

## CHILDREN'S HOSPITAL OF ORANGE COUNTY – TERMS AND CONDITIONS

### 1. PURCHASE ORDER TERMS

These TERMS AND CONDITIONS referred to herein govern all Purchase Orders ("Orders") issued by Children's Hospital of Orange County dba CHOC Children's Hospital, hereafter "HOSPITAL," for goods, materials, equipment, software, or other deliverables ("Product"). Fulfillment of any part of an Order, or any other conduct by SELLER which recognizes the existence of a contract pertaining to the subject matter of such Order, shall constitute acceptance by Supplier of such Order and all of the terms and conditions included or referenced on this page (the "Contract Terms"). HOSPITAL objects to any terms proposed in SELLER's proposal, sales note, communication, acknowledgment or other form of acceptance of SELLER's offer which add to, vary from, or conflict with the Contract Terms. Any such proposed terms shall be void and the Contract Terms constitute the complete and exclusive statement of the terms and conditions between SELLER and HOSPITAL. The Contract Terms may be modified only by a written instrument executed by authorized representatives of both SELLER and HOSPITAL.

### 2. ENTIRE AGREEMENT

If an Order has been issued by HOSPITAL in response to SELLER's offer and if any of the Contract Terms add to, vary from or conflict with any terms of SELLER's offer, then the issuance of the Order by HOSPITAL shall constitute an acceptance of SELLER's offer subject to the express conditions that SELLER assents to the additional, different and conflicting Contract Terms and acknowledges that the Order and these Contract Terms constitutes the entire agreement between SELLER and HOSPITAL with respect to the subject matter hereof and the subject matter of SELLER's offer.

### 3. PACKAGING

A packing list must be enclosed in all shipments showing the Order number and itemized with the exact quantity and description of the Products shipped, inline with SELLER's quotation and invoice format. All packing lists, bills of lading and each separate package within each shipment shall clearly reference piece number, HOSPITAL's Order number and SELLER's packing slip number. Additionally, in instances of multiple carton shipments, each package is to be clearly marked with necessary lifting, handling, shipping information, Order number(s) and date(s), and a specific deliver to, side mark and/or project name reference, if provided by HOSPITAL, must appear on all packages, labels, packing lists and invoices.

### 4. INVOICES

Individual invoices shall be issued for each separate shipment. Supplier agrees to issue invoices referencing the Order number, line number (where applicable), release number (where applicable), item number, description of items, sizes, quantities, unit prices and extended totals. If an Order contains more than one item, SELLER's invoice will make the proper Order line number reference as it corresponds to the applicable invoice line. Taxes, if any that are to be collected by SELLER shall be stated separately and shall be remitted by SELLER to the appropriate taxing authority. The date for calculating early pay discounts on invoices, if any, shall commence on the date the Product is accepted by HOSPITAL or the date of the receipt of a proper invoice, whichever is later. HOSPITAL reserves the right to apply agreed discounts for early payment, even if not stated on the invoice. All invoices must be in duplicate and be mailed to: ATTENTION: ACCOUNTS PAYABLE, P.O. BOX 5700, ORANGE, CA 92863.

