

PURCHASE ORDER TERMS AND CONDITIONS

12/11/06

Acceptance of this order constitutes acceptance of the following terms and conditions. Invoice payment may be delayed if these terms are not observed.

1. Order must be acknowledged, either by immediate shipment from stock, notice that materials will be drop-shipped, or other communications all reflecting anticipated dates for shipment.
2. Prices reflected on this order are considered firm until re-negotiated in writing with seller or his representative. Prices include all delivery and handling charges unless otherwise indicated.
3. No product substitution or work improvisation may be made without prior written approval of Purchasing Agent.
4. The specific quantity ordered must be delivered in full and not changed without the Purchasing Agent's consent in writing. Any unauthorized quantity is subject to our rejection and return at seller's expense.
5. Buyer shall receive all goods with subsequent privilege to inspect and to reject. If goods are rejected, they will be returned at seller's risk for credit or replacement at buyer's option.
6. Seller shall be held liable for all loss or damages incurred as a result of late shipments or late job completion except through causes defined as Acts of God.
7. All vendors must bring all clinical equipment to the Biomedical Engineering Dept. for the proper safety inspections prior to use.
8. ALL SHIPMENTS SHALL BE F.O.B. ST. LUKE'S HOSPITAL, UNLESS OTHERWISE INDICATED.
9. **TERMINATION:**
 - a. Hospital may cancel this order, in whole or in part, without liability to Hospital, if deliveries are not made at the time and the quantities or conditions hereof.
 - b. Hospital may terminate this order in whole or part at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and the placements of subcontracts, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Hospital has or may acquire an interest. Any termination claim must be submitted to Hospital within sixty (60) days after effective date of termination.
 - c. Any cancellation or termination by Hospital, whether for default or otherwise, shall be without prejudice to any claims for damages of other rights of Hospital against Seller.
 - d. Hospital may cancel this order, in whole or in part, without liability to Hospital, 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.
10. COD SHIPMENTS WILL NOT BE ACCEPTED.
11. Hospital **does not** pay finance charges, handling fees, or any other fees.
12. Seller shall not advertise or publish the fact that Hospital has placed this order without Hospital's prior written consent except as may be necessary to comply with a proper request for information from an authorized representative of any government unit or agency.
13. By the acceptance of this order, seller represents that the merchandise covered by this order was not manufactured, packaged, labeled, distributed, sold or priced in violation of any Federal, State, or local laws.
14. Seller expressly warrants that material, equipment or services covered by this order will conform to the specifications, drawings, or samples furnished by seller and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery, acceptance or payment by buyer.

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15. Seller represents and warrants that all articles and services covered by this purchase order meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as date of this order.
16. All contractors performing work on hospital premises are required to provide evidence of coverage for Worker's Compensation, Employers Liability and Public Risks, and save us harmless from all loss or liability.

Contractor is responsible to supply all labor, materials, tools and all other supplies required for the total completion, as scheduled, of the above referenced work. All materials shipped to St. Luke's Hospital for the job are to be unloaded by the contractor. No materials or tools will be loaned, sold, or rented to any contractor. Tool and material security is the responsibility of the contractor.

All work is to be done in a neat and workman-like manner and in accordance with the standard engineering practice. The work area must be left in a clean and orderly manner upon job completion. Contractor to supply insurances required during work period.

All federal, state and local codes or regulations that are applicable will be part of this order and will be required for its satisfactory completion.

No additional work or alterations to the contract may be made without written approval by the Engineering and/or Purchasing Departments. Contractor is responsible to close holes from installing conduit, pipe, cable and wire installations.

