

TERMS AND CONDITIONS
UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON

ACCEPTANCE; APPLICABLE TERMS AND CONDITIONS OF PURCHASE:

- (a) Upon receipt by Buyer of an express acceptance by Seller, or upon Seller's commencement of work on the goods subject to this Purchase Order ("this Order"), or upon shipment of such goods, or Seller's commencement of installation of services, whichever occurs first, this Order shall become a contract with the terms and conditions herein set forth.
- (b) Acceptance of this Order is expressly limited to the terms and conditions herein contained on both sides hereof. Buyer shall not be bound by any provisions in Seller's order acknowledgement or acceptance forms or other documents (including counteroffers) that propose any terms or conditions in addition to or differing with the terms and conditions set forth herein, and any such terms and conditions of Seller and any other modification to this Order shall have no force or effect and shall not constitute any part of the terms and conditions of purchase or lease, except to the extent separately and specifically agreed to in writing by the Buyer. Buyer's failure to object to provisions contained in Seller's documents shall not be deemed a waiver of the terms and conditions set forth herein, which shall constitute the entire agreement between the parties.
- (c) No amendment, deletion, supplement, or change in terms and conditions contained herein shall be binding on Buyer unless approved in writing by the Buyer.

ANTITRUST LAWS: CLAIMS FOR OVERCHARGES:

Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

ASSIGNMENT:

Seller may not assign, transfer, or subcontract this Order or any right or obligation hereunder without Buyer's written consent. Any purported assignment transfer or subcontract shall be void and ineffective.

BANKRUPTCY:

In the event of any proceedings, voluntary or involuntary, in the event of the appointment, with or without the Seller's consent, or assignee for the benefit of creditors or of a receiver, then the Buyer shall be entitled to cancel any unfilled part of this Order without any liability whatsoever.

CANCELLATION:

Buyer reserves the right to cancel all or any part of the undelivered portion of this Order if Seller does not make delivery as specified, time being of the essence of this contract, or if Seller breaches any of the terms hereof including, without limitation, the warranties of Seller.

CHANGES:

Buyer may, by written Change Order, make any changes in this Order, including additions to or deletions from the quantities of items or services ordered or in the designs, specifications, or delivery schedules, but no additional charge will be allowed unless authorized in writing by Buyer. If any such change affects the delivery schedule or the amount to be paid by Buyer, Seller shall notify Buyer immediately and negotiate an adjustment. Any exchange of information or advice between the parties shall not authorize Seller to change the items or services purchased hereunder or the provisions of the Order unless incorporated as a written Change Order in accordance with this section.

CONFIDENTIAL INFORMATION AND PUBLICITY:

Without prior written consent of Buyer, Seller shall keep confidential and neither disclose to any person outside its employ, nor use for purposes other than performance of this Order, any information or property pertaining to the existence, terms, or performance of this Order, including, but not limited to, designs, drawings, blueprints, descriptions, specifications, or any other proprietary information that is a part of this Order. Seller shall not make any publicity, advertisements, news release, public announcement, denial, or confirmation regarding any aspect of this Order, the goods, or the program to which they pertain without Buyer's prior written approval. Upon Buyer's request, or in any event, upon the completion, cancellation, or termination of this Order, Seller shall return to Buyer all information or property delivered to Seller or generated by Seller pursuant to the performance of this Order which has been identified as confidential or proprietary. Seller shall ensure that all subcontracts, purchase orders, and other agreements entered into by Seller or any of its subcontractors or suppliers of any tier shall provide to Buyer the same rights and protection with regard to such subcontractors or suppliers as are contained in this paragraph with regard to Seller.

DEFAULT BY SELLER:

In the event of default by Seller in the performance of any obligation hereunder, including, but not limited to, time of delivery and/or completion, or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, Buyer may, in addition to its other rights or remedies, cancel this Order without penalty and/or liability, except for goods previously received and accepted, charging Seller for losses and damages sustained by reason of such delay or failure when not caused by force majeure.

DELIVERY OR PERFORMANCE SCHEDULE; QUANTITIES:

- (a) Time is of the essence in the performance of this Order and delivery of products or services hereunder.