### 5. TIME AND PLACE OF DELIVERY; HOSPITAL'S INSPECTION

Time is of the essence. Deliveries will be accepted only during regular daytime business hours, Monday through Friday, 6:30 a.m. to 1:30 p.m., PST/PDT, unless otherwise requested in writing by HOSPITAL. No deliveries are accepted on holidays. Delivery will be made as specified on the Order. Shipments must equal the exact amounts identified in the Order and no partial shipments or runt cartons, changes or substitutions in specifications may be made without HOSPITAL's prior written consent. HOSPITAL is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. HOSPITAL's acceptance of late shipments or partial shipments shall not constitute a waiver of any of HOSPITAL's rights to collect damages for goods not delivered or for late delivery. SELLER shall report to HOSPITAL any delays in a schedule immediately as they become known to SELLER. In the event of SELLER's failure to deliver as and when promised, HOSPITAL reserves the right to cancel its order, or any part thereof, and SELLER agrees that HOSPITAL may return all or part of any shipment so made, and may charge SELLER with any loss or expense sustained as a result of SELLER'S such failure to (1) deliver timely, as promised, Products and/or services, or (2) deliver Products and/or services in correct quantities, of acceptable quality and performance in accordance with the provisions of the Order. If SELLER fails to deliver Products and/or services within the time specified, HOSPITAL may procure similar Products and services elsewhere and SELLER shall be liable to HOSPITAL for any excess costs for the procurement of the Products and services. The remedy herein reserved is not exclusive, but is in addition to any other rights and remedies provided by law or under these Contract Terms. HOSPITAL shall have a reasonable time after delivery to inspect Products and work covered by the Order and payment by HOSPITAL prior to its inspections will not constitute acceptance of same. HOSPITAL does not assume the burden of 100% inspection, if partial inspection reveals that any portion of the shipment does not conform to the provisions hereof, the entire shipment may be rejected and, at the option of HOSPITAL, returned. In the event of a rejection and a return of articles or materials, SELLER shall, within ten (10) days of the return, issue a credit, or a cash refund, as specified by HOSPITAL. Freight charges accruing from rejected materials are fully SELLER'S responsibility. Payment by HOSPITAL for the products or services delivered hereunder shall not constitute HOSPITAL'S acceptance.

### 6. ROUTING, RISK OF LOSS AND SHIPMENT

SELLER shall comply with specific routing instructions provided by HOSPITAL, such as inside prearranged and scheduled deliveries. In the case of leased equipment and/or serialized assets, SELLER must provide HOSPITAL's Purchasing Department with proof of delivery, including the serial numbers of all devices, components and peripherals delivered. Shipping F.O.B. will be "DESTINATION," with risk of loss and/or damage passing from SELLER to HOSPITAL upon receipt of delivery at HOSPITAL, and title shall pass from SELLER to HOSPITAL on the later of acceptance by HOSPITAL or final payment for Products and/or services, even if Products are specifically manufactured. SELLER shall bear the responsibility of insuring and tracking all Products until receipt of delivery at HOSPITAL. Regardless of the method of shipment used, SELLER agrees to deliver all product specified on the Order to the location(s) specified on the Order at SELLER's own risk. SELLER shall bear the risk of loss, destruction or damage until the items are accepted by SELLER. Freight for all shipments, if negotiated as billable, shall be prepaid and billed at SELLER'S actual freight fees, free of any superfluous "shipping and handling" fees.

### 7. HAZARDOUS GOODS

Where the Products comprise or include substances hazardous to health, SELLER will supply HOSPITAL with all data necessary to allow HOSPITAL to form a suitable and sufficient assessment of the risks and of the steps which need to be taken in order to meet the requirements of all applicable laws and regulations. Additionally, Material Safety Data Sheets, by OSHA requirements 29 CRF 1910.1200, shall be provided by SELLER in advance of delivery of Products for all hazardous chemicals to the attention of HOSPITAL'S Safety Officer.

### 8. PAYMENT TERMS

Payment will be made following receipt and inspection of the Products and receipt, in proper form and substance, of all documentation required by these Contract Terms. As full consideration for SELLER's satisfactory provision of the Products or performance of the services, HOSPITAL will pay SELLER'S invoice not later than sixty (60) days following HOSPITAL's receipt of an undisputed invoice unless otherwise agreed upon in writing. HOSPITAL may without triggering a default hereunder and without incurring interest, withhold disputed amounts from any invoice submitted by SELLER, provided that HOSPITAL informs SELLER in writing of the disputed amount and the basis for such assertion. Should SELLER reduce its prices for goods of equal quality in like quantity, following the issuance of HOSPITAL'S Order, and prior to SELLER shipping the Products; HOSPITAL shall receive the benefit of such lower price on all shipments made while the lower price is effective. Any and all invoices for Products and/or services resulting from an Order must be received by the HOSPITAL'S Accounts Payable Department within twelve (12) months from the date of any Order. Any invoices not received within the twelve (12) month timeframe shall be deemed to be forgiven by SELLER.

### 9. STATE OF THE ART CLAUSE

It is the intent of all Orders to procure "state of the art" equipment. Introduction to new models of equipment and accessories may occur after the SELLER'S acceptance of an Order. HOSPITAL and SELLER reserve the right to modify any Order up to ninety (90) days prior to delivery in order to obtain the latest model of a particular component or system in production at the time of shipment. All discounts and/or tiered pricing that applied to the original order must be retained for any state of the art upgrades or changes.

