

Kettering Health Standard Terms and Conditions

1. **Acceptance:** Seller's commencement of services or the work on the products subject to this purchase order (the "Products") or shipment of Products, whichever occurs first, shall be deemed as effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face of the purchase order and these terms and conditions. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quality, price or delivery schedule of the Products, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained of the face of the purchase order and herein. Additional or different terms or any attempt by Seller to vary in any 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 Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the Products.
2. **Packing; Freight; Shipping:** The Products shall be packed and shipped by Seller in accordance with Buyer's instructions and good commercial practice and so as to ensure the lowest transportation cost and that no damage shall result from weather or transportation. No additional charges shall be assessed against Buyer unless otherwise stated herein. All freight shall be paid by the Seller. Seller shall print the name of the receiving facility, purchase order number, and ship to location on all invoices, labels, packing lists, and other shipping documents (not including bills of lading) for all direct shipments or deliveries. Appropriate documentation shall accompany all shipments and deliveries.
3. **Risk of Loss.** Risk of loss or damage to the Products shall be on Seller until said Products have been delivered to and accepted by Buyer notwithstanding any other terms contained herein. All Products will be received by Buyer subject to its right of inspection of Products.
4. **Inspection of Products/Recalls.** Buyer shall inspect Products upon delivery but will have the right to reject any Products within thirty (30) days of delivery or installation, as applicable, in the event the Products are damaged or do not conform. Where Products are damaged, Buyer shall notify Seller. Buyer may reject the damaged Products and the following provisions shall apply: (a) upon notification, Seller shall create and issue a Return Merchandise Authorization; (b) Seller shall collect the damaged Products from Buyer at Seller's expense; (c) during the period between delivery of the Products to Buyer and collection by Seller, Buyer shall not be liable for any loss or further damage caused to the damaged Products; (d) all sums payable by Buyer in relation to the damaged Products shall cease to become payable; (e) all sums paid by Buyer in relation to the damaged Products shall be refunded by Seller immediately; (f) Buyer shall be entitled to claim damages from Seller for any losses caused to Buyer as a result of the Products being damaged. Buyer shall not pay restocking fees.
5. **Invoices and Payment.** Unless otherwise provided in this purchase order, no invoices shall be issued nor payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. If the amount of delivered materials is less than the quantity ordered by Buyer, or if Buyer rejects any portion of the delivered materials, Buyer may adjust the payment to Seller accordingly.
6. **Tax Exempt Status.** Buyer is tax exempt and will not be responsible for or liable for payment of any taxes assessed to or paid by Seller that Buyer would not otherwise be required by law to pay. Upon request by Seller, Buyer will provide all reasonably necessary documentation to Seller to verify tax-exempt status or Seller may search the Internal Revenue Service's Tax Exempt Organization Search (TEOS) database at www.irs.gov to confirm such tax exempt status.
7. **Seller's Obligations.** Seller warrants that all Products supplied hereunder shall be free and clear of all liens and encumbrances, that Seller has good and merchantable title, and that each of the Products shall be substantially free from defects in material, design, and workmanship and shall perform in substantial compliance with the published specifications for such product, and Seller's written representations regarding the functions and uses for the Products set forth in the terms of the Seller's quotation and/or package inserts.
8. **Change in Law.** In the event there is a change in applicable federal or state law, including, without limitation, Medicare or Medicaid laws or regulations, or general instructions (or interpretation thereof) of the Internal Revenue Service, or the adoption of regulations, any of which materially and adversely affect the relationship with the parties to one another hereunder, or otherwise makes the performance of any material term or condition of these terms and conditions illegal or impossible, the parties shall, upon written notice of one party to the other of such event, negotiate in good faith using their best efforts to modify these terms and conditions in order to comply with any such change. In the event the parties are unable thereafter to agree upon reasonable modification to these terms and conditions, either party may terminate the purchase order upon ten (10) days prior written notice to the other.
9. **No Exclusivity, Volume, Output, or Requirements.** Nothing herein shall be construed as creating an exclusivity or volume, output, or requirements contract. Buyer is making no representations to Seller that Seller will be the exclusive provider of any such service or good provided to Buyer or any affiliate thereof during any term of these terms and conditions. Additionally, Buyer is making no representations to Seller that it will purchase a minimum number or volume of services or Products from Seller.
10. **Group Purchasing Organization Fees.** If applicable, Seller shall be responsible for paying all applicable Group Purchasing Organization ("GPO") Administrative or Rebate Fees to the GPO.
11. **Insurance.** Seller shall provide and maintain professional and general liability insurance coverage issued by an insurance company with a minimum rating of A-, and with total limits of \$1 million per occurrence and \$3 million aggregate coverage per year ("Professional and General Liability Insurance"), and Seller will provide a certificate of such Professional and General Liability Insurance to Buyer. Seller shall be responsible for payment of all premiums to maintain such Professional and General Liability Insurance in force. If such insurance is "claims made", an extended reporting endorsement ("Tail") for such Professional and General Liability Insurance shall be purchased in the event of the termination of Seller's services, and Seller shall be responsible for and shall pay any such Tail insurance premium. Seller may satisfy its insurance obligations by providing a certificate of self-insurance to Buyer, provided such certificate meets the above requirements. Seller shall also maintain workers' compensation insurance covering its employees at such levels as will satisfy its obligations under the workers' compensation laws of the states in which it operates.
12. **Corporate Compliance.** Seller understands that Buyer operates a corporate compliance program for compliance with all federal and state statutes, rules, and regulations, particularly as they pertain to governmental payers. Seller agrees to cooperate with the Buyer Chief Compliance Officer or designee in any investigation related to compliance issues.
13. **Compliance with Laws.** Seller 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.

