

Cleveland Clinic Purchase Order Terms and Conditions (“Terms and Conditions”)

Notwithstanding any different or additional terms or conditions contained in Seller's invoice, proposals or other communication, Seller accepts Buyer's order for products ("Products") or services ("Services") only on the condition that Seller expressly accepts these Terms and Conditions. Unless Seller accepts these terms and conditions without deviation or reservation, no contract shall result from an order. Any terms and conditions in any confirmation by Seller that states different or additional terms shall be null and void. Buyer hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to such terms is hereby given. Seller's commencement of performance of Services or Seller's shipment of any Products shall be deemed to be acceptance of these Terms and Conditions. Any notice by Seller objecting to these Terms and Conditions must be in writing separate from any form including but not limited to any invoice or acknowledgement form, and must be communicated to Buyer prior to any shipment of Products or commencement of any Services. Any amendment, waiver or other alteration of these Terms and Conditions by Seller shall be effective only if made by mutual agreement.

1. **Price.** The prices indicated on a Purchase Order (“PO”) are firm and no change or adjustments to price or any charge, surcharge, or fee will be valid unless accepted by the Buyer in writing 45 days prior to change. Seller warrants that the prices for the Products and Services delivered or preformed under this PO are not less favorable than those currently extended to any other customer of Seller for the same or similar Products and Services in similar quantities.
2. **Quantity.** Buyer may return any Products shipped in excess of the quantities designated in an order. Seller will bear this expense. No substitutions, changes in delivery dates, or other modifications to an order will be accepted by Buyer, without the express approval of Buyer's Supply Chain Management Department.
3. **Discrepancies.** Seller shall be responsible for any discrepancies between Products and Services provided and Products and Services ordered. Unless packing slips accompany each delivery, Buyer's count of Products received shall be conclusive.
4. **Inspection and Rejection.** Buyer may inspect and reject the Products and Services within a reasonable period of time following receipt from the carrier. Payment for Products and Services delivered or performed shall not constitute an acceptance of such Products and Services. If Buyer finds that any of the Products and Services purchased under this PO do not conform to the PO, Buyer may require Seller to replace the non- conforming Products and Services with conforming Products and Services at Seller's sole cost.
5. **Delivery Delay and Defaults.** Except for delays or defaults beyond Seller's control and not due to Seller's acts and omissions, Seller is liable for all delays and defaults in deliveries. Buyer may additionally approve a revised schedule, or request shipment via air or special routing to minimize delay. In any such event, Seller shall bear the added expense.
6. **Transportation.** Seller will deliver and perform all orders of Products and Services under this PO as F.O.B. Destination. Title and risk of loss to Products and Services shall pass to Buyer upon completed delivery or performance and acceptance of the Products and Services at the designated site.
7. **Invoices.** Seller will issue invoices for Products and Services provided to the attention of the Buyer's Accounting Department, in duplicate. Terms of payment are net 60 days after the later of delivery or performance of Products and Services or receipt of invoice.
8. **Conflict of Interest.** Seller represents that none of Buyer's employees, officers or directors are employees, officers or directors of Seller or serve on any boards or committees of or in any advisory capacity with Seller except as disclosed herein.
9. **Warranty.** Seller expressly warrants that all Products furnished and all Services performed shall conform to the applicable specifications, shall be merchantable and fit for their particular purpose. Seller expressly warrants that all Products furnished and all Services performed shall be timely, of good material and workmanship and free from defects, whether latent or patent. Seller expressly warrants that all Products furnished and all Services performed shall be free from any claim of any infringement by a third person and that Seller will convey clear title to Buyer. Software shall be free of material defects and shall not include any disablers, time-bombs, including encrypted software keys, Trojan horses or any other virus or other instructions of any kind designed to terminate or disrupt the operation of the software. Upon failure of the software to function in accordance with specifications during the warranty period, Seller shall promptly, and at no charge to Buyer, repair or replace the software. Seller shall further pass through to Buyer any manufacturer's warranties and indemnities for Products or hardware provided under this PO. No inspection, acceptance or payment for Products and Services by the Buyer shall constitute a waiver of warranties.

