

WESTFIELD MEMORIAL HOSPITAL  
PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE; PURCHASE ORDER CONSTITUTES ENTIRE AGREEMENT.** This order constitutes Purchaser's offer and may be accepted by Seller (or Contractor where applicable) only in accordance with the terms hereof. Any acceptance herein of an offer of Seller, or any confirmation herein of a prior agreement between Purchaser and Seller, is expressly made conditional on Seller's assent to the additional or different terms contained herein. This Order may be accepted by Seller by commencement of work, shipment of goods, or furnishing of services hereunder. Dispatch of Seller's acknowledgment form (or other written document) will also act as an acceptance if it agrees with this Order with respect to the description, amount, price and time of delivery of the goods or services ordered. Notwithstanding any oral agreement, or any instructions, terms and conditions that may be contained in any quotation, acknowledgment, invoice or other written document of Seller, no addition to, waiver for the future or modification of, any of the provisions herein contained shall be of any force or effect unless made in writing and executed by Purchaser. All equipment shall be UL approved for hospital use (or equivalent) with 3-wire power line cord and non-molded plug and the equipment shall pass all applicable leakage current tests specified by NFPA 78B for intended area of use and shall be supplied with two (2) complete sets of operating manuals, service manuals, schematics, parts list and warranty statements.
2. **TIME OF THE ESSENCE.** Time of shipment and of other aspects of performance hereunder is of the essence of this agreement. Any back-orders require the Seller to notify Purchaser of the anticipated delivery date. The right is reserved to cancel all and any part of this Order if not shipped promptly.
3. **CHANGES.** Purchaser shall have the right at any time to make changes in this order by written notice to the Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's costs or time of performance of this Order, Seller shall notify Purchaser immediately and negotiate an adjustment.
4. **RIGHT OF INSPECTION AND REJECTION.** Material and equipment supplied by Seller shall be received subject to Buyer's inspection and approval within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Seller's expense. No material or equipment returned to Seller as defective shall be replaced except upon Purchaser's formal authorization. It is the Seller's responsibility to demonstrate the device at the hospital to its staff involved in operating, testing and maintaining the equipment, insuring the hospital that the equipment complies to both the manufacturer's specifications and all applicable Code requirements.
5. **WARRANTY.** Seller warrants that all goods or services furnished pursuant to this Order will be free from defects in material or workmanship and will be in conformity with the requirements of this Order, including drawings and specifications, if any, and reasonably fit for the purpose disclosed in this Order or in such drawings and specifications. Seller further warrants that such goods or services will be merchantable and fit for the purpose for which they are sold, and where design is Seller's responsibility, will be free from defects in design. Purchaser's approval of Seller's design or material shall not be construed to relieve Seller of the warranties set forth herein. Without limitation of any rights which Purchaser may have at law by reason of any breach of warranty, goods which are not as warranted may at any time within twelve (12) months after delivery be returned at Seller's expense. Purchaser at its option may require Seller either to replace such goods at no increase in price (Seller must pay all repacking, transportation and handling charges both ways) or refund the purchase price and any charges in connection therewith. Seller warrants that all goods and services furnished pursuant to this Order comply with all federal, state and local laws, rules and regulations governing said goods or services. The Seller shall respond to all trouble calls within the warranty period within twenty-four (24) hours of notification. Furthermore, if the equipment is of a portable nature, loaned equipment of the same type shall be made available to Westfield Memorial Hospital in the event repairs require more than forty-eight (48) hours of equipment down time. If authorized by Seller, Westfield Memorial Hospital shall be authorized to perform minor warranty service on items specified by this Purchase Order without violating in any way the warranty set forth for this equipment.
6. **PATENT INDEMNITY.** Seller agrees to indemnify, save harmless and defend Purchaser from and against any and all suits, claims, damages, costs and attorney's fees arising out of or in connection with any infringement of any United States patent in the manufacture, use or sale of the equipment or materials furnished under this Order. In case said claimed equipment or material is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, Seller shall, at its own expense, either procure for a Purchaser the right to continue using said equipment or material, or, at the option of Purchaser, either replace same with equally efficient noninfringing equipment or material, or modify it without impairing its efficiency so it becomes noninfringing or remove said equipment or material and refund the purchase price and the transportation and installation costs thereof.
7. **INDEMNITY AND INSURANCE.** In consideration of this Order, and in the event that all or any portion of the work covered by this Order will be performed on Purchaser's premises, Seller agrees, as a condition hereof:
  - (a) To indemnify, save harmless and defend Purchaser from and against any and all loss to Purchaser's property, both real and personal, arising or growing out of or in connection with the performance of this Agreement, and from and against any and all claims, demands, or suits of whatsoever nature, and any expense incidental thereto, which may be made, claimed or brought by Seller, its employees or agents, or by any other person (including claims by the employees of Purchaser for Workmen's Compensation) on account of property damage, personal injury, or death sustained or suffered by any person arising or growing out of or in connection therewith, unless caused by the sole negligence of Purchaser.
  - (b) To provide and maintain the kinds and minimum amounts of insurance prescribed by Purchaser's "Seller's or Contractor's Insurance Certificate" attached hereto and made part hereof as Attachment 1, including the insuring of the indemnity set forth in subparagraph (a) hereinabove. The Seller shall not be permitted to perform any work under this Order on Purchaser's premises until and unless three (3) properly completed and executed copies of said "Seller's or Contractor's Insurance Certificate" have been delivered to Purchaser's Purchasing Department, and written authorization to commence work has been given to the Seller by the Purchaser's Purchasing Department.
  - (c) That no lien or claim of any kind whatever shall be filed by Seller or any subcontractor of Seller, or by any other person, firm or corporation against Purchaser's property for any work performed, or for any material furnished, in connection with the performance of this Order; and Seller agrees that if any lien arising out of the performance of this Order remains unsatisfied after all payments are made, Seller shall refund to Purchaser all monies that the Purchaser may be compelled to pay in discharging such lien, including all costs and a reasonable attorney's fee. Seller further agrees, at Purchaser's request, to execute a no-lien contract in the form prescribed by applicable state law for filing and recording, and to deliver to Purchaser properly executed waivers of all mechanics' and/or material men's liens from each of Seller's subcontractors and material suppliers.
8. **WAGES AND HOURS.** In accepting this Order, Seller agrees that in the manufacture of the goods and/or in the performance of the services ordered, Seller has complied, or will comply with the Fair Labor Standards Act of 1938, as amended, and Seller agrees to so certify on all its invoices.
9. **ASSIGNMENT.** Neither this Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by Seller without the prior written consent of Purchaser.
10. **MEDICARE AUDIT.** If this Purchase Order is for services or goods and services where the services will exceed \$10,000 in any twelve month period, the following provisions specifically apply to said contract.
  - (a) In accordance with the Medicare and Medicaid Amendments of 1980, Public Law 96-499, Contractor upon written request, shall make available to the Secretary of Health and Human Services or, upon request, make available to the Comptroller General, or any of their duty authorized representatives, contracts, and books, documents and records of Contractor or any subcontractor utilized by it to carry out the

