

PREMIER HEALTH PURCHASE ORDER TERMS

INDEPENDENT AGREEMENTS: To the extent Premier Health and Supplier are party to a valid, current, executed written agreement the scope of which includes the purchase of Products and/or Services that are the subject of this PO, then, to the extent there is an express conflict between the terms of this PO and the terms of such separate written agreement, the written agreement terms shall govern and control. Absent any such express conflict, the terms of the PO and written agreement shall be construed to both govern and control.

GENERAL: Supplier's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the expressed terms contained on the face and back hereof. Any proposed additional or different terms or attempt by Supplier to vary in any degree any of the terms of this offer in Supplier's acceptance is hereby objected to and rejected, but such proposal shall operate as a rejection of this offer unless such variances are in the terms of the Supplier without said additional or different terms. If this purchase order shall be deemed an acceptance prior offer by Supplier, such acceptance is limited to the express terms contained on the face and on the back, hereof. Additional or different terms or any attempt by Supplier to vary in degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Supplier's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods. "Acceptance of this contract / agreement / purchase order of authorization is evident of your intent to comply with Title VII of the 1964 Civil Rights Act and Section 504 of the Rehabilitation Act which prohibit discrimination because of RACE, COLOR, NATIONAL ORIGIN, HANDICAP, (AGE, SEX and/or RELIGION where applicable) in any facet of your operation except where such discrimination is a bona fide, documented business necessity."

PACKING: The Articles shall be packed and shipped by Supplier in accordance with Premier Health's instructions and good commercial practices and so as to ensure that no damage shall result from weather or transportation. Supplier will notify PHP of all packaging, UPC, U/M & catalog number changes 30 days in advance of such changes. All packing slips and boxes must carry a purchase order number on the outside of the box or boxes. All orders require a packing slip with the delivery of the goods. Supplier, if requested, will sort all orders & identify such orders by purchase order number.

SHIPPING: Supplier will ship via Premier Health's designated carrier, collect. Supplier shall print receiving Hospital name, purchase order number and ship to location on all invoices, labels, packing lists, and other shipping documents (not including the Bill of Lading) for all direct (desktop or facility) shipments / deliveries. Appropriate documentation must accompany all shipments / deliveries.

TERMINATION: (a) Premier Health may cancel this order, in whole or in part, without liability to Premier Health, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any other terms or conditions hereof. Premier Health may forthwith cancel the contract resulting from the acceptance of this order in the event of Supplier's insolvency, the filing of a voluntary or involuntary petition of bankruptcy by or against Supplier, the appointment of a Receiver or Trustee for Supplier, or the execution by Supplier of an assignment for the benefit of creditors. (b) Premier Health may terminate this order in whole or in part, at any time for its convenience, by notice to Supplier in writing. On receipt by Supplier of such notice, Supplier shall, and to the extent specified therein, stop work hereunder and the

placement of subcontract, terminate work under subcontracts outstanding hereunder and take any necessary action to protect property in Supplier's possession in which Premier Health has or may acquire an interest. Any termination claim must be submitted to Premier Health within sixty (60) days after the effective date of termination. **(c)** Any cancellation or termination by Premier Health, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Premier Health against Supplier. **(d)** Premier Health shall have the right to audit all elements of any termination claim and Supplier shall make available to Premier Health on request all books, records, papers relating thereto.

CHANGES: Premier Health at any time may notify Supplier to make changes in the quantities ordered or in the specifications or drawings relating to the Articles or may change or amend any other term conditions 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 adjustment must be made within fifteen (15) days from the date of receipt by Supplier of such changes.

COMPLIANCE WITH LAWS: Supplier shall be in full and complete compliance with any and all applicable federal, state and local laws and regulations, including, without limitation, all Equal Employment Opportunity Commission regulations and requirements, all Occupational Health regulations, any applicable Department of Agriculture regulations, and any applicable state Department of Health regulations.

WARRANTY: Supplier expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be reasonably free from defects in material or workmanship. Supplier further warrants that all goods and services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Supplier's warranty shall run to Premier Health, its successors, and assigns. Supplier agrees to replace or correct material defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Premier Health, when notified of such nonconformity by Premier Health, provided Premier Health elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming goods or services promptly, Premier Health after reasonable notice to Supplier, may make such corrections or replace such goods and services and charge Supplier for the cost incurred by Premier Health in doing so.

REMEDIES: The remedies herein reserved shall be cumulative, and additional to any other further remedies provided in law or equity.

HOLD HARMLESS: **(A)** Supplier agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its employees, in providing products under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for Supplier's acts or omissions onto PHP. Further, Supplier agrees to indemnify, defend and hold harmless PHP, its directors, officers, agents, and employees from and against all claims, actions or causes of actions, including attorney's fees, arising out of Supplier's acts and/or omissions under this Agreement. **(B)** PHP similarly agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its employees, and nothing in this contract shall be interpreted to place any such responsibility onto Supplier and PHP agrees to indemnify, defend and hold harmless Supplier, its directors, officers, agents and employees from and against all claims, actions or causes of actions, including attorney's fees arising out of PHP's acts and/or omissions under this Agreement.