14. **HIPAA Compliance.** Seller acknowledges that Buyer is bound by law to have written agreements with its business partners who may have access to patient information requiring compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the rules and regulations promulgated thereunder. Accordingly, if applicable, Seller warrants and represents that it is or will be in compliance with HIPAA and all relevant federal statutes, rules, regulations, and requirements effective at future dates according to the applicable timetables and will execute any appropriate attachment to these terms and conditions to enable Buyer to be compliant with HIPAA, including Buyer's Business Associate Agreement if Buyer determines the Seller is a Business Associate as defined by HIPAA. Failure by Seller to comply with this provision shall result in immediate and automatic termination of the purchase order without penalty or cost to Buyer.
15. **Offshoring Restrictions.** If Seller receives Buyer patients' PHI ("PHI" means protected health information and has the meaning assigned to it in 45 C.F.R. §160.103 or other patient personal information, Seller understands and agrees that any receipt, processing, transferring, handling, viewing, storing or accessing of PHI and other patient personal information by Seller or by any of Seller's contractors at a location outside of one of the fifty United States or one of the United States territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Island) (collectively, "Offshoring"), requires prior written approval from Buyer, which approval may be granted or denied by Buyer in its sole discretion. Seller shall submit any requests for Offshoring, in writing, to Buyer at offshoring@ketteringhealth.org no less than sixty (60) days prior to the proposed commencement of the Offshoring. Any unapproved Offshoring by Seller shall give Buyer the right to terminate this Agreement immediately and without penalty, in addition to such other rights and remedies which may be available to Buyer under applicable law.
16. **Excluded Providers.** Seller hereby represents and warrants that neither it, nor its' employee(s) or agent(s), either of whom is or are performing services under this Agreement, have at any time been excluded from participation in any federal or state funded healthcare program. Seller hereby agrees to notify Buyer immediately of any threatened, proposed, or actual exclusion of Seller, or its' employees or agents performing services under this Agreement, from any federal or state funded healthcare program. In the event that Seller, or Seller Personnel performing services under this Agreement, is excluded from participation in any federal or state funded healthcare program during the term of the purchase order, or if at any time after the effective date of the purchase order it is determined that Seller is in breach of this Section, the purchase order shall, as of the effective date of such exclusion or breach, automatically terminate.
17. **Seller Personnel Background Check Requirements.** Seller shall complete the following requirements and shall upon written request provide Buyer with evidence that Seller has completed and verified documentation consistent with the following requirements: (a) A current criminal records check enabling Sellers Personnel to safely work on Buyer's premises and potentially come into contact with Buyer's patients in the workplace. The following are disqualifying offenses that shall be brought to Buyer's attention, and any Seller Personnel having any of the following disqualifying offenses shall not be permitted to work onsite at a Buyer facility where they may potentially come into contact with Buyer patients, unless written approval is provided by Buyer. (i) Any felony conviction, regardless of when it occurred; (ii) Any drug-related or drug trafficking conviction, regardless of when it occurred (except misdemeanor marijuana possession cases); (iii) All misdemeanor convictions involving theft (with the exception of passing bad checks), fraud, or violence (with the exception of disorderly conduct) within the past 7 years; or (iv) Any pending charges or active warrants. (b) Seller agrees to have in place a policy that requires its employees to promptly report – to their leader or HR – any of the above issues outlined in the above Section (a). Should any such issues be reported to Seller by Seller Personnel, Seller will promptly notify Buyer and the affected personnel may be immediately removed from working onsite at a Buyer facility at Buyer's sole discretion. (c) A

