ALBANY MEDICAL CENTER PURCHASE ORDER TERMS AND CONDITIONS

The following terms and conditions are made a part of the written purchase order (“Purchase Order” or “Order”) to which they are attached regarding the purchase of certain goods (“goods” or “merchandise”) and/or services by Albany Medical Center (“AMC”) from the seller (“Vendor”) named in the Purchase Order. These terms and conditions are incorporated by reference into all written and electronic Orders between AMC and Vendor as if expressly set forth therein. The terms and conditions contained in this Purchase Order merge with and supersede all previous or contemporaneous understandings, representations, terms and conditions by either party, whether in oral, written, electronic or other form, and shall not be modified, amended, revised, transferred, conveyed or assigned by either party except upon mutual written agreement signed by both parties' respective authorized agents.

1) SPECIFICATIONS. Merchandise and services must conform to AMC’s specifications and/or samples provided by Vendor, or both, if there are both, and shall be delivered at the times and in the quantities herein specified. This Purchase Order and all monies due hereunder are non-assignable by Vendor without the written consent of AMC. No Order shall be valid unless signed by AMC’s authorized representative. AMC is not obligated to recognize any claim based on a verbal order.

2) OFFER AND ACCEPTANCE. This Purchase Order constitutes an offer on the part of AMC to Vendor upon the conditions and terms at the prices stated herein, and in order to constitute a binding contract upon AMC, this offer must be accepted by the Vendor on the express understanding that no variation in the terms of the Order will be valid or binding on AMC without its express written approval. Commencement of performance by Vendor pursuant to this Order shall constitute acceptance by Vendor. Any conditions stated by Vendor in acknowledging receipt of this Order shall not affect AMC’s offer as represented by this Order and shall not be binding on AMC if in conflict with or addition to any of the provisions of this Order.

3) NO VARIATION. No acceptance shall be effective which varies, supplements or conflicts with the terms of these Purchase Order Terms and Conditions. Any such conflicting or supplemental terms shall be deemed to be rejected in absence of AMC’s express written approval on the face of the Purchase Order or in an attachment thereto signed by AMC’s authorized representative. Any such approval, and any execution on behalf of AMC of any agreement or other document proffered by Vendor, shall constitute acceptance and agreement by AMC only as to such approval’s or agreement’s (a) description of goods and/or services ordered; (b) pricing terms, delivery terms and quantities related to such goods and/or services; and (c) any added term and/or condition to the extent that such added term and/or condition does not conflict with these Purchase Order Terms and Conditions.

4) SHIPPING. No additional charge is to be made to AMC for shipping, handling, packaging or insurance unless specified on the face of the Order. Merchandise shipped by freight or express will be marked, packed, and described so as to obtain the lowest rate possible except where otherwise specified by AMC in writing, and penalties and/or increased charges due to failure to do so will be charged to Vendor.

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1 As used in this document, “Albany Medical Center,” or “AMC,” includes Albany Medical Center, Albany Medical Center Hospital, Albany Medical College (including its Faculty Practice), Albany Medical Center Foundation, Inc., and their respective corporate affiliated entities, as the Purchase Order context and circumstances may require or imply.
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5) RISK OF LOSS. Acceptance of and risk of loss with respect to all goods purchased hereunder is subject to AMC’s inspection and approval at destination within a reasonable time after arrival, notwithstanding prior payment to obtain cash discount or any other benefit. Title to the goods shall pass to AMC only upon their actual receipt and acceptance by AMC. The risk of loss or damage prior to completion of delivery to and acceptance by AMC shall be and remain upon Vendor, and any such loss or damage to goods or materials ordered hereunder shall not release Vendor from any obligation hereunder unless directly and solely caused by AMC’s negligence or other wrongful conduct during inspection.

6) REJECTED GOODS. AMC may return rejected merchandise or hold same at Vendor’s risk and expense, and may, in either event, charge the Vendor with the cost of transportation, storing, shipping, unpacking, examination, repacking, reshipping, and other like expenses and charges. In the event Vendor ships more than six days after either the shipping date shown on the shipping instructions, or the date indicated to AMC by Vendor (whether oral or written), AMC reserves the right to return any and all merchandise in original standard packaging to Vendor and charge the Vendor with the cost of transportation, shipping, reshipping, and other like expenses and charges.

7) DELIVERY. AMC shall not be obligated to make any payment until the merchandise and any documents of title thereto (with all necessary endorsements thereon) shall have been delivered to and accepted by AMC at its appointed destination. Notwithstanding the terms of any document of title to the merchandise, AMC shall be entitled to inspect all goods before making payment therefor and/or exercise whatever other rights AMC may have hereunder or at law or in equity. Delivery shall not be complete until the merchandise has been actually received and accepted.

8) PAYMENT. Payment terms for this Purchase Order are negotiated and calculated based on the later of the Vendor invoice date or the date of acceptance of goods, and/or of the date of completion of services, as applicable, unless specifically agreed otherwise in writing on the face hereof. Acceptance by Vendor of the final payment on the contract price shall be and shall operate as a release of AMC from all claims of Vendor arising out of or in connection with the Order.