- (b) Buyer may cancel this Order for any nonconformity in any lot or installment delivered or services performed hereunder, including, without limitation, failure of Seller to deliver the goods or perform services when due, delivery of defective or otherwise nonconforming goods, delivery of an insufficient quantity of goods, or deficient, defective, or incomplete performance of services.
- (c) Seller shall promptly advise Buyer of any delay or anticipated delay in delivery or performance and shall pay Buyer for any losses sustained or costs incurred by Buyer as a result of a late delivery.
- (d) Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver goods or perform services in advance of schedule. In the event of termination or change in the terms of this Order, no claim by Seller will be allowed for any such manufacture or procurement of performance of services in advance of such normal flow time without the prior written consent of Buyer.
- (e) Unless specified otherwise on the face hereof, this Order shall not be deemed separable as to the goods and services ordered herein.
- (f) Goods that are to be shipped shall be shipped F.O.B. destination unless otherwise specified by Buyer. Any shipments that are sent C.O.D. without Buyer's consent will not be accepted and will be made at Seller's risk.

DISPUTE RESOLUTION:

To the extent that Chapter 2260, Texas Government Code, is applicable to this Purchase Order and not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Chief Business Officer of University shall examine Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically agree that (1) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspensions of performance by Contractor; (2) neither the issuance of this Purchase Order by University nor any other conduct, action or inaction of any representative of University relating to this Purchase Order constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (3) University has not waived its right to seek redress in the courts.

ENTIRE AGREEMENT:

This Order is the complete and exclusive statement of the contract between Buyer and Seller with respect to purchase of the products. No waiver, consent, modification, amendment, or change of the terms of this Order shall be binding unless in writing and signed by Buyer and Seller. In case of a conflict between the terms and conditions on the face of this Order and the terms and conditions contained on the reverse side of this Order, the terms and conditions on the face of this Order shall control.

EQUAL EMPLOYMENT OPPORTUNITY:

The Equal Employment Opportunity clauses in Section 202 of Executive Order 11246, as amended; 38 USC Section 2012 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973, as amended, relative to Equal Employment Opportunity and implementing Rules and Regulations of the Secretary of Labor are incorporated herein as specific reference.

FAIR LABOR STANDARDS ACT:

Seller agrees that goods shipped to Buyer under this will be produced in compliance with the Fair Labor Standards Act.

FORCE MAJEURE:

Neither party shall be liable for delay in its performance of its obligations and responsibilities under this Order due to causes beyond its control, such as, but not limited to, war, embargo, national emergency, insurrection or riots, acts of the public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials shall not be considered as an excusable delay. If due to such cause, Seller should be unable to meet all of its delivery commitments for items ordered hereunder as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such items. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operation, Buyer may, at its option and without liability to Seller, cancel outstanding deliveries hereunder wholly or in part.

GOVERNING LAW:

This Agreement shall be considered as executed in, and shall be construed and interpreted in accordance with, the laws of the State of Texas.

INDEMNIFICATION:

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("BOARD") AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND ALL OTHER CLAIMS, INCLUDING REASONABLE ATTORNEYS' FEES (COLLECTIVELY "CLAIMS"), ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER

INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER

INDEPENDENT CONTRACTOR:

During delivery hereunder, Seller shall remain an independent contractor and not an employee or an agent of the Buyer.

INSPECTION AND ACCEPTANCE:

All goods shall be received subject to Buyer's right of inspection and rejection. Defective goods or goods not in accordance with Buyer's specifications will be held for Seller's instruction at Seller's risk and, if Seller so directs, will be returned at Seller's expense. If inspection discloses that part of the goods received are not in accordance with Buyer's specifications, Buyer shall have the right to cancel any unshipped portion of the order. Payment for goods on this Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller.

INSURANCE:

If this Purchase Order requires the presence on University's premises of Contractor's employees, agents, suppliers or permitted subcontractors (if any), Seller agrees to maintain and to cause its agents, suppliers and permitted subcontractors (if any) to maintain the following insurance coverages for at least the specified limits: Coverages Limits Workers' Compensation Statutory Limits Employer's Liability \$1,000,000 per accident and employee Commercial General Liability (including contractual liability) \$1,000,000 per occurrence Product/Completed Ops \$1,000,000 aggregate Auto Liability \$1,000,000 combined single limit All policies (except Workers' Compensation) shall name University, the Board of Regents of the University of Texas System ("Board") and their officers and employees as Additional Insured. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements shall be provided to University prior to commencement of any services under this Purchase Order.

