

Henry Ford Health System Purchase Order Terms and Conditions

- (1) **ACCEPTANCE:** Seller and the party indicated by the address on the front of HFHS Purchase Order agree that the terms and conditions listed below shall govern the sale of the goods ("Articles"), services, or both set forth on the front of this Order, unless the parties sign an overriding Agreement, which is properly authorized by the Purchaser. Seller shall be deemed to have accepted this Agreement if it acknowledges the Agreement, or if it commences delivery of the Articles, services or both.
- (2) **PACKING:** The articles shall be packed and shipped by Seller in accordance with HFHS written instructions and good commercial practice and so as to insure that no damage shall result from weather or transportation.
- (3) **WARRANTY—PRODUCT:** Seller warrants that all Articles: (1) will comply with all applicable laws, rules and regulations; (2) will be free from defects in material and workmanship; (3) will conform to specifications, drawings, other descriptions, and samples accepted by HFHS; (4) will be merchantable; and (5) if ordered for a stated purpose, will be fit for such purpose. Seller also warrants that to the extent the Articles are not manufactured pursuant to detailed designs furnished by HFHS they will be free from defects in design. Such warranties, including warranties prescribed by law, shall run to HFHS its successors, assigns customers and patients, end users of the Articles for a period of one year after acceptance by HFHS or such longer period as may be prescribed by law or additional agreement.
- (4) **WARRANTY—SERVICE:** Seller warrants that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services shall conform to the standards generally observed in the industry for similar services. Seller warrants that the Seller's performance of the services shall be in compliance with all applicable laws, rules, and regulations.
- (5) **WARRANTY—PRICE:** Seller warrants that the prices charged HFHS as indicated on the front side thereof, are no higher than prices charged on orders placed for a stated purpose, will be fit for such purpose. Seller also warrants that to the extent the Articles are not manufactured pursuant to detailed designs furnished by HFHS they will be free from defects in design. Such warranties, including warranties prescribed by law, shall run to HFHS its successors, assigns customers and patients, end users of the Articles for a period of one year after acceptance by HFHS or such longer period as may be prescribed by law or additional agreement.
- (6) **PATIENT INFRINGEMENT IDEMNITY:** To the extent the Articles are not manufactured in accordance with HFHS designs, Seller shall defend, indemnify and hold harmless HFHS its successors, assigns customers and users of its products from and against any claim, loss damage or expense arising out of any infringement or claim of infringement of any letters patent, trade name, trademark, copyright trade secrets or any other proprietary right of a third party by reason of the sale or use of any Articles purchased this order, HFHS shall promptly notify Seller of any claim.
- (7) **HFHS FURNISHED PROPERTY:** Seller shall not use, reproduce or appropriate for, or disclose by anyone other than HFHS any material, drawings, designs and other property or data furnished by HFHS nor shall Seller use the same to produce or manufacture more Articles than are required hereunder. Title thereto shall remain in HFHS at all times. Seller shall bear the risk of loss or damage to such property furnished by HFHS unless such loss or damage is solely, directed, and proximately caused by HFHS negligence. All such HFHS furnished property, together with spoiled and surplus materials, shall be returned to HFHS at termination or completion of this order unless HFHS shall otherwise direct.
- (8) **TERMINATION:** (a) HFHS may cancel this order, in whole or in part, without liability to HFHS, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof. (b) HFHS may terminate this order in whole or in part, at any time for its convenience, by notice to Seller in writing. On receipt by Seller of such notice. Seller of such notice, Seller shall and to the extent specified therein, stop work and the placement of subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which HFHS has or may acquire an interest. Any termination claim must be submitted to HFHS within sixty (60) days after the effective date of the termination. (c) Any cancellation or termination by HFHS whether for default or otherwise shall be without prejudice to any claims for damages or other rights of HFHS whether for default or otherwise. (d) In the event this order is cancelled for terminated or the Articles purchased hereunder are rejected by HFHS, Seller shall immediately refund to HFHS all amounts which have been paid by HFHS to Seller hereunder. (e) HFHS shall have the right to audit all elements of any termination claim and Seller shall make available to HFHS on request all books, records, and papers relating thereto
- (9) **CHANGES:** HFHS at any time may make changes in the quantities ordered or in the specifications or drawings relating to the Articles or may change or amend any other term or condition of this order, in which event an equitable adjustment will be made to any price, time of performance and/or other provisions of this order required to be changed thereby. Any claim for such an adjustment must be made within fifteen (15) days from the date of the receipt by Seller of such change.
