



## PO TERMS AND CONDITIONS

### Definitions:

- (1) **Vendor** means a person or organization from whom Trinity Health is purchasing Products and/or Services.
- (2) **Buyer** means Trinity Health, its subsidiaries or affiliates, which includes but is not limited to each of the entities listed on the Trinity Health website ([www.trinity-health.org](http://www.trinity-health.org)), which is updated regularly.

**Standard Terms and Conditions:** Vendor accepts and is bound by these Terms and Conditions, which are incorporated by reference into the Purchase Order ("PO"), compliance with which is an express condition of Buyer's obligation to pay. These terms shall apply to all Buyer orders, whether such order is communicated by PO, EDI, internet e-commerce, facsimile, orally, or any other method, or whether reference is made to this document. If Vendor is not in agreement with the PO pricing or these Terms and Conditions, Vendor must notify Buyer prior to shipment of Product or performance of Services via fax number provided on the PO. No acceptance shall be effective which modifies these Terms and Conditions or which proposes additional terms.

**Shipment and Delivery:** Unless otherwise specified on the PO, all shipments of the Vendor's Products and Services direct from Vendor shall be FOB Destination, with all costs of shipping, insurance and handling paid by Vendor. All shipments shall comply with the Trinity Health Freight Management Program requirements listed on the Trinity Health website. The destination is specified on the face of the PO as the 'SHIP TO' address, with delivery to be made during normal business hours, Monday through Friday, unless otherwise specified. All other fees or costs, including handling, pick-up fees, taxes, minimum order fees or overhead allocations are not permitted and will not be paid by Buyer.

**Inspection and/or Rejection:** All Products and Services shall be subject to a reasonable inspection and approval upon receipt by Buyer. This provision shall in no way limit the remedies available to Buyer at equity or law.

- (1) **Products.** In the event that Buyer, after such inspection, rejects Vendor's Products due to the discovery of nonconforming, broken or damaged Products or the packages containing the Products, Buyer shall have the right, in its sole discretion, to return all or any portion of the damaged Products and receive either a full credit of the purchase price or a timely replacement of the damaged Products. All shipping, transportation, handling and insurance costs related to the rejected and replacement Products shall be paid by the Vendor.
- (2) **Services.** Buyer shall have a minimum thirty (30) days after completion of all Services to inspect and/or evaluate the Services provided and reject any unsatisfactory Services.

**Payment Terms:** Unless a longer period is specified on the PO, payment for the Products and Services is due within forty-five (45) days of Buyer's receipt of Vendor's complete invoice. All invoices must include the price specified on the face of the PO and the applicable PO number to be processed for payment. Vendor shall itemize all charges for the Products and/or Services on the invoice.

- (1) **Invoice Dispute.** In the event that Buyer reasonably disputes any expense amount which appears on an invoice issued by Vendor, Buyer shall not be required to pay that portion of said amount which Buyer reasonably disputes until the dispute is resolved. Such nonpayment by Buyer shall not constitute a breach of Buyer's obligations of payment to Vendor and the parties shall work together in good faith to resolve the dispute in a timely manner.
- (2) **Prompt-Pay Discount.** Buyer is entitled to a prompt-pay discount as specified on the PO. Buyer may automatically apply the applicable prompt-pay discount to the payment amount.
- (3) **Decrease in Pricing.** In the event of any industry-wide or Vendor decrease in Vendor's published pricing, Vendor will reduce the price of Products and Services by the same percentage reduction as such industry-wide or Vendor price decrease.
- (4) **Tax.** Buyer is a tax-exempt entity and the Products and Services purchased by Buyer pursuant to the PO are not subject to sales and/or use tax in the majority of states. Buyer's tax exemption certificate(s) are available to Vendor upon request. Medical device excise taxes are the responsibility of Vendor and will not be paid by Buyer.
- (5) **Cancellation.** Buyer reserves the right prior to shipment of Product or performance of Services, to cancel the PO in its entirety or in part by verbal notice followed by written confirmation.

**Warranties:** For all Products and Services provided pursuant to the PO, Vendor warrants to Buyer, its successors and users of the Products and Services as follows:

- (1) all Products will conform with the Buyer documentation and PO description, will be of good material and workmanship, will be free from defects in material and workmanship and will be merchantable and fit for the

- purpose intended;
- (2) all Services shall be rendered in a timely and reliable manner by qualified personnel and at a generally recognized professional level of quality in Vendor's industry;
  - (3) use of the Products and Services shall not unlawfully infringe upon the copyright, patent or other proprietary rights of others;
  - (4) the Products are free of liens and encumbrances and Vendor has the legal right to transfer title of the Products;
  - (5) the Products have been properly stored, labeled, handled, crated and shipped by Vendor;
  - (6) no slave, prisoner or any other form of forced or involuntary labor is used in the supply of Products and Services; and
  - (7) the Products and Services conform to applicable federal and state laws, rules, regulations and standards, including any applicable standards of the FDA, CMS and the Joint Commission.