INVOICES:

Payment of invoices shall not constitute acceptance of the product and/or services and shall be subject to adjustment for errors, shortages, defects in the product and/or services, or other failure of Seller to meet the requirements of the Order. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer.

ORDER OF PRECEDENCE:

Terms and conditions of any Purchase Order issued by Buyer's authorized company representative(s) shall apply to the extent that they supplement the provisions of this Agreement. In the event there is a conflict between the documents constituting the agreements between the parties, the documents and provisions shall prevail in the following order:

- (a) the purchasing company's implementing order,
- (b) exhibits of this Agreement, and
- (c) the general terms and conditions of this Agreement.

PATENTS:

Seller warrants the material purchased hereunder does not infringe any letters patent granted by the United States and covenants and agrees to save harmless and protect Buyer, its successors, assigns, customers, and users of its product against any claim or demand based upon such infringement, and, after notice, to appear and defend at its own expense any suits at law or in equity arising therefrom.

PRICES:

Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for items that are the same or substantially similar to the articles, taking into account the quality of the articles, and Seller will forthwith refund any amounts paid by Buyer in excess of such price.

RIGHT TO AUDIT:

At any time during the term of this Agreement and for a period of four (4) years thereafter, The State of Texas, The University of Texas System, UTHSC-H and/or other federal, state and local agencies which may have jurisdiction over this agreement, at reasonable times and at its expense reserves the Right to Audit Contractor's records and books that relate only to this agreement. In the event such an audit by UTHSC-H reveals any errors/overpayments by UTHSC-H, Contractor shall refund UTHSC-H the full amount of such overpayments within thirty (30) days of such audit findings, or UTHSC-H, at its option, reserves the right to deduct such amounts owing UTHSC-H from any payments due Contractor. If needed for audit, original or independently certified copies of off-site records will be provided to auditors at Contractor's expense within two (2) weeks of written request.

RISK OF LOSS:

Notwithstanding any prior inspection and irrespective of the F.O.B. point name herein, the Seller shall bear all risks of loss, damage, or destruction on the products called for hereunder until final acceptance by Buyer at destination. Further, the Seller shall also bear the same risks with respect to any products rejected by Buyer provided, however, that, in either case, the Buyer shall be responsible for any loss occasioned by the gross negligence of its employees acting within the scope of their employment.

SETOFFS:

Seller agrees that Buyer shall have the right to set off against any amounts that may become payable by Buyer to Seller under this contract or otherwise any amounts that Seller may owe to Buyer, whether arising under this contract or otherwise.

SEVERABILITY:

The provisions of this Agreement are separate and divisible, and if any court shall determine any provision of this Agreement is void and/or unenforceable, the remaining provision or provisions shall remain.

SPECIFICATIONS:

Products shall be manufactured in accordance with Buyer specifications. No changes in specifications shall take place unless mutually acceptable and agreed to in writing.

NO SUBSTITUTIONS:

Seller must deliver the products specified in Buyer's Order, without deviation. Seller is hereby prohibited from providing any substitutions without express written authority from Buyer.

TAXES:

The University of Texas Health Science Center at Houston is a tax exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education.

TECHNOLOGY ACCESS:

Contractor is not conceding that the technology provided to University under this Agreement constitutes an automated information system as defined by Section 2157.001(1), *Government Code*, and used in Section 2157.005, *Government Code*. However, if such technology constitutes an automated information system then, in accordance with Section 2157.005, *Government Code*, Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to University that the technology provided to University for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance

WAIVER:

Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Order at any time shall not be construed as a waiver by Buyer for performance in the future.

WARRANTY:

In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:

- A. It will comply with all requirements of this Purchase Order.
- B. If Contractor is a corporation or a limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.
- C. If Contractor is a corporation or a limited liability company, it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable, and that if this certification is false or inaccurate, at University's option, this Purchase Order may be terminated and payment withheld.
- D. In accordance with Section 2155.004, Texas Government Code, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment withheld if this certification is inaccurate.
- E. Pursuant to Section 403.055(h), Texas Government Code, any payments owing to Contractor under this Purchase Order may be applied to any debt or delinquent taxes that Contractor owes the State of Texas, until such debt or delinquent taxes are paid in full.