### 10. ASSIGNMENT

SELLER shall not delegate any duties nor assign any rights or claims under any Order or for breach thereof without the written consent of HOSPITAL and no such attempted delegation or assignment shall be binding on HOSPITAL.

### 11. TERMINATION

Either party may terminate an Order at any time, for any reason, and without penalty, upon at least thirty (30) days prior written notice to the other party, in which event SELLER shall within fifteen (15) business days refund to HOSPITAL any monies paid under the Order.

### 12. CONFIDENTIALITY

The contents of these Contract Terms and its existence shall be confidential and SELLER shall not, without first obtaining the written consent of HOSPITAL, in any manner otherwise advertise or publish the fact SELLER had

contracted to furnish to HOSPITAL, the Products mentioned herein, or disclose to any person, firm, corporation or government agency the contents hereof. Notwithstanding the foregoing, HOSPITAL may share confidential information related to an order with HOSPITAL's group purchasing organization(s), currently Children's Hospital Association (CHA) and Vizient, Inc., and directly with members of CHA and Vizient, Inc.

### 13. CONFIDENTIALITY OF PATIENT RECORDS

SELLER and each of its employees, agents and contractors shall comply with all applicable laws regarding the confidentiality of patient information including but not limited to the regulations under the Health Information Portability and Accountability Act ("HIPAA"), California Medical Information Act ("CMIA"), and Health Information Technology for Economic and Clinical Health Act ("HITECH").

### 14. PATENTS AND COPYRIGHTS

In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application therefore, SELLER will indemnify and save harmless HOSPITAL from any and all loss, cost, or expenses on account of any and all claims, suits, or judgments for the use of such article in violation of a third-party's rights under such patent, copyright, or application.

### 15. LIENS AND ENCUMBRANCES

All Products purchased hereunder shall be free and clear of all liens, claims or encumbrances of any nature whatsoever.

### 16. INDEMNIFICATION

Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party and its officers, directors, trustees, and employees from and against any claim, demand, liability, loss, judgment, settlement, suit, action, cost or expense, including reasonable attorneys' fees, to the extent arising out of or incident to the negligent or intentional acts or omissions of the Indemnifying Party, its officers, directors, agents, subcontractors or employees in connection with an Order.

### 17. CERTIFICATION OF INSURANCE

SELLER shall, at its own expense, at all times, maintain in full force and effect, the following insurance policies in the following amounts: (a) Professional, Products, and/or General Liability Insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate; (b) Automobile Liability Insurance with coverage of at least one million dollars (\$1,000,000) combined single limit; and (c) Workers' Compensation Insurance as required by applicable state law and employers' liability insurance. Prior to the provision of any Products or work performed under an Order, SELLER shall furnish to HOSPITAL Certificates of Insurance (COI) evidencing that such coverage is in effect and shall notify HOSPITAL at least thirty (30) days before any change or cancellation of such coverage.

### 18. SAFETY REQUIREMENTS – RIGHTS TO INSPECT WORK PERFORMED

All material, equipment, services and supplies provided to HOSPITAL must comply fully with all safety requirements set forth by the respective manufacturer as well as the Rules of the Industrial Commission of Safety and all applicable OSHA / CALOSHA Standards. SELLER shall be in compliance with all applicable codes for existing health care facilities. HOSPITAL staff may inspect SELLER'S performance of an Order and these Contract Terms at any time. In the event HOSPITAL determines that SELLER'S performance of its duties or other terms of an Order are deficient in any manner, HOSPITAL will notify SELLER of such deficiency in writing or orally. SELLER shall remedy any deficiency within ten (10) day of such notification, or HOSPITAL at its option may terminate an Order immediately upon written notice, or remedy deficiency and setoff the cost thereof from any amounts due HOSPITAL under the Order or otherwise. HOSPITAL staff will conduct inspection of SELLER'S performance.

### 19. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, and its performance, consummation and enforcement will be subject to all applicable California laws.

### 20. PRODUCT INVESTIGATIONS

SELLER agrees to cover all costs of third party investigations related to the Products pertaining to compliance with the Safe Medical Devices Act of 1990.