All of the warranties referenced or set forth in this Section shall be in addition to all other warranties which may be prescribed by law or offered by Vendor and all other remedies available at law or in equity.

**Insurance:** Vendor represents and warrants that it maintains insurance coverage in such amounts, covering such risks and liabilities, and with such deductibles as are consistent with normal industry practice; provided, however, that if any Vendor personnel must enter the property of Buyer in the course of providing Products or Services pursuant to this PO, Vendor shall maintain workers' compensation insurance at or above the minimum required by law, and comprehensive general liability, automobile liability, and professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. Vendor shall furnish certificates of insurance to Buyer upon request.

**Access to Records:** Vendor agrees that if the PO is determined to be a contract or subcontract within the meaning of the Medicare statutes and regulations, the Vendor will allow, until the expiration of four years after the furnishing of the Products or Services, the Secretary of the Department of Health and Human Services and the Comptroller General or any of their duly authorized representatives, access to the contract, and any books, documents and records necessary to certify the nature and extent of costs incurred by the Buyer.

**Exclusion from Governmental Programs:** Buyer has issued the PO with the understanding that Vendor is not excluded from participating in the Medicare or Medicaid program and not ineligible to participate in any governmental program. Vendor shall immediately notify Buyer in the event Vendor becomes debarred or suspended from any governmental program.

**Deficit Reduction Act--Medicaid Requirements:** Buyer is a recipient of Medicaid funds and subject to the Deficit Reduction Act. Buyer's Deficit Reduction Act policies are available to Vendor and Vendor will cooperate with Buyer to detect and prevent waste, fraud and abuse and protect whistleblowers.

**Protection of Confidential Information:** Buyer may disclose information regarding Buyer, its business or its patients ("Confidential Information") to Vendor in connection with the Products or Services. Buyer shall retain title to all such Confidential Information and Vendor agrees not disclose to third parties any of Buyer's Confidential Information or use such information itself for any purpose other than providing the Products and Services, without Buyer's prior written approval. Vendor shall not use Buyer's name in any advertising or publicity without Buyer's prior written approval. If Vendor has access to Patient Information or is considered a Business Associate under the law, Vendor will execute and comply with Buyer's Business Associate Agreement.

**Vendor Code of Conduct:** When conducting any business activities with Buyer, Vendor agrees to comply with the Trinity Health Vendor Code of Conduct, available at <http://www.trinity-health.org/documents/SupplierCodeofConduct.pdf>.

**Vendor Credentialing:** Vendor expressly acknowledges and agrees that as a condition of access to Buyer's facilities, Vendor and its personnel shall, at Vendor's sole cost, comply with all Buyer's requirements for on-site Vendor personnel, including any third party vendor credentialing services. No Vendor personnel will be given access to any Buyer facility absent successful completion of Buyer's vendor credentialing program and continued strict compliance with Buyer's rules, standards, policies and procedures (e.g., immunization policies, identification requirements, appointment requirements, etc.).

**Government Contractor Requirements:** Trinity Health is not a federal government contractor; however, some of the individual Buyers that purchase from Vendor under these terms may be federal government contractors. Vendor acknowledges that the terms of the PO by any such entities incorporate the contract clauses regarding equal employment opportunity and affirmative action contained in 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 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 on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered federal government contractors and subcontractors take

affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. As applicable, Buyer shall make its affirmative action plan for both protected veterans and qualified individuals with disabilities available to Vendor.

**Incorporation of FEMA Clauses Required for Federal Reimbursement.** For any PO placed by Buyer for which Buyer is eligible to seek federal reimbursement or payment with federal funds, all applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326, and those additional contractual clauses required or recommended by FEMA in its March 2020 *Contract Provisions Template* publication (available at <https://www.fema.gov/media-library-data/1557346958767-7fe2febf2ef09f7c3d0d2411a9a718f7/PDATContractProvisionsTemplate.pdf>) ("FEMA Clauses") are hereby incorporated by reference. In the event of any conflict or inconsistency between a provision in these Terms and Conditions and a FEMA Clause, the terms of the FEMA Clause shall prevail to the extent necessary to qualify Buyer for federal reimbursement or payment.

**Miscellaneous:** The relationship between the parties is that of an independent contractor, and neither the Vendor, nor the Vendor's agents or employees, shall be deemed to be agents or employees of Buyer. Vendor remains responsible for the performance of any subcontractors and the acts or omissions of Vendor's subcontractors shall be deemed to be the acts or omissions of Vendor. These Terms and Conditions shall be governed by and construed in accordance with the laws of the state of Michigan. The parties expressly consent to the exclusive jurisdiction of the state and federal courts located in the State of Michigan for any dispute concerning these Terms and Conditions and any PO and agree not to commence any such proceedings except in such courts. The parties hereby waive all defenses of lack of personal jurisdiction and forum non conveniens related thereto. Nothing contained in these Terms and Conditions or any PO shall preclude Buyer from pursuing any other remedies available at law or in equity.