- F. In accordance with Section 231.006, Texas Family Code, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
- G. All goods and services covered by this Purchase Order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by University (collectively "specifications"), and shall be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. University shall have the rights of inspection and approval and may reject and return goods or require reperformance of services at Contractor's expense if defective or not in compliance with University's specifications. Defects shall not be deemed waived by University's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
- H. No disclosure, description, or other communication of any sort shall be made by Contractor to any third person of the fact of University's purchase of goods or services hereunder, or of the details and characteristics thereof without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including without limitation samples, drawings, patterns, and materials shall remain the property of University, shall be held at Contractor's risk, and shall be returned to University upon University's request, and no disclosure or reproduction thereof in any form shall be made without University's prior written consent.
- I. All goods delivered or services provided pursuant to this Purchase Order shall conform to standards established for such goods and services by any applicable federal, state, or local laws or regulations, including without limitation those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code.
- J. Use or sale of any goods delivered hereunder, except (with respect to patents) goods produced to University's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
- K. The price to be paid by University shall be that contained in Contractor's bid, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches its warranty, the prices shall be reduced to Contractor's current prices on orders by others or, in the alternative, University may cancel this Purchase Order without liability to Contractor.
- L. The foregoing representations, covenants, certifications, warranties and agreements shall survive acceptance of goods and software as well as performance of services hereunder.
- M. Loss of Funding. Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University shall issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- N. False Claims Act and Whistleblower Protections. The University of Texas Health Science Center at Houston (UTHSC-H) is required by federal law to provide information to all of its contractors and agents regarding the federal false claims act, administrative remedies for false claims and statements, the state false claims act and whistleblower protections under these laws to assist in detecting fraud, waste and abuse in federal health care programs. Please provide this information to all employees.

A. Federal Law. The federal False Claims Act (31 U.S.C §3729(a) allows a civil action to be brought against a health care provider who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid; or
- Conspires to defraud the government by getting a false or fraudulent claim allowed or paid.

B. Remedies.

- A federal false claims action may be brought by the U.S Department of Justice Civil Division.
- A private individual or *whistleblower*, with knowledge of past or present fraud on the federal government, may sue on behalf of the government to recover civil penalties. This is known as a Qui Tam case.
- Violations are punishable by a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains.
- The statute of limitations is six years after the date of violation or three years after the date when material facts are known or should have been known by the government, but no later than ten years after the date on which the violation was committed.

C. Texas Law. Texas has a state version of the False Claims Act that is substantially similar to the federal False Claims Act. (See Tex. Hum. Res. Code Ann. § 32.039; Tex. Hum. Res. Code Ann. §§ 36.001-36.008; Tex. Hum. Res. Code Ann. §§ 36.051-36.055; Tex. Hum. Res. Code Ann. §§ 36.101-36.117)

Offenses under the Texas Act are, in general, similar to those of the federal False Claims Act. However, under the Texas False Claims Act, a person may also be liable if he presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by a healthcare practitioner. Additionally, Texas law provides that the civil penalty is greater for unlawful acts that result in injury to an elderly person, a disabled person, or someone younger than eighteen.

D. Whistleblower Protections. Federal law prohibits an employer from discriminating against an employee in the terms or conditions of his or her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole. (31 U.S.C. §3730(h)). Texas law also has a whistleblower provision which prevents employers from retaliating against employees who report their employer's false claims.

E. Reporting False Claims. If you are aware of a false claims act violation, the university encourages you to:

- Report it to your supervisor for further investigation.
- If you are not comfortable doing this or do not see action in response to your report, call the compliance hotline at 1-888-472-9868.

You are not required to report a possible false claims act violation to the university first. You may report directly to the federal Department of Justice or the U.S. Health and Human Services Office of Inspector General Hotline telephone number, 1-800-447-8477 (1-800-HHS-TIPS). The UTHSC-H will not retaliate against you if you inform the university or the federal government of a possible false claims act violation. The University of Texas Health Science Center at Houston has related policies for detecting fraud and abuse in HOOP 2.01 *Standards of Conduct* and the *Standards of Conduct Guide* as well as The University of Texas System Business Procedures Memorandum 50. If you have any questions about this information, please call the Office of Legal Affairs and Institutional Compliance at 713-500-3294

AMERICAN RECOVERY AND REINVESTMENT ACT:

This purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).