- (10) **COMPLIANCE WITH LAWS:** In filling this order, Seller shall comply with all applicable federal, state and local laws and governmental regulations and orders. Seller specifically warrants and guarantees to HFHS; (a) that the Articles are in compliance with Sections 5 and 12 of the Federal Trade **Commission Act and are properly labeled as to content as required by applicable Federal Trade Commission Trade Practice Rules;** (b) that the Articles are in compliance with the provisions of the Fair Packaging and Labeling Act. (c) that the Articles are not adulterated or misbranded within the meaning of State Federal Food, Drug and cosmetic Act, as amended, or within the meaning of any applicable State or municipal law in which the definitions of adulteration and misbranding are substantially identical with those contained in the Federal Food, Drug and Cosmetic Act, or are not Articles which may not under the provisions of Sections 404 or 505 of said Act introduced into interstate commerce or which may not under substantially similar provisions of any state or municipal law are introduced into commerce. (d) That the Articles are in compliance with the consumer Product Safety Act of 1972. (e) That the Articles are in compliance with the Federal insecticide, Fungicide and Rodenticide Act. (f) that the Articles are not hazardous substances or, if they are hazardous substances are not misbranded hazardous substances or banned hazardous substances within the meaning of the Federal Hazardous Substances Act (including the former Federal Caustic Poison Act); (g) that all Articles furnished hereunder will be produced and sold in compliance with all applicable requirements of the Fair Labor Standards Act as amended including Sections 6,7, and 12, and the regulations and orders issued under Section 14 thereof, and that it will certify such compliance of each invoice submitted in connection with this order. (h) That the Articles are not misbranded under the provisions of the Wool Products Labeling Act. (I) that the Articles are not manufactured or sold in violation of the Occupational Safety and Health Act of 1970. (j) that to the extent Seller is engaged in the marketing or handling of products, fabrics or related materials subject to the flammable Fabrics Act as amended and regulations thereunder, Seller hereby guarantees to HFHS that with regard to all products fabrics or related materials sold or to be sold to HFHS by Seller, and for which flammability standards have been issued, amended or continued in effect under the Flammable Fabrics Act as amended reasonable and representative tests as prescribed by the Federal Trade Commission have been performed which show that the products, fabrics or related materials at the time of their shipment or delivery by Seller, conform to such of the above mentioned flammability standards as are applicable thereto. This guarantee shall also apply to any applicable codes of the National Fire Prevention Association (NFPA) and to any applicable state or local laws substantially identical to the Flammable Fabrics Act or which adopt the test provided for in any applicable code of the NFPA. (k) that Seller hereby agrees that it will allow, until the expiration of four years after the furnishing of goods and or services hereunder, the Secretary of Health and Human Services, the Comptroller General, or their authorized representatives to inspect this order and Seller's records, books and other documents necessary to certify the costs covered in this order. Further, Seller shall insert the substance of this paragraph in any subcontract it may enter into to fulfill its obligation due under this order. (l) that it will comply with all applicable provisions of Executive Order 11246, and Executive Order 11375, as amended, which requirements are incorporated herein by reference the Vietnam Era Veterans Readjustment Act of 1974, Executive Order 11701; the Rehabilitation Act of 1973, Executive Order 11758, and the rules, regulations, and relevant orders of the Secretary of Labor. (m) That it does not maintain or provide for its employees any segregated facilities are maintained. Seller agrees that a breach of the Section is a violation of the Equal Opportunity Clause, Paragraph 9 (n) that it does not discriminate on the basis of religion, race, creed, national origin, sex, age or handicap and will comply with all applicable Equal Opportunity requirements.  
Disability Language: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."

Veteran Language: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans."