Fraud and Abuse Control Information System (FACIS) search, that includes a current check of the HHS/OIG List of Excluded Individuals/Entities (available at <http://www.oig.hhs.gov>) and the GSA's System for Award Management ("SAM") list of Parties Excluded from Federal Programs (available at <https://www.sam.gov/SAM/>) (collectively "Exclusion Lists"). Any Seller personnel having any positive results of a FACIS search shall not be permitted to perform work for Buyer.

18. **Federal Contractor Status.** Seller acknowledges Buyer is not a federal contractor and shall not enter into any arrangements that would cause Buyer to be subject to the requirements of a federal contractor or subcontractor, nor any arrangement that would require Buyer to comply with affirmative action program requirements.
19. **Discount Reporting.** Buyer understands that it must properly disclose and appropriately reflect any discounts or reductions in price associated with the Products purchased under the purchase order in costs claimed or charges made by Buyer under Medicare, Medicaid, or federal or state health care programs requiring such disclosure or reporting. See 42 U.S.C. § 1320a-7b(b)(2)(A). Seller shall promptly provide to Buyer, upon written request, any additional information Buyer may need to meet Buyer reporting or disclosure obligations. Seller acknowledges that compliance with such reporting or disclosure requirement was a condition precedent to the purchase order and that Buyer would not have entered into this purchase order had Seller not agreed to comply with such obligations. Seller warrants and represents the contracted price represents fair market price for all of the Products listed or received by Buyer, less discounts reported in accordance with this Section.
20. **Right to Audit.** Seller shall keep accurate and complete accounting records. Upon ten (10) days' notice, Buyer may audit, or direct a reputable accounting firm to audit, Seller's records relating to its performance under the purchase order. Seller shall reasonably cooperate with such audit. Such audit shall not occur more than once each financial year.
21. **Independent Contractor.** Seller acknowledges that in the performance of its duties under the purchase order it is an independent contractor and not an employee of Buyer. Seller is responsible for any and all federal, state, and local taxes arising out of or related to work performed hereunder for Buyer. Moreover, Seller employees or contractors rendering services to Buyer hereunder shall not receive any direct compensation or any other employment benefit of any nature from Buyer for services provided under the purchase order.
22. **Equal Opportunity.** The parties hereto shall not discriminate against any patient, employee, or any other person because of race, color, handicap, age, or national origin nor shall there be any such discrimination in the employment practices and personnel policies of either party.
23. **General Confidentiality.** (a) The parties hereby acknowledge that they have or may have access to confidential and proprietary information of the other party including, without limitation, business information related to purchase history, supplies, Seller identification, terms, prices and other financial information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). The parties agree that during the term of the purchase order and at all times thereafter, and except as specifically permitted herein or in a separate writing signed by the parties, that they shall not use, commercialize, or disclose the other party's Confidential Information to any person or entity, except to its own employees or agents having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), except that Confidential Information may be disclosed to Buyer officers, physicians, employees, payers, and/or patients when appropriate. A party may also disclose the other party's Confidential Information to any person, entity, or professional organization which provides consulting, legal, accounting, auditing, information technology or financial services to a party ("Representative"); provided (i) the disclosure is limited to only the information necessary to allow the Representative to perform its services for such party and (ii) the Representative, with the exception of professional organizations, agrees to be bound by confidentiality restrictions no less