17. Operating, maintenance (electrical schematics) and parts list manuals must be received prior to payment of invoice. Equipment inspected upon receipt by Biomedical Engineering and if found not to meet specifications shall be returned freight collect.
18. All warranties shall be construed as conditions as well as warranties. No waiver of a breach or of any provisions of this order shall constitute a waiver of any other breach or provision. No modification, change in, or departure from, or waiver of the provisions of this order shall be valid or binding unless approved by Hospital in writing. This order shall constitute the entire agreement between the parties.
19. It is the policy of St. Luke's Hospital not to discriminate on the basis of race, color, religious creed, sex, national origin, handicap, ancestry or sexual preference in accordance with applicable state and federal laws and regulations.
20. During the performance on this order, contractors agree to abide by the following Government requirements:
 - a. If applicable, strict compliance with the Walsh-Healy Public Contracts Act (Act on June 30th, 1936, 49 Stat. 203B; U.S.C. 24-45) as amended, regulating hours of work, minimum wages and working conditions.
 - b. No discrimination against any employee or applicant for employment because of race, creed, color or national origin.
21. In compliance with the Social Security Act, the following clause must be agreed to:

"Under Section 1861 (V) (I) of the Social Security Act, we hereby agree to make available to the Secretary of Health and Human Services (HHS) or the Comptroller General for four years, any records necessary to certify the nature and extent of all contracts where the value or cost is \$10,000 or more over a twelve (12) month period."

If vendor carries out any duties of this contract through a subcontract where the value or cost is \$10,000 or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause that the subcontractor agrees to make available to the Secretary of Health and Human Services (HHS) or the Comptroller General for four years, any records necessary to certify the nature and extent of all contracts.
22. The vendor agrees that he is in full compliance with Title VII of the Civil Rights Act of 1964 (as amended); the Equal Pay Act of 1963 (Section 6, 7, and 12 of the Fair Labor Standards Act); the Age Discrimination in Employment Act of 1967; Executive Orders 11246 and 11367 (where applicable); and other such State and Federal laws defining and prohibiting certain discriminatory employment practices as same may be applicable to the vendor.
23. The only terms and conditions applicable to this purchase order are those contained on this purchase order. The Hospital shall not be bound by any additional or different terms, whether printed or otherwise, in seller's quotation or in any other communication from seller to the Hospital unless specifically agreed to in writing.

24. Choice of Law - The internal laws and regulations of the Commonwealth of Pennsylvania (and not such Commonwealth's law of conflicts) shall apply with respect to all matters relating to this Agreement, all Exhibits attached hereto, and to the parties' duties and responsibilities hereunder.
25. To the extent the Seller is a "business associate" under HIPAA, Seller agrees to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d through d-8 ("HIPAA"), and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Seller agrees not to use or further disclose any protected health information as defined in 45 CFR 164.504, or individually identifiable health information as defined in 42 U.S.C. Section 1320d (collectively the "Protected Health Information") concerning a patient other than as permitted by the Hospital and the requirements of HIPAA or regulations promulgated under HIPAA including, without limitation, the Federal Privacy Regulations and the Federal Security Regulations. Seller will implement appropriate safeguards to prevent the use or disclosure of a patient's Protected Health Information. Seller will promptly report to Hospital any use or disclosure of a patient's Protected Health Information not permitted by the Hospital or in violation of HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of which Seller becomes aware. In the event Seller, with Hospital's approval, contracts with any agents to whom Seller provides a patient's Protected Health Information, Seller shall include provisions in such agreements whereby the Seller and agent agree to the same restrictions and conditions that apply to Seller with respect to such patient's Protected Health Information. Seller will make its internal practices, books, and records relating to the use and disclosure of a patient's Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by the Seller or Hospital by virtue of this subparagraph.
26. Any controversy or claim arising out of or relating to this Order shall be settled by arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) then pertaining. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitration shall be held in the Lehigh Valley, Pennsylvania, and the arbitrator shall apply the substantive law of Pennsylvania, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Each party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, or such similar type of equitable remedies, to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration. **THE ARBITRATOR SHALL NOT AWARD ANY PARTY PUNITIVE DAMAGES, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SEEK SUCH DAMAGES.**
27. If the Vendor has knowledge or information that the Hospital or a Hospital employee is involved in a suspected violation of the state or federal False Claim Act, the Vendor should contact St. Luke's Hospital and Health Network's Compliance Hot Line by calling 1-610-954-4034.