

PALMETTO HEALTH

PURCHASE ORDER TERMS AND CONDITIONS

- (1) *Acceptance*-This purchase order constitutes Buyer's offer to Seller, and commencement of performance pursuant to this order shall constitute acceptance by Seller. Conditions stated by Seller in acknowledgement of this Order shall not affect Buyer's Offer as represented by this Order, and shall not be binding on Buyer if in conflict with, or in addition to any of the provisions of this Order (including delivery schedule, price, quantity, specifications, terms and conditions) unless expressly agreed to in writing by Buyer.
- (2) *Contract*-This contract may be extended upon mutual agreement between Buyer and Seller. However, either party may cancel this contract after a Thirty (30) day written notice has been given to the other party.
- (3) *Delivery Schedules*- Deliveries are to be made on time. If Seller fails to make deliveries at the time agreed upon, Buyer reserves the right to cancel, purchase elsewhere, and hold Seller accountable for additional costs or damages incurred. **Deliveries will be made to Palmetto Health's Receiving Dock Monday through Friday, 7:00 A.M. until 3:00 P.M. on the Baptist and Richland Campuses. Easley's dock does not open until 8:30 on Tue & Thursday.**
- (4) *Excusable Delays*-Except with respect to defaults of subcontractors, Seller shall not be liable for delays or defaults in deliveries due to causes beyond its control and without its fault or negligence. If at any time Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer. Any delay due to default of subcontractor will be excusable if beyond the control and without the fault or negligence of both Seller and its subcontractor and if Seller establishes that it could not obtain supplies or services from any other source in time to meet the delivery schedule. When the Buyer receives notification of a material or indefinite delay, he may by written notification to the Seller as to any delivery concerned, and where the prospective delay substantially impairs the value of the entire contract, then also as to the whole, either terminate and there by discharge any unexecuted portion of the contract to modify the contract by agreeing to take available materials in substitution.
- (5) *Prices*-Seller's price shall not be higher than last quoted or charged to Buyer unless otherwise agreed to in writing. Invoices must be rendered for each shipment under this Order on date of Shipment.
- (6) *Taxes*-except as may be otherwise provided in this Order, applicable taxes including State Sales Tax, will be shown as a separate item on invoices. Separate invoices for taxes will not be honored.
- (7) *Quantities*-Shipments must equal exactly the amounts ordered. Unless agreed to by Buyer, Buyer will have no liability for payment for materials delivered to Buyer which are in excess of quantities specified on the face of the Order
- (8) *Liens, claims and Encumbrances*- Seller warrants and represents that all goods will, when delivered hereunto, be clear of all liens claims and encumbrances of all kinds.
- (9) *Special Charges*-Seller shall be responsible for all handling charges which include packing, wrapping, containers, ice and related materials.
- (10) *Warranty*-Seller expressly warrants the all the material and work covered by this Order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and will be merchantable, of good material and workmanship and free from defect. Seller expressly warrants that all the material covered by this Order, which is the product of Seller or is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended. This warranty shall survive any inspection, delivery, or acceptance of the materials, and payment therefore, by Buyer.
- (11) *Inspection*-All material shall be received subject to Buyer's inspection and rejection. Defective material or material not in accordance with Buyer's specifications will be held for Seller's instruction and at Seller's risk and, if Seller so directs will be returned at Seller's expense. No goods returned as defective shall be replaced without a new order and schedule. Payment for material on this Order prior to inspection shall not constitute and acceptance thereof, or will acceptance remove Seller's responsibility for latent defects.

