



The Christ Hospital General Purchase Order Terms & Agreement

In the terms and conditions below, The Christ Hospital and its subsidiaries and affiliates shall be referred to collectively as "TCH," the company supplying goods and/or services under this purchase order (the "Purchase Order") shall be referred to as the "Seller," and the goods and/or services described in and provided pursuant to this Purchase Order are referred to as "Goods" or "Services," as the case may be.

1. **ACKNOWLEDGEMENT AND ACCEPTANCE.** The Purchase Order shall constitute the final, complete, and exclusive statement of the contract and supersede in all respects all communications, representations, or agreements between the parties, whether verbal or written, unless otherwise described herein. If this Purchase Order constitutes an offer by TCH to purchase Goods and/or Services, Seller shall indicate its acceptance of this order by verbal acceptance communicated to TCH, by written acceptance on the face of this Purchase Order, by signed acknowledgement of the Purchase Order, by Seller's other written confirmation received by TCH, by commencing work on this Purchase Order in any manner, by delivery of the Goods or Services as stated, or by Seller's acceptance of payment for Goods or Services. Any such acceptance shall conclusively affirm Seller's agreement to these terms and conditions stated herein and acknowledgement that this Purchase Order shall exclusively constitute the terms and conditions of TCH's purchase of the Goods and/or Services. As an offer, this Purchase Order expressly limits acceptance to its terms and conditions, and notice of objection to any different or additional terms in response from the Seller is hereby given. By way of example and not limitation, to the extent that any project description document, attached hereto, if any, quotation, order acceptance, confirmation, invoice or other document of Seller contains conflicting, differing or additional terms from the terms and conditions herein, the terms and conditions herein will control and all such conflicting, differing or additional terms (collectively "Inconsistent Terms") are rejected by TCH, are considered a material alteration hereof, and shall have no effect unless expressly agreed to in writing by TCH. In addition, TCH's acceptance of Goods or Services from Seller shall not be deemed to be an acceptance of any such Inconsistent Terms. If this Purchase Order is not signed and returned to TCH, either by mail or fax, TCH, at its option, may cancel this Purchase Order at any time. If this Purchase Order is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the offeror's assent to any additional or different terms contained in this Purchase Order. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for Goods or Services pursuant to an earlier contract, this Purchase Order incorporates by reference all terms of the Uniform Commercial Code providing any protection for TCH, including, without limitation, all express and implied warranty protection and all TCH's remedies under the Uniform Commercial Code.

2. **FOB; DAMAGE DURING DELIVERY.** Delivery of Goods under this Purchase Order shall be by FOB TCH Cincinnati, Ohio or another destination as specified by TCH and the risk of loss or damage shall remain with Seller until actual delivery to TCH. Seller shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of Seller. Replacement of any damaged Goods shall be the sole responsibility of Seller.

3. **PAYMENT TERMS.** Unless otherwise indicated in this Purchase Order, TCH shall render payment within forty-five (45) days of the date of delivery and acceptance of Goods or provision of Services, or from the receipt of a conforming and undisputed invoice, whichever is later. All invoices for payment shall be in U.S. Dollars and shall include the Purchase Order number. Invoices for payment not including such information may be returned to Seller without payment.

4. **PACKAGING.** All packages, cases, crates, etc., are to be marked with Seller's name and the applicable TCH Purchase Order number. A packing list must accompany each shipment of Goods. TCH shall not be responsible or liable for any packaging or shipping charges, unless otherwise agreed to herein by TCH.

5. **DELIVERY.** The delivery and performance requirements, manner of delivery and specified dates of this Purchase Order shall be strictly adhered to and shall not be modified without the prior written acceptance of TCH. Time is of the essence. In the event of failure to deliver or

perform by the dates specified in this Purchase Order, TCH reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. Goods not shipped in time to meet the delivery requirements and dates under a Purchase Order, at TCH's option, shall be delivered at the fastest means available, at the sole expense of Seller. Notwithstanding anything to the contrary herein, no delivery shall be made without at least twenty-four (24) hours advance notice being given by Seller to TCH.

6. **DELAY IN SUPPLY.** In the event of failure by Seller to deliver any Goods or perform any Services contained in this Purchase Order, other than as a result of acts of God, force majeure, civil commotions, fire, war, perils of the sea, delay in transit, or TCH's written request, TCH shall have the right to cancel all or any remaining part of this Purchase Order, without payment or compensation, and obtain delivery or performance from other sources. Any and all increased costs and expenses thereby incurred by TCH in obtaining such delivery or performance shall be set-off against any moneys due or to become due to Seller or shall be recoverable as damages hereunder.

7. **CHANGES.** Except as otherwise provided herein, this Purchase Order may not be amended, modified, supplemented, cancelled or discharged, except in writing signed by TCH and Seller. Except as modified herein, any modification of any Project Description shall be at Seller's sole cost and expense, unless Seller notifies TCH of such modification and TCH approves such modification in writing.