- (11) INDEMNITY AND INSURANCE: (a) Seller shall defend, indemnify and hold harmless HFHS, its employees, customers, patients, and users of the Articles from and against any claim, loss, damage or expense arising out of the purchase and/or use of the Articles purchased hereunder and/or arising out of Seller's (or its subcontractor's) work or performance hereunder and shall procure and maintain liability insurance, with contractual liability coverage, with minimum limits of \$250,000/\$1,000,000/\$100,000 or with such higher limits as HFHS shall reasonably request. Seller shall on or before delivery of the Articles purchased hereunder, furnish to HFHS a Certificate of Insurance evidencing the foregoing coverage's and limits. (b) Seller shall defend, indemnify and hold harmless HFHS from and against the assessment by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the Articles purchased hereunder. (c) Seller shall defend, indemnify and hold harmless HFHS, its employees, customers and users of the Articles from and against any claim loss (including the cost of any Articles lost by libel, condemnation or voluntary recall), damage or expense arising out of any claim or filing by the United States of America or any state or local government or any agency or instrumentality thereof that the Articles are not as herein guaranteed and warranted.
- (12) ASSIGNMENT: Seller shall not assign this order of any interest herein, including any performance or any amount which may be due or may become due hereunder, without HFHS prior written consent.
- (13) SUBCONTRACTING: If any Articles are to be made to HFHS design, all subcontracting by Seller with respect thereto shall be subject to HFHS's written approval.
- (14) ADVERTISING: Seller shall not advertise or publish the fact that HFHS has placed this order without HFHS's prior written consent except as may be necessary to comply with a proper Request for Proposal from an authorized representative of any governmental unit or agency.
- (15) CONTROLLING LAWS: This order and the performance of the parties hereunder shall be controlled and governed by the law of the State of Michigan.
- (16) NOTICE OF LABOR DISPUTES: Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to HFHS. Seller shall insert the substance of this paragraph in any subcontract hereunder so that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify Seller or all relevant information with respect to such dispute.
- (17) DELAYS: Seller will not be liable for damages caused by delays in delivery due to acts of God or the public enemy, acts of the government, fires, floods, quarantine restrictions, freight embargoes or other causes not involving Seller's fault or negligence and, unless the materials or supplies or work to be furnished under a subcontract are procurable in the open market delays of a subcontractor due to such causes, provided that Seller notifies HFHS within five days after such delays become apparent. If the delays exceed thirty (30) days, HFHS may terminate this Agreement and shall receive from Seller, an immediate refund of all payments made to Seller by HFHS under this order.
- (18) TRADEMARKS: HFHS warrants that all of the trademarks HFHS requests Seller to affix to the Articles purchased are those owned by HFHS and it is understood Seller shall not acquire or claim any rights, title or interest therein, or use any of such trademarks on any Articles produced for itself or anyone other than HFHS.
- (19) TAXES: HFHS will not pay Seller any State or Local Sales, Use or similar tax unless separately stated and itemized herein, or any Federal Excise Tax, unless included in the prices stated herein and Seller agrees that, except, as otherwise provided herein, all such taxes, which at the date of this order Seller is required by law to collect from HFHS are so included or separately stated and itemized herein. Seller further agrees that the prices stated herein do not, and the amounts invoiced hereunder will not; include any tax with respect to which exemption is available or indicated by HFHS herein or otherwise, or any Federal Excise tax with respect to which HFHS has furnished an applicable exemption certificate. If, after the date of this order, and prior to date of shipment, any taxes charged to HFHS herein (whether separately stated and itemized or included in the prices stated herein) are increased or Seller is relieved in whole or in part of the burden of said taxes, the prices (or taxes if separately stated) shall be correspondingly increased or reduced.
- (20) RISK OF LOSS: Risk of loss or damage to the Articles shall be on Seller until said Articles have been delivered to and accepted by HFHS notwithstanding any other terms contained herein.
- (21) ACCEPTANCE BY HFHS: All Articles will be received by HFHS subject to its right of inspection and rejection. HFHS shall be allowed a reasonable period of time to inspect and test the Articles and to notify Seller of any nonconformance with the terms and conditions of this order. HFHS may reject any Articles, which do not conform to the terms and conditions of this order. Articles so rejected may be returned to Seller or held by HFHS at Seller's risk and expense. Upon rejection of the Articles by HFHS, Seller shall immediately send all payments made to Seller by HFHS under this Agreement.
- (22) GENERAL: All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall constitute a waiver of any other breach or provision. No modification or change in, or departure from or waiver of the provisions of this order shall be valid or binding unless approved by HFHS in writing. The invalidity or unenforceability of any particular provision of this order shall not affect the other provisions hereof, and this order shall be construed in all respects as if such invalid or unenforceable provision was omitted. This order shall constitute the entire agreement between the parties.