10. **Access to Records.** If the subject of an order is services within the scope of Section 952 of the Omnibus Reconciliation Act of 1980 and the regulations promulgated thereunder, for a period of six (6) years after the furnishing of such services the Secretary of Health and Human Services and the Comptroller General of the United States shall, upon written request, have access to such books, documents and records of Seller necessary to verify the nature and extent of the costs of the Services provided by the Seller, in accordance with said laws.
11. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer (including all directors, officers, employees, affiliates, and agents) from and against all damages, costs (including, but not limited to court costs and attorney's fees), loss, or cause of action for any claims arising from or relating to acts or omissions of Seller (including its subcontractors), breach of any material terms of this PO, violation of federal, state or local laws, rules or regulations, alleged or actual latent or patent defective Products or Services, and any claim of infringement of any third party intellectual property rights (including but not limited to, patent, trademark, trade secret and copyright) resulting from action under this PO. If Buyer's use of any Product, software or Services is or is likely to be enjoined as an infringement of any third party intellectual property rights, Seller shall, at Seller's option and expense, either: (i) procure for Buyer the right to continue to use the Product, software or Services under the terms of this PO; or (ii) replace or modify the Product, software or Services so that it is non-infringing. If these options do not adequately protect Buyer's interests, in Buyer's sole discretion, Buyer may elect to terminate this PO and Seller shall refund to Buyer all consideration paid by Buyer hereunder to the date of termination.
12. **Insurance.** Seller will maintain such public liability insurance, including, but not limited to, products liability insurance and other insurance that will adequately protect Buyer against such damages, claims, liabilities, costs, losses and expenses.
13. **Applicable Law.** The terms and conditions of all POs shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of laws provisions. All actions brought under or in connection with this PO shall be brought in Cuyahoga County, Ohio courts. The application of the model Uniform Computer Information Transactions Act approved by the National Conference of Commissioners on Uniform State Laws (as enacted and/or modified into any state law in the U.S.A.), is expressly excluded and shall not apply.
14. **Cancellation/Termination.** Buyer may terminate or cancel a PO, in whole or in part, at any time upon written notice to Seller. Buyer will remain obligated for goods shipped or services performed by Seller prior to receipt of Buyer's notice.
15. **Use of Name.** Without prior written permission, Seller (including its subcontractors, employees, or agents) may not use Buyer's name or trademarks as an endorsement or otherwise release information relating to the order.
16. **Assignment.** Seller may not assign or subcontract any of its rights or obligations under this PO.
17. **Compliance with Laws.** The parties shall comply with all applicable state and federal laws, rules and regulations, including (i) the federal anti-kickback statute (42 U.S.C. 1320a-7(b)); (ii) the "Stark Law" (42 U.S.C. 1395nn) and (iii) federal and state privacy laws. Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of any items or services: nor are the payments intended to induce illegal referrals of business. In the event any part of this PO is determined to violate federal, state or local laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the provisions which are in violation. In the event the parties are unable to agree to new or modified terms as required to bring this PO into compliance, either party may terminate this PO upon written notice to the other party.
18. **Debarment.** Seller represents and warrants that it has not been debarred, suspended, excluded or otherwise determined to be ineligible to participate in federal healthcare programs or federal procurement and non-procurement programs (collectively "Debarred") and agrees not to engage or assign any employee, agent or contractor ("Agent") to perform Services who has been Debarred. Buyer may terminate this PO without further obligation in the event that Seller or any Agent is Debarred. Accordingly, Seller shall provide Buyer with immediate notice if Seller (i) receives notice of action or threat of action with respect to Debarment; or (ii) becomes debarred.
19. **Tax Exempt Status.** Seller recognizes that Buyer is a tax-exempt organization and agrees that actions taken under this PO will take into account and be consistent with Buyer's tax-exempt status. Buyer will provide Seller with a tax-exemption certificate upon Seller's request.
20. **HIPAA.** If the Services to be provided by Seller are such that Seller will be a Business Associate of Buyer (see below description to determine if Seller is a Business Associate of Buyer) for purposes of the Health Insurance Portability and

Accountability Act of 1996, as amended from time to time (“HIPAA”), Seller agrees to enter into a Business Associate Agreement with Buyer which complies with HIPAA.

Generally a Business Associate is a person or entity, other than a member of the Cleveland Clinic workforce, performing a function which involves the use or disclosure of protected health information (“PHI”) of Cleveland Clinic that is used, disclosed, created, received, maintained or transmitted for or on behalf of a Cleveland Clinic entity. PHI is individually identifiable health information that relates to the past, present, or future health conditions (or payment for health care) of Cleveland Clinic patients. Contact Cleveland Clinic Supply Chain Management for more information regarding execution of a Business Associate Agreement.

21. **Government Contractor/Equal Employment Opportunity.** Seller acknowledges that as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal opportunity and affirmative action which may be applicable to Seller. **Accordingly, Seller shall, to the extent they apply, abide by the requirements of 41 CFR Sections 60-1.4(a), 60-4.3, 60-300-5(a) and 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 upon their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

To the extent applicable, Seller incorporates by reference 29 CFR Part 471, Appendix A to Subpart A, as well as any E-Verify obligations described in FAR 52.222-54.

22. **Valid Master.** In the event that the parties have a currently valid, fully executed agreement governing purchases of the Products or Services covered by this PO, then these terms and conditions shall not apply.
23. **Compliance Related Changes.** The parties recognize that the law and regulations may change or may be clarified, and that the terms of this PO may need to be revised, on the advice of counsel, in order to remain in compliance with such changes or clarifications, and the parties agree to negotiate in good faith revisions to the terms that cause the potential or actual violation or noncompliance. In the event the parties are unable to agree to new or modified terms as required to bring this PO into compliance, either party may terminate this PO on written notice to the other party.
24. **Environmental Impact.** The parties agree to cooperate with one and other in connection with the identification, adoption and implementation of environmentally friendly initiatives intended to improve environmental related conditions, including, but not limited to, fuel economy, hazardous waste handling, air quality and conditions of the work environment.
25. **Compliance With Policies.** Seller shall comply with Buyer’s policies and procedures for its vendors as contained in its Supplier Relationship Management Handbook, including those covering Code of Conduct, Credentialing, Training, Supplier Diversity, Products Purchased being Mercury Free and Visits within Buyer’s Hospitals.