8. **INDEMNITY.** Seller shall protect, indemnify and hold harmless TCH, its successors, assigns, affiliates, employees, directors, officers, agents, customers and users of its products and services, of and from any claim, loss, damage (whether for personal injury, property damage, or direct or consequential damage or economic loss), deficiency, action, demand, judgment, cost or expense (including, without limitation, reasonable attorneys' fees) arising out of or resulting from the Goods sold or Services rendered hereunder, or from any act or omission of Seller, its agents, employees or subcontractors, or which otherwise arises as a result of (i) Seller's performance of its obligations hereunder or (ii) any violation or infringement by Goods or Services provided hereunder of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party (collectively, any "Claim"). If any Claim should be asserted or action commenced against TCH for which TCH is entitled to indemnification hereunder, Seller (a) shall, upon TCH's demand, promptly undertake the defense of any Claim, employing counsel reasonably satisfactory to TCH or (b) agrees that TCH, at TCH's sole discretion, may elect to defend any Claim on its own behalf. In either case, Seller will, upon demand, pay all reasonable attorneys' fees and other costs or expenses incurred by TCH in connection with such defense, any judgment or award resulting from any such claim or action and any settlement paid by TCH with Seller's consent, which shall not be withheld unreasonably. This indemnification shall survive delivery of the Goods to or performance of the Services for TCH, as the case may be, termination of this Purchase Order, and any subsequent sale or other transfer of the Goods or Services to a third party. TCH's remedies hereunder are cumulative and in addition to those provided by law or any other contract.

9. **QUALITY REQUIREMENTS FOR GOODS.** Seller shall provide and maintain an inspection system, including tests and test reports, acceptable to TCH in its reasonable discretion covering the inspection of Goods provided under this Purchase Order, and Seller shall tender to TCH for acceptance only such Goods that have been inspected in accordance with such inspection system and that have been determined by Seller to conform to the Purchase Order requirements. However, all Goods provided under this Purchase Order are subject to final inspection and acceptance within a reasonable time after actual delivery and TCH shall have the right to reject any defective or nonconforming Goods despite any prior inspection by Seller. Payment for any Goods shall not be deemed an acceptance thereof.

10. **QUALITY REQUIREMENTS FOR SERVICES.** Seller shall provide and maintain a system of inspection and oversight acceptable to TCH in its reasonable discretion to ensure all Services provided under this Purchase Order will be diligently performed in accordance with the Project Description, if applicable, and the applicable industry practices and standards of diligence, care and skill currently recognized in Seller's industry. The adequacy of the performance of the Services provided under this Purchase Order are subject to final inspection within a reasonable time after actual performance and TCH shall have the right to terminate any Purchase Order that fails to meet the oversight requirements and minimum quality standards provided in this Paragraph 10.

11. **RETURN OF DEFECTIVE GOODS.** All Goods supplied under this Purchase Order that do not meet with the approval of TCH, that are

shipped contrary to Purchase Order instructions, or that are in excess of the quantity or quantities ordered under this Purchase Order, will be returned to Seller or held pending a mutual agreement between TCH and Seller regarding their disposition, subject to Seller's risk of loss and sole expense. Seller will reimburse TCH for all costs and expenses related to any field correction or recall of Goods.

12. EXECUTION OF PURCHASE ORDER. Only Purchase Orders sent in writing via fax, mail, courier or e-mail and signed by duly authorized TCH personnel shall serve as an official intent of purchase by TCH.

13. NONEXCLUSIVE. Seller will not be the exclusive provider of any Goods or Services to TCH.

14. COMPLIANCE WITH LAWS. Seller agrees to comply with all applicable federal, state and local laws, rules and regulations. Without limiting the foregoing, Seller and its personnel providing Services to TCH will not be (1) excluded from participating in any "Federal health care program" as that phrase is defined in 42 U.S.C. § 1320a-7b(f) ("Excluded"), or (2) debarred, suspended, declared ineligible, or voluntarily excluded by any Federal department or agency (collectively, "Debarred"). Seller will notify TCH immediately if Seller or any of its personnel providing Services to TCH becomes Excluded or Debarred and TCH may terminate the Services upon written notice to Seller. Seller shall, in accordance with Paragraph 8, indemnify and hold TCH harmless against any liability arising out of or resulting from Seller's failure to so comply. Upon request, Seller shall supply TCH with copies of compliance reports and any other information necessary to demonstrate compliance with this Paragraph 14.