- (12) *Patents*-By accepting this Order, Seller agrees to defend, protect, and save harmless Buyer, its successors, assigns, and users of these products, against all suits at law or in equity, and from all damages, claims, demands, for actual or alleged infringement of any United States or foreign patent or copyright by reason of the use or sale of the material ordered.
- (13) *Buyer's Property*-All material, including tools, furnished or specifically paid for by Buyer, shall be the Property of Buyer, shall be subject to removal at anytime without additional cost upon demand by Buyer, shall be kept separated from other materials or tools, and shall be clearly identified as the property of Buyer. Seller assumes all liability for loss or damage, with the exception of normal wear to tear, and agrees to supply detailed statements of inventory upon request of Buyer.
- (14) *Tools*-Unless otherwise herein agreed, Seller at its own expense shall furnish, keep in good condition and replace when necessary all dies, tools, gauges, fixtures, patterns, etc., necessary for the production of the material ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by Buyer shall be paid for by Buyer. Buyer has the option, however, to take possession of and title to any dies, tools, gauges, fixtures, patterns, etc., that are special for the production of the material covered by this Order and shall pay to Seller an amortized cost thereof; provided, however, that this option shall not apply if the material hereby ordered is the standard product of Seller or if a substantial quantity of like material is being sold by Seller to others.
- (15) *Changes*-(a) Buyer may at any time, by a written order make changes within the general scope of this Order in any one or more of the following; (i) drawings, designs, or specifications (ii) method of shipment or packing; (iii) quantities of articles to be furnished (iv) place of delivery and (v) delivery schedules. If any such changes cause any increase or decrease in the cost of, or the item required for the performance of any part of the work under this Order, whether changed or not changed by any such order, and equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by Seller of the notification of change provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Order. However, nothing in this clause shall excuse Seller from proceeding with this Order as changed. (b) Buyer's personnel may from time to time render assistance or give technical advice to, or exchange information with, Seller's personnel concerning this Order or the articles or services furnished hereunder. However, such assistance, advice statements, or exchange of information shall not constitute a waiver with respect to any of Seller's obligations or Buyer's rights hereunder, to be authority for any change in the articles called for hereunder. Any such waiver or change to be valid and binding upon Buyer must be in writing and signed by an authorized representative of Buyer's Purchasing Department. In case of any doubt, Seller shall promptly consult Buyer's Purchasing Department for further instructions. (c) In connection with any claim for adjustment under this clause, Seller shall submit cost data in such form and detail as may reasonably be required by Buyer. (d) Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment pursuant to this clause, Buyer shall have the right to prescribe the manner of disposition of such property.
- (16) *Supplementary Information*-Any specifications, drawings, notes, instructions, engineering, notices, or technical data referred to in this Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, refer to Buyer's Purchasing Department for decision or instructions or for interpretation.
- (17) *Information Disclosed*-Unless otherwise expressly agreed to in writing by Buyer, no information or knowledge, heretofore or hereafter disclosed to Buyer, in the performance of or in connection with this Order, shall be deemed to be confidential or proprietary, and any such information or knowledge shall be free from any restrictions (other than claim for patent infringement) as part of the consideration for this Order.
- (18) Seller will adhere to HIPAA and Federal Confidentiality Requirements.
- (19) *Shipping and Billing*-(a) All material shall be suitably packed, marked, and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation cost and no additional charge shall be made to the Buyer therefor unless otherwise stated herein. (b) No charge shall be made by Seller for Drayage or storage, unless otherwise stated herein. (c) Seller