duties under this contract that are necessary to certify the nature and extent of costs associated with services furnished under this agreement.

- (b) If Contractor carries out any of the duties of this contract through a subcontract, then it shall include in any such contract a clause similar to that set forth in the preceding subparagraph as required by the Medicare and Medicaid Amendments of 1980, Public Law 96-499.
  - (c) All books and records to which subparagraph (a) and subparagraph (b) apply shall be maintained and available for a period of not less than four (4) years from the date that services pursuant to this contract have last been furnished.
  - (d) The provisions of the Medicare and Medicaid Amendments of 1980, Public Law 96-499, including specifically Section 952 thereof, are incorporated herein by reference and Contractor agrees to be bound thereby.
11. GOVERNING LAW. This Order, and the rights and obligations of the parties thereto, shall be determined in accordance with the law of New York.
  12. CONTRACTUAL EXPECTATIONS. This order is subject to the most recent version of the "Notice To Vendors, Westfield Memorial Hospital Minimum Contractual Expectations." It is available upon request from The Saint Vincent Health System Purchasing Department.

### EQUAL OPPORTUNITY CLAUSE

(This clause applies only if (a) the amount of the Order is \$10,000 or more, or (b) the amount of this Order is indefinite but may reasonable be expected to amount to \$10,000 or more in the current calendar year.)

During the performance of this Order, the Seller (or Contractor where applicable) agrees as follows:

1. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Seller's commitments under section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Seller's noncompliance with the nondiscrimination clauses of this Order or with any of such rules, regulations, or orders, this Order may be canceled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The Seller will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders by the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event that Seller becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

Please acknowledge acceptance:

Vendor Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_