### 21. WARRANTIES

SELLER expressly warrants that all Products, parts and workmanship entering into performance of this order will conform to the provisions of this Agreement and that the Products will be of merchantable quality, fit for their particular purpose or application, of good workmanship and material, and free from defect. Such warranties shall survive inspection, test, acceptance and last for the term stated in Section 20.2 below. SELLER guarantees to HOSPITAL as to delivery hereunder that, as of the date of delivery, the merchandise listed herein, or any portion thereof, is on such date, of such construction and nature that the same conforms to all applicable laws and regulations. In the event any Products previously delivered to HOSPITAL become the subject of an advisory or actual recall, SELLER will accept the return of the Products and credit HOSPITAL for such substances, including shipping charges.

#### 21.1 Repair and Replacement of Product(s)

If at any time during the term of an Order, it is reasonably determined by HOSPITAL that the Product(s) do not fulfill the Warranty set forth herein, SELLER shall repair or replace the Product(s) at no additional charge to HOSPITAL within ten (10) business days of verbal or written notification. In the event that HOSPITAL determines that SELLER cannot repair or replace the Product(s) to fulfill the Warranty set forth herein, HOSPITAL may terminate the Order immediately. Upon such termination, SELLER agrees to refund all monies paid under the Order within fifteen (15) business days.

#### 21.2 Term

The Warranty set forth herein shall commence on the date of first clinical use or ninety (90) days following delivery, whichever is later; and shall expire on midnight of the final date marking the end of either the manufacturer's stated warranty term, or SELLER'S contracted warranty term, whichever is later.

### 22. CORPORATE RESPONSIBILITY COMPLIANCE

The parties acknowledge that HOSPITAL has a compliance program intended to prevent and detect compliance violations, including without limitation, violations related to fraud, abuse, false claims, excess private benefit, and inappropriate referrals. The parties hereby agree that any compliance concerns shall be promptly reported either to an appropriate HOSPITAL manager or through the HOSPITAL'S Compliance hotline (877-388-8588).

### 23. MEDICARE/MEDI-CAL PARTICIPATION

SELLER hereby represents and warrants that neither SELLER nor its principals (if applicable) nor any employees directing providing supplies or service under this Agreement (if applicable) are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in any federally funded health care program, including Medicare and Medi-Cal. SELLER hereby agrees to immediately notify HOSPITAL of any threatened, proposed, or actual debarment, suspension or exclusion from any federally funded health care program, including Medicare and Medi-Cal. In the event that SELLER is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any federally funded health care program during the term of an Order, or if at any time after the Effective Date of an Order it is determined that SELLER is in breach of this Section, the Order shall, as of the Effective Date of such action or breach, automatically terminate. SELLER further understands that HOSPITAL periodically checks contracted individuals and entities against the Office of Inspector General (OIG) and General Service Administration (GSA) databases of Excluded Individuals and Entities and will notify SELLER if it discovers a match. SELLER will take reasonable measures to verify that the match is the same individual or entity before taking any action to terminate any underlying agreement(s).

### 24. ACCESS TO BOOKS AND RECORDS

During the term of an Order and for a period of four (4) years after the termination hereof, SELLER shall grant access to the following documents to the Secretary of the U.S. Department of Health and Human Services ("Secretary"), the U.S. Comptroller-General and their authorized representatives: these Contract Terms, and all books, documents and records necessary to verify the nature and costs of services provided hereunder. If SELLER carries out the duties of an Order through a subcontract worth Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization, this subcontract shall also contain a clause permitting access by the Secretary, Comptroller-General and their authorized representatives to the related organization's books, documents and records.

### 25. ERRORS AND OMISSIONS

SELLER shall not take advantage of any errors and/or omissions in an Order. SELLER must promptly notify HOSPITAL of any errors and/or omissions that are discovered.

### 26. INDEPENDENT CONTRACTOR

Each party will act under any Order as an independent Contractor with respect to the other party, and not as an agent for, employee of or partner of the other party. Any Order shall not be deemed to create any partnership or joint venture.

### 27. WAIVER

Waiver of breach of any provision of any Order or these Contract Terms shall not constitute waiver of full compliance with such provision nor shall it be construed as a waiver of any other waiver or breach.