15. WARRANTY. Seller warrants that all Goods delivered hereunder, if any, will (i) be merchantable, (ii) be free from defect of design, material or workmanship, (iii) conform strictly to the specifications, descriptions, drawings, or sample specified or furnished to TCH, (iv) be free from security interests, liens or encumbrances, (v) be fit and safe for their intended purpose, and (vi) be safe and appropriate for the purpose for which such Goods or Services are normally used. Seller warrants that all Services rendered hereunder, if any, will be performed in a professional and workmanlike manner in accordance with the applicable professional industry standards of diligence, care and skill currently recognized in Seller's industry. The warranties contained herein shall begin at the time of performance, receipt at the delivery location or installation, if applicable, whichever is later, unless a later time is specified in the manufacturer policy. Such warranties shall survive for greater of (a) one (1) year, (b) the standard warranty term provided by Seller to its customers, or (c) as provided under applicable law. Notwithstanding anything to the contrary contained herein, the foregoing shall not limit any additional warranty or warranty period otherwise agreed to by the parties in writing. The warranties contained herein shall survive any inspection, delivery, performance, acceptance, or payment by TCH of the Goods or Services. TCH may, at its option, return for credit or require prompt replacement or correction of any of the Goods or Services which do not conform to the foregoing warranties at Seller's expense. In the event that Seller fails to make such replacement or correction, TCH shall have the right to obtain such replacement or correction from other sources. Any and all increased costs and expenses thereby incurred by TCH in obtaining such replacement or correction shall be set-off against any moneys due or to become due to Seller or shall be recoverable as damages hereunder. Corrected or replaced Goods or Services shall be subject to the terms and conditions of this Purchase Order in the same manner and to the same extent as Goods or Services originally delivered hereunder. If part of the Goods to be delivered or Services to be performed hereunder are defective or nonconforming, TCH may cancel any unshipped portion of the Goods or cancel any unperformed Services, as the case may be, covered by the Purchase Order. The rights of TCH provided in this Paragraph 15 shall be in addition to any other rights provided by law, this Purchase Order, or any other contract.

16. INDEPENDENT STATUS. Seller acknowledges that it is an independent business acting as an independent contractor. Though Seller may perform Services, no agent, representative or employee of Seller shall be or be considered an agent or employee of TCH.

17. BANKRUPTCY. In the event of any proceedings, voluntary or involuntary, in bankruptcy by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then TCH shall be entitled, at its sole option, to cancel any unfilled part of this Purchase Order without any liability whatsoever.

18. ASSIGNMENT. Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for the breach hereof, without the prior written consent of TCH. Any such attempted delegation or assignment shall be void. Any change of control of Seller shall be deemed an assignment hereunder.

19. SET-OFF AND COUNTERCLAIMS. All claims for moneys due or to become due from TCH shall be subject to deduction by TCH for any set-off or counterclaim arising out of this or any other of TCH's purchases from Seller.

20. TERMINATION. This Purchase Order, or any portion hereof, may be terminated by TCH at any time with or without cause. As used herein, the term "cause" shall include, but not be limited to, (a) a breach by Seller of any of the terms hereof, including any warranty made in connection with the purchase ordered hereunder; (b) any allegation that any of the Goods or Services furnished hereunder infringes any patent, trademark, copyright or other proprietary right of any third party, or violates any statute, ordinance or administrative order, rule or regulation; or (c) as otherwise set forth in this Purchase Order. If TCH terminates without cause, TCH will compensate Seller for the actual and reasonable expenses incurred by Seller for work in process requested by TCH up to and including the date of termination, provided such expenses do not exceed the agreed upon prices in this Purchase Order. Upon such payment, all equipment, materials, work-in-progress, finished or unfinished goods, drawings, information, special tooling, and other things for which TCH has paid shall at TCH's option become the property of TCH and be released by Seller to TCH upon demand.

21. TAXES. Seller is responsible for payment to the proper taxing authority of all sales, use and similar taxes. TCH represents that it is a tax-exempt corporation under 501(c)(3) of the Internal Revenue Code of the United States, as amended. A copy of TCH's tax exemption certificate will be provided upon request. Seller shall take all action required to cause TCH's purchase of the Goods and/or Services to be treated as tax-exempt transactions, and in no event shall TCH be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Purchase Order.

22. CONFIDENTIALITY. Seller shall keep confidential all non-public or proprietary information of TCH. Seller shall not make or publish any notice, advertisement, press release or other communication with respect to this engagement or a contract without TCH's prior written consent in each instance.

23. POLICIES AND PROCEDURES. Seller represents and warrants that it and its personnel will abide by TCH's security, safety, personnel, vendor credentialing and privacy policies and procedures.

24. MISCELLANEOUS. Seller shall maintain in effect, at its expense, insurance of such types and in such amounts as is commercially reasonable in connection with the conduct of its business, including, without limitation, insurance coverage for its liability and indemnity obligations hereunder. The remedies reserved in this Purchase Order shall be cumulative and additional to any other or further remedies elsewhere in this Purchase Order and provided by law or equity. Resort to any remedy by TCH, as provided in this Purchase Order or otherwise, shall not be deemed an election of remedies or a waiver of any breach or remedies. If any provision of this Purchase Order shall under any circumstances be deemed invalid or inoperative, this Purchase Order shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly. Either party's failure to enforce any provisions of this Purchase Order or rights hereunder shall not operate as a waiver of such provisions or rights and the same shall remain in full force and effect for the duration of this Purchase Order. Any terms of this Purchase Order which by their nature extend beyond the expiration, termination or cancellation of this Purchase Order shall remain in full force and effect until fulfilled and performed and shall inure to the benefit of and be binding upon Seller and TCH and their respect successors and permitted assigns. This Purchase Order and the acceptance of it shall be a contract made in the State of Ohio and governed by the laws thereof, without giving effect to conflicts of law principles, and the exclusive venue shall be in Hamilton County, Ohio.