INDEMNIFICATION/PRODUCT RECALLS AND INSURANCE: **(A)** Supplier shall provide and maintain products liability and general liability insurance coverage with total limits of \$1 million

per occurrence and \$3 million aggregate coverage per year ("Products Liability and General Liability Insurance"), and Supplier will provide a certificate of such Products Liability and General Liability Insurance to PHP. The Supplier shall be responsible for payment of all premiums to maintain such Products Liability and General Liability Insurance in force. If such insurance is "claims made," an extended reporting endorsement ("Tail") for such Products Liability and General Liability Insurance shall be purchased in the event of the termination of the Agreement, and Supplier shall be responsible for and shall pay any such Tail insurance premium. **(B)** As applicable, in the event that PHP is affected by a product purchased from Supplier hereunder, Supplier shall correct any problem associated with such product recall to the satisfaction of PHP. **(C)** Supplier agrees to defend, indemnify and hold PHP harmless from and against any third-party claims, suits and/or actions for injuries and/or damages alleging that said injury and/or damage arose from the design or manufacturing of the Product(s). This indemnification and hold harmless shall not apply in any instance in which said third party claim arises due to the acts and/or omission of the employees and/or agents of PHP, and/or the acts and/or omission of any third parties unrelated to Supplier. Said duty to indemnify and hold harmless is expressly conditioned upon reasonable written notice from PHP to Supplier of the threatening or filing of any such claim. **(D)** Furthermore, Supplier agrees that if the Product is subject to a recall, that Supplier shall reimburse PHP for any reasonable losses and costs that PHP incurs in taking action in response to the recall, including costs resulting from the performance of corrective procedures and/or surgeries to replace the recalled products.

GOVERNING LAW & VENUE: This Agreement shall be construed in accordance with the laws of the State of Ohio. Any disputes that arise hereunder shall be resolved in a court of competent jurisdiction located in Montgomery County, Ohio.

RISK OF LOSS: Risk of loss or damage to the Articles shall be on Supplier until said Articles have been delivered to and accepted by Premier Health notwithstanding any other terms contained herein. All Articles will be received by Premier Health subject to its right of inspection and rejection. Premier Health shall have a reasonable period of time to inspect the Articles and to notify Supplier of any non-conformance with the terms and conditions of this order. Premier Health may reject any Articles which do not conform to the terms and conditions of this order. Articles so rejected may be returned to Supplier.

ENTIRE AGREEMENT; AMENDMENTS; NO WAIVER: This Agreement contains the entire agreement between the parties with respect to the matters covered by this Agreement and supersedes all prior negotiations, agreements and employment agreements between the parties, whether oral or in writing. This Agreement may not be amended, altered or modified except by written agreement signed by the parties. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

INVOICING: All invoices must be mailed to the address listed on the purchase order under the "Invoice to" section, Attn: Accounts Payable. All invoices must carry a valid purchase order number (No exceptions.). Supplier will process all returns & credits within 10 days. Supplier will not charge Premier Health a re-stocking fee. No statement can be made without a supporting invoice which must show purchase order number. Discounts are taken from date of receipt of invoice or date of actual receipt of materials, whichever is later. All purchase orders must match 100% (line for line) to supplier invoice. Line item sequence must match the purchase order line item sequence. All invoices or payments will be reduced to the purchase order price if not resolved prior to shipping. If products are received without a valid purchase order, Premier Health will assume that they are donations and will carry a no charge status.

TAX EXEMPT STATUS: PHP's affiliates are tax exempt, and to that extent, said affiliates will not be responsible for or liable for payment of any taxes assessed to or paid by Supplier that PHP would not otherwise be required by law to pay. Upon request by Supplier, PHP will provide all reasonably necessary documentation to Supplier to verify tax-exempt status.

EXCLUDED PROVIDERS: Supplier hereby represents and warrants that neither it, nor its employees, have at any time been excluded from participation in any federal or state funded healthcare program, including but not limited to, Medicare and Medicaid. Supplier hereby agrees to notify PHP immediately of any threatened, proposed, or actual exclusion of Supplier or its' employees from any federal or state funded healthcare program, including but not limited to, Medicare and Medicaid. In the event that Supplier is excluded from participation in any federal or state funded healthcare program during the term of this Agreement, or if at any time after the effective date of this Agreement it is determined that Supplier is in breach of this Section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. Supplier shall indemnify and hold harmless PHP against any and all actions, claims, demands and liabilities, and against all loss, damages, cost and expenses, including reasonable attorney's fees, arising directly or indirectly, out of any violation of this section of this Agreement by Supplier or due to exclusion of Supplier from a federally funded healthcare program including but not limited to Medicare or Medicaid.

PREMIER HEALTH SUPPLIER POLICIES

- a) Supplier will abide by & accommodate Premier Health's purchasing structure and Supplier Policy. The Premier Health Supplier policy can be found at <http://www.premierhealth.com/Vendors/Vendor-Policies/>
- b) Supplier will communicate all back order situations to Premier Health Supply Chain and will not substitute unless approved by Premier Health Supply Chain. Supplier will assist Premier Health on locating acceptable substitutions.
- c) Any removal of hospital material, products or equipment must be cleared through the Premier Health Supply Chain Division.
- d) All repair costs must be approved by the respective Premier Health prior to repair. Failure to comply with this policy assumes the Supplier will be responsible for all costs (materials and labor) and agrees to hold Premier Health harmless from all costs and damages, including property and personal injury.