9) CHANGES. This Purchase Order may not be modified, altered, or changed in any respect, without the prior written consent of AMC and shall be binding upon the respective successors and assigns of the parties hereto. In the event of any variance between this Order and Vendor’s invoice, packing slips, statements or correspondence, Vendor agrees that the terms, conditions, and provisions hereof shall control.

10) RIGHT TO CANCEL. AMC may cancel this Order for cause at any time prior to completion of Vendor’s obligations hereunder if Vendor fails to comply with the terms and conditions of the Order, or in the event of the happening of any of the following: 1) insolvency of Vendor; 2) filing of a voluntary or involuntary petition in bankruptcy; 3) the appointment of a receiver or trustee of Vendor; 4) the execution of Vendor of an assignment for the benefit of creditors.

11) PRICE DECLINES; PRICE WARRANTY. Vendor shall give AMC the benefit of any price reductions made by Vendor to specified shipping date or actual time of shipment, whichever is later. Vendor warrants that the prices for the goods covered by the Order are not less favorable than those currently extended to any other customer of Vendor for the same or similar goods in similar quantities. If Vendor reduces its price for such goods prior to final delivery of the goods to AMC, Vendor shall issue a corresponding reduction in the price or prices provided for in this Purchase Order. AMC’s agreement to the price(s) specified under this Purchase Agreement is subject to the terms and conditions of the Purchase Order.

(rewised: 07/14/16)
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Order shall entitle AMC to the most current model/version of all goods associated with each such price unless specifically provided otherwise on the face of the Purchase Order.

12) WAIVER. No waiver by AMC of any right or of any breach of any provision of AMC’s Purchase Order, or failure to act in a specific instance, shall constitute a waiver of any other right or breach of that or any other provision, nor shall it be deemed to be a general waiver of such right or provision or to sanction any subsequent breach thereof. The exercise of any right or remedy herein provided shall be without prejudice to the right of AMC to exercise any other right or remedy provided herein or at law or in equity.

13) ASSURANCE. Acceptance of this Order constitutes an assurance that all merchandise delivered pursuant to this Order has been manufactured, produced, packaged, labeled, shipped, and if required, registered in accordance with, and in all aspects conforms to, all applicable federal, state, and local laws, rules, and regulations.

14) WARRANTY. Vendor expressly warrants that all goods and work covered by this Order will be new and merchantable, of good material and workmanship and free of defect, and are not comprised of any equipment or software other than the most current version thereof unless otherwise specifically agreed to by AMC in writing. Vendor further warrants that all goods covered by this Order, which are the product of Vendor or are in accordance with Vendor’s specification, will be fit and sufficient for the purposes for which they were manufactured and sold and, if Vendor knows or has reason to know of any other particular purpose for which Buyer intends to use such goods, the goods will be fit for such particular purpose. Vendor hereby extends to AMC any and all warranties received from Vendor’s suppliers and agrees to enforce such warranties on AMC’s behalf. All of the above warranties shall run to AMC, its successors, assigns, customers and users of products sold by Vendor.

15) PROPRIETARY RIGHTS. If the products to be supplied pursuant to this Order have been provided or designed in accordance with specifications furnished or originated by AMC, any data, report, know-how, physical or intellectual property or other material prepared or produced in connection therewith (“deliverables”) shall be “works made for hire” by Vendor for AMC, and all title to and all rights in and to such deliverables shall vest in AMC. To the extent the deliverables may not be deemed to be works made for hire, Vendor hereby assigns any and all rights in such deliverables to AMC. All drawings, photographs, data and other written material or information supplied in connection therewith shall at all times remain the property of AMC and be returned promptly upon AMC’s request.

16) INTELLECTUAL PROPERTY. Vendor warrants that manufacture or use of the goods covered by this Order and the sale or offer for sale of such goods will not infringe any United States or foreign patent, copyright, trademark or any other intellectual property right of any third party (“IP Right”). Vendor agrees to defend, indemnify and hold harmless AMC and AMC’s directors, officers, employees, successors, assigns, customers, and users of any and all goods purchased hereunder from and against all damages, claims, liabilities, losses, costs, expenses and losses (including, without limitation, court costs, reasonable attorneys’ fees, penalties and punitive damages) arising out of or relating to any actual or alleged infringement of any such IP Right, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of such goods.

17) INDEMNIFICATION AND INSURANCE. Vendor agrees to hold harmless, defend and indemnify AMC against any and all claims, demands or suits by any person and against related loss, damages or injury to property or
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persons, liabilities, costs and expenses (including reasonable attorney's fees), which may arise out of performance under this Purchase Order or the use, possession or ownership of the goods and/or services related thereto, caused or contributed to by either: (a) the actions or omissions (whether or not negligent) by Vendor or Vendor's agents or subcontractors including without limitation such acts or omissions, incident to the presence of the Vendor, its agents, and subcontractors upon AMC's premises in the course of performance under this Purchase Order; or (b) defective, unsafe or non-conforming goods or services supplied by Vendor or Vendor's agents or subcontractors; or (c) Vendor's use and possession of AMC's property during performance under this Purchase Order. The term "AMC" as used in this section includes AMC as defined above as well as AMC's officers, employees, agents, students, successors, assigns, customers, invitees and users. Vendor will at all times carry insurance acceptable to AMC and sufficient to fully fund and support Vendor's indemnification obligation as provided in this section, and shall provide certificates of all such insurance. All such insurance shall name AMC as an additional insured and provide for at least thirty (30) days notice of cancellation or modification.

18) GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action or other legal proceeding brought pursuant to or in connection with this Agreement by either party hereto shall be venued and maintained, except upon mutual written consent of such parties, within the County of Albany and State of New York.

19) CONFIDENTIALITY. Vendor shall consider all specifications, plans, instructions, samples and other information furnished by AMC, or prepared by Vendor specifically for AMC in connection with this Purchase Order, to be confidential and shall not, without AMC's prior written consent or except as required by law, disclose such information to any third party or, use such information for any purposes other than performing this contract, or issue any news release, advertisement, publicity, or promotional material regarding this Order, its purpose or content or Vendor's relationship hereunder with AMC.

20) TRANSFER OF TITLE. When goods are purchased F.O.B. Vendor or shipping point, it is agreed between Vendor and AMC that goods covered by this Order shall not be considered as delivered and title thereto or responsibility therefore shall not pass until after the goods reach AMC's receiving point indicated thereon.

21) ELECTRICAL STANDARD. All electrically connected merchandise ordered hereunder shall meet the current specifications described in NFPA Code 99: Standard for Health Care Facilities published by the National Fire Protection Association. If any specification is not met, AMC reserves the right to either return the merchandise at Vendor’s expense, or alter the merchandise to conform with these specifications. Such alternations shall not be considered a violation of the Vendor’s or manufacturer’s warranties.

22) INDEPENDENT CONTRACTOR. Vendor agrees that any and all services under this Purchase Order shall be performed by Seller, its employees, agents, suppliers or subcontractors as independent contractors, and not as employees of AMC, and that such persons doing work hereunder shall not be considered or represent themselves as employees or agents of AMC.

23) FEDERAL HEALTH PROGRAMS. Vendor warrants that it is authorized to participate fully in Federal Health Programs as defined by 42 USC 1320a-7b(f) which includes State health care programs as defined by 42 USC 1320a-7(h) that it is not being investigated by a Federal, State, and/or local government agency with alleged violations of laws and/or regulations that may result in it’s possible exclusion or suspension from Federal
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Health Care programs, and that it is not excluded or suspended from participation in, or is otherwise rendered ineligible for participation in Federal Health Care programs.

24) INVESTIGATIONS. Vendor shall immediately notify AMC upon notification from a federal, state, and/or local government agency that Vendor is being investigated, or that Vendor is charged with violations that may result in its exclusion or suspension from Federal Health Care programs, and/or that it is being excluded from participation in or otherwise rendered ineligible to participate in Federal Health Care programs.

25) HEALTH CARE FRAUD, WASTE AND ABUSE. Albany Medical Center represents that it has in effect a policy providing information regarding certain federal and State laws pertaining to health care fraud, waste and abuse, as well as information regarding the processes which the Center has to detect and prevent health care fraud, abuse and waste. The policy, as well as updates and changes to the policy, may be accessed at www.amc.edu. Questions related to the policy may be directed to the Corporate Compliance and Audit Department, 518-262-4692. Concerns potentially implicating the laws referred to herein may be reported anonymously to Albany Medical Center by calling 518-264-TIPP.

26) CIRCULAR A-110. If this Purchase Order is being placed by AMC, in its capacity as a recipient of federal funds, to Vendor as a contractor for or subrecipient of any such federal funds, then all applicable procurement provisions contained in Appendix A to federal Circular A-110 are hereby incorporated into this Purchase Order as if fully set forth herein, and Vendor shall include or incorporate such provisions in any agreement with any subcontractor or other subrecipient which provides any goods or services in connection herewith.

27) BOOKS AND RECORDS. In the event that 42 USC 1395x(v)(1)(I)(i) is deemed applicable to this Agreement, until the expiration of four years after services are provided hereunder, the parties shall make available upon the written request of the Secretary of Health and Human Services or the United States Comptroller General the contract and such books, documents and records as are necessary to certify the nature and extent of costs incurred hereunder.

28) NO ADDED TAX-RELATED CHARGES. AMC shall not be liable for any added charge attributable to any excise or other tax imposed upon vendor in connection with its sale of any taxable medical device [as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, 21 USC 321(h)] or any other taxable goods and/or services in connection herewith, except as specifically identified in this Purchase Order or in an attachment thereto signed by AMC’s authorized representative.

29) Equal Employment Opportunity Affirmative Action Compliance. The Equal Employment Opportunity and Affirmative Action Clause, as set forth by the Department of Labor, 41 C.F.R. Sections 60-1.4(a) is hereby incorporated by reference herein insofar as it is required by such regulations and unless exempted by applicable statutes, rules, regulations or orders. You agree, unless exempted, to incorporate by reference and abide by Executive Order 11246. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.