restrictive than those contained herein and agrees not to disclose Confidential Information to any other entity outside of Buyer or Seller; (b) Confidential Information does not include (i) information already known outside the scope of the purchase order, (ii) information in the public domain through no wrongful act of a party, or (iii) information received outside the scope of the purchase order from a third party who was free to disclose it. (c) In the event that either of the parties is requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demands or similar processes) to disclose or produce any Confidential Information of the other party, it is agreed that the party so requested or required to disclose or produce any confidential Information will (i) provide the other party with prompt notice thereof and copies, if possible, and, if not, a description, of the Confidential Information requested or required to be disclosed or produced and (ii) consult with the other party as to the advisability of the other party taking legally available steps to resist or narrow such request. (d) Upon termination, or at any time upon request by a party, the other party shall (i) return all Confidential Information in its possession or control, (ii) certify to the destruction or deletion of all Confidential Information, or (iii) retain Confidential Information in compliance with its reasonable document retention policies, so long as such Confidential Information is timely destroyed in the normal course of the party's business and remains subject to the obligations and restrictions contained in this Section. (e) The parties acknowledge that damages alone will be an inadequate remedy for breach of the provisions of the purchase order and that the aggrieved party, in addition to all other remedies, shall be entitled as a matter of right to equitable relief, including injunctions and specific performance, in any court of competent jurisdiction.

24. **Use of Name and Logo.** For the avoidance of doubt, in no event shall Seller use the logo, trade name, service mark, or trademark (or any adaptation of the foregoing) of Buyer or any affiliate of Buyer, including, but not limited to, inpatient and outpatient facilities otherwise owned or operated by Buyer, in sales presentation slide decks to other potential customers, on any websites owned by Seller now or in the future, in customer lists, in press or news releases, in any and all other forms of marketing materials, or otherwise without receiving prior written consent from Buyer, which consent may be withheld in Buyer's sole and absolute discretion. In the event Buyer consents to the use of its logo, trade name, service mark, or trademark, such use: (a) shall be solely limited to the use permitted in such written approval and Buyer reserves the right to request copies of such materials to approve before they are made available to the general public; (b) does not create any ownership right in Seller of such logo or business name; and (c) may be revoked upon notice at any time by Buyer and Seller shall make efforts as soon as reasonably practicable to remove or retract such use from all applicable marketing materials. Violation of this Section constitutes a material breach of this Agreement. The parties acknowledge that damages alone will be an inadequate remedy for breach of the provisions of this Agreement and that the aggrieved party, in addition to all other remedies, shall be entitled as a matter of right to equitable relief, including injunctions and specific performance, in any court of competent jurisdiction. This Section shall survive the termination or expiration of this Agreement.
25. **Assignments.** Nothing in these terms and conditions shall be construed to permit assignment by Seller of any rights or duties under these terms and conditions and such assignment is expressly prohibited. Seller may, however, with Buyer's advance written approval, assign and/or sell any accounts receivable or indebtedness owed by Buyer; assign its rights or duties under these terms and conditions to a wholly-owned subsidiary; or assign its rights or duties under the purchase order as part of an organizational restructuring. In the event the purchase order is assigned without Buyer's written approval, Buyer reserves the right to terminate the purchase order immediately.