- shall properly mark each package with Buyer's order numbers and where multiple packages comprise a single shipment each package shall also be consecutively numbered. Purchase order number and package numbers shall be shown on packing slips, bills of lading, manuals, warranties or other shipment receipt, for each shipment shall be attached to the invoice and promptly forwarded by Seller. (f) Seller agrees to describe material on bill of lading or other shipping receipt and to route shipment in accordance with instructions issued by Buyer. (g) Render invoices in duplicate on day of shipment accompanied by bill of lading. (h) Monthly statements must be rendered promptly.
- (20) *Title, Drawings, Specifications and Delivery of Goods*-Seller assumes risk of loss until goods are delivered, inspected and accepted by the Buyer. Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller and intended for use in connection with this Purchase Order. Seller shall use such drawings and specifications only in connection with this Order, and shall not disclose such drawings and specifications to any person, firm, or corporation other than Buyer's or Seller's employees, subcontractors, or Government inspectors. The Seller shall, upon Buyer's request or upon completion of the Order, promptly return all drawings and specifications to Buyer.
- (21) *State Approval of Vehicle Equipment*-If the articles covered by this purchase order require approval for the sale and/or use from the appropriate agency of each of the states requiring same, and upon request, Seller will submit to Buyer a Photostat of each such approval for sale and/or use.
- (22) *Duty Drawback Rights*-This purchase order includes all related customs, duty and import drawback rights, if any (including rights developed by substitution and rights which may be acquired from Seller's suppliers), which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.
- (23) *Insolvency*-Buyer may forthwith cancel the contract resulting from the acceptance of this Order in the event of the happening of any of the following, or of any other comparable event: Insolvency of the Seller: The filing of a voluntary petition of bankruptcy: The filing of an involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from date of such appointment: The execution by Seller of an assignment for the benefit of creditors.
- (24) *Advertising*-Seller shall not, without first obtaining the written consent of buyer, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer the material herein ordered, and for failure to observe this provision, Buyer shall have the right to terminate the contract resulting from the acceptance of this order without any obligation to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination's.
- (25) *Freight Program* -Vendor/Distributor will work in good faith and use commercially reasonable efforts to accommodate a Member Freight Program (a program whereby the Participating Member uses a third party for inbound freight management or services) at no additional cost to the member. To the extent a Participating Member makes use of a Member Freight Program Palmetto Health agrees that the member or its agent will be responsible for paying for freight services and related costs directly and product pricing will be reduced accordingly. Shipping terms for products which are subject to a Member Freight Program will be negotiated between the member and any involved third parties.
- (26) *Freight Terms-FOB Destination and or Freight Prepaid* – Seller pays freight charges when not using Palmetto Health's Freight Management System, Seller Bears freight charges and Seller owns goods in transit. Palmetto Health will consider alternate terms if deemed in the best interest of the Health System. Purchasing is the only organization authorized to establish new or modify existing order shipping and freight terms.
- (27) Seller shall identify themselves as a Diversity Vendor (Small Business, Minority Owned and Female) and provide legal documentation to Buyer to support identity.
- (28) *Training*-Upon initial installation of hardware or software at buyer's site, Seller . Will provide user training related to include clinical training, applications and in-service training, as reasonably required or requested by each facility where implementation takes place. Seller will maintain a properly qualified training staff to provide such training, Seller will be solely responsible for any

- expenses for staff travel, room and board related to such training. The scheduling of training shall be coordinated directly with Buyer and shall accommodate all shifts that require training.
- (29) Technology Upgrades -Vendor hereby represents and warrants that the technology contained in the Products or offered as an upgrade under this Agreement is the latest technology currently available from Vendor with respect to the Products functions. If Vendor offers new technology, Palmetto Health may, at its election, upgrade the Products provided hereunder for such new technology, subject to availability, at terms, conditions and if new technology is within 6 months of original po date, Vendor agrees to provide Palmetto Health with the most current and up to date technology showing good faith at the purchase cost.
- (30) Vendor Personnel Replacement- All Seller resources shall be qualified and able to perform the tasks assigned according to the project plan. In the event the provided resource is unable to perform tasks according to the project plan, Buyer will submit a written request to Seller for resource replacement. Seller will have the opportunity to resolve the documented issue prior to resource replacement. If the issue has not been resolved within seven (7) business days, Seller shall replace the resource within five (5) business days. Buyer's pre-approval is required prior to engagement of the new resource.
- (31) Remedies-The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision.

Construction- The following additional conditions will apply if work is to be performed by the Seller at any of Buyer's locations.

- (32) All persons furnished by Seller shall be deemed Seller's employees or agents and Seller shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor. All persons provided by Seller shall adhere to the Palmetto Health Standards of Behavior to include: Compassion, Integrity, Excellence, Dignity and Teamwork.
- (33) Seller shall maintain at Seller's expense and shall cause Seller's subcontractors to maintain at their expense, insurance coverage of the types and with the coverage limits specified below:

Commercial General Liability with bodily or personal injury limits of One Million Dollars (\$1,000,000) per person and \$3,000,000 annual aggregate and property damage limits of Three Hundred Thousand Dollars (\$300,000) per incident and annual aggregate;

Automobile insurance as required one Million Dollars (\$1,000,000) for bodily injury or personal injury and Fifty Thousand Dollars (\$50,000) for property damage;

Employer's liability insurance with limits of Three Hundred Thousand Dollars (\$300,000);

Worker's compensation-statutory limits.

