Supplier's sub-suppliers shall be deemed to be the acts or omissions of Supplier.

Liability Insurance: Supplier shall maintain the following insurance coverage for the duration of the provision of Services to Buyer or the reasonable life of the Products provided to Buyer, whichever is applicable:

- (1) General liability insurance coverage with minimum limits of coverage of \$1,000,000 per occurrence and \$3,000,000 per annual aggregate;
- (2) If the transaction involves professional services, professional liability insurance coverage with minimum limits of coverage of \$2,000,000 per occurrence and \$4,000,000 per annual aggregate. In the event Supplier's professional liability insurance coverage is on a claims-made basis, Supplier shall continue that coverage for at least thirty-six (36) months following termination or expiration of the PO, or obtain additional insurance in the same coverage amounts for claims brought after

termination or expiration of the PO with respect to occurrences during the term of the PO or transaction.

- (3) If the transaction involves storage of protected health information or personal information, information security and privacy liability insurance coverage with minimum limits of coverage of \$3,000,000 per occurrence and \$3,000,000 per annual aggregate covering demands, claims, costs, expenses, liabilities and losses resulting from a breach of the privacy or security of any protected health information or personal information of Buyer that is in the care, custody or control of Supplier or its sub-supplier(s).
- (4) Workers' compensation coverage in amounts consistent with industry standards and in compliance with Maine State Law and/or any applicable laws.

Current certificates of insurance concerning any insurance required to be maintained under the PO shall be issued to Buyer. Buyer shall be notified by the insurer thirty (30) days in advance in the event of cancellation or non-renewal of any such insurance coverage.

Supplier shall notify Buyer of any and all incidents, untoward occurrences, or claims made arising out of its services. Supplier shall cooperate in any investigation of claims or incidents by Buyer.

No Automatic Renewal. Any contractual obligations assumed by the parties are not subject to any implied or automatic renewal, and any relationship between the parties after the term required by the PO will be the subject of a new agreement or a new PO. The parties may only extend the term (or any subsequent term) by executing a separate, written agreement of extension.

Governing Law: These Terms and Conditions shall be governed by and construed in accordance with the laws of the state where the Products are delivered or Services are performed, as specified on the face of the PO.