Seller shall file with Buyer's Supply Chain Department certificates of insurance evidencing such insurance, signed by authorized representatives of the insurance companies naming the Buyer as an additional insured and stating that in the event of any material change in or cancellation of the coverage, at least 10 days prior written notice will be given to the Buyer and Risk Management at, 293 Greystone Blvd, Columbia, SC. All such insurance shall be primary as to any insurance carried by Buyer

- (34) The work shall be performed in a first class and workmanlike manner by qualified and efficient workers who shall not cause labor conflicts with any workers employed by the Buyer or others working at Buyer's facilities. The work shall be performed in strict conformity with the strictest quality standards mandated and/or recommended by all generally recognized organizations establishing quality standards for work of the type to be performed hereunder. Seller shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services and it shall observe, abide by and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Seller shall control the manner and means of the labor and services so as to perform the work in a reasonably safe manner and comply

- fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Order shall govern.
- (35) Seller is responsible for securing all applicable licenses and permits and compliance therewith and the price shall be deemed to include the cost of these items.
- (36) The site shall be kept free of waste and, on completion, left "broom clean." In case of dispute Buyer may remove waste at Seller's expense.
- (37) If requested, Seller shall furnish satisfactory evidence of the kind, quality and quantity of labor and materials used or to be used.
- (38) The Seller, for its self and for all subcontractors and material men, agrees that no mechanic's lien or other claim shall be filed or maintained by the Contractor or by any subcontractor, material man, laborer or any other person, whatsoever, for or on account of any work done or materials furnished under this Order. This agreement shall be an independent contract and the Seller shall execute and deliver to Buyer a separate Waiver of Liens (in form and substance satisfactory to the Buyer). No work shall be performed until the Waiver has been obtained.
- (39) In every subcontract entered into by the Seller after the execution and delivery of this Order or in connection herewith, the Seller shall incorporate a provision, similar to the foregoing paragraph, to the effect that neither the subcontractor nor any party acting through or under him shall file or maintain any mechanic's lien or other claim against the Buyer in connection with the work to be performed hereunder.
- (40) *Remedies*-The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision. Seller shall indemnify, hold harmless and defend Buyer from any and all claims and liabilities for injuries or death and also for any and all claims and liabilities arising out of loss or damage to property, caused by or resulting from the performance of the work covered hereby.
- (41) *Suspension and Debarment*-Seller certifies by its representative's signature to this contract that the contractor has not been suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency. Seller agrees to and will inform Buyer immediately if at any point it is suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency. If at any point Buyer determines that the Seller is suspended, Seller agrees that this contract will terminate immediately. Further, Seller agrees to register at Buyer's vendor site by accessing www.palmettohealth.org , selecting "Vendor Info" and following instructions for registration.
- (42) *Anti-Virus*-Seller will ensure, as appropriate to the type of product ordered, that assets sold to Seller have been checked for viruses prior to delivery to Buyer using the latest available release in anti-virus/malware protection. All connections, remote or local, to Buyer from Seller will be accomplished through and with devices that contain the latest available release in anti-virus/malware protection.
- (43) *Invoices*-Notwithstanding the foregoing, all undisputed invoices are due thirty days from invoice receipt.

- (44) *Right to Audit*-Buyer shall have the right, at all reasonable times during normal business hours and upon at least twenty-four (24) hours advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by Seller with respect to Services provided under this Contract.
- (45) *Governing Law*-This Contract will be governed, construed and enforced in accordance with the laws of the State of South Carolina, without giving effect to any principles of conflicts of laws. All actions will be brought before the United States District Court for the state of South Carolina, Columbia Division or the Richland County Court of Common Pleas. In the performance of Work under this Order, Seller agrees to comply with all applicable federal, state, or local laws rules, regulations, or ordinances.
- (46) *Force Majeure* – Neither party shall be liable for failure to perform the contract, including excess costs, if the failure arises out acts of God or the public enemy and without the fault or negligence of the party failing to perform. If the failure to perform is caused by default of a subcontractor, and if such default arises out of acts of God or the public enemy for both the contracted party and the subcontractor, and without fault or negligence of either of them, the contracting party shall not be liable for failure to perform the contract, including excess costs, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contracted party to perform the contract.