26. **Successors and Assigns; Third Party Beneficiaries.** These terms and conditions binds and benefits the parties and their respective permitted successors and assigns. The purchase order is not intended to confer any benefit, right, or remedy upon any third party.
27. **Hold Harmless; Indemnification.** (a) Seller agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its Seller Personnel, in providing Products and/or services under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility onto Buyer. Further, Seller agrees to indemnify, defend, and hold harmless Buyer and its subsidiaries, affiliates, directors, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, actions, settlements, or judgments and against all loss, damage, costs, penalties, fines, causes of action, and expenses (including reasonable attorneys' fees and litigation expenses) based upon or arising directly or indirectly by or as a result of the following: (i) Seller's services under this Agreement; (ii) to the extent Seller is providing good or Products, any third-party claims, suits and/or actions for injuries and/or damages alleging that an injury and/or damage arose from the design or manufacture of the good(s) or product(s) (except for claims that arise due to act(s) or omission(s) of Buyer employees or agents as to the proper use of the goods(s) or product(s)); (iii) the negligent or intentional act or omission of Seller, its subcontractors, or its agents; (iv) the performance or failure to perform Seller's obligations set out in this Agreement; (v) Seller's violation of federal, state or local civil and/or criminal statutes, laws or regulation; (vi) to the extent Seller has access to PHI, the improper handling, storage or transmission of PHI or other private health information by Seller, its subcontractors, or its agents; (vii) to the extent Seller has access to PHI, the improper handling, storage or transmission of PHI or other private health information by Seller, its subcontractors, or its agents; (viii) the failure of Seller, its subcontractors, or its agents to implement or maintain industry standard or commercially reasonable information system security measures or safeguard; (ix) the exclusion of Seller, or its employee(s), or agent(s) performing services under this Agreement, from a federal or state funded healthcare program; and/or (x) a breach of Seller's Offshoring restrictions set forth herein. (b) Buyer agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its employees, under this Agreement and nothing in this contract shall be interpreted to place any such responsibility onto Seller. Further, Buyer agrees to indemnify, defend, and hold harmless Seller, its directors, officers, agents and employees from and against all claims, actions, or causes of actions, including legal fees, to the extent arising out of Buyer's actions under this Agreement. (c) The duty to indemnify, defend, and hold harmless is expressly conditioned upon reasonable written notice from the party to be indemnified to the indemnifying party of the threatening or filing of any such claim.
28. **Force Majeure.** Seller shall not be liable for any claims or damages and shall be excused for such claims, damages, failures, and delays in the performance of its obligations under the purchase order due to any act or cause beyond the reasonable control and without the fault of Seller ("Force Majeure Event"), including, without limitation, acts of nature such as fire, flood, tornado, earthquake; and/or pandemic, national and/or state of emergency, acts of government such as civil injunctions, enacted statutes, or enacted regulations; acts of third parties such as riot, strike, power outage, or explosion; or Seller's inability, due to an aforementioned cause, to obtain necessary labor or materials. If a Force Majeure Event occurs, the parties will meet to discuss in good faith any practical solutions to avoid interruption of service under the purchase order. It is the Seller's intent in such events to use commercially reasonable means to avoid interruption in services. This provision shall not be interpreted to exonerate either party of its obligation to provide services or make payments due hereunder.
29. **Conflicting Terms, Amendments, and Outstanding Purchase Orders.** In the event of any conflict between this purchase order and the terms and conditions of any document, instrument, or agreement prepared by Seller, including, without limitation, warranty documents, price

quotations, and invoices, the terms of this purchase order shall control. No terms, conditions, prior course of dealings, course of performance, usage of trade, understandings, or agreements purporting to modify, vary, supplement, or explain any provision of these terms and conditions are effective, unless in a written agreement signed by the parties. Notwithstanding the foregoing, any purchase orders and related statements of work for which, as of the effective date, performance has begun, but has not been completed, shall remain in effect. However, if there are any conflicting terms, the terms of these terms and conditions shall control.

- 30. **No Waiver.** No provision of these terms and conditions 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. Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of these terms and conditions shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.
- 31. **Severability.** If any word, phrase, clause, sentence, paragraph, section, or other provision of these terms and conditions is determined to be illegal or unenforceable, the other provisions of these terms and conditions remain in full force, provided the essential provisions of these terms and conditions remain legal and enforceable.
- 32. **Construction of Terms and Conditions.** The language in all parts of these terms and conditions shall in all cases be simply construed according to its fair meaning and not strictly for or against Seller or Buyer. The headings preceding each paragraph are for convenience only and shall not in any way be construed to affect the meaning of the paragraphs themselves.
- 33. **Governing Law & Venue.** These terms and conditions 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.
- 34. **Limitations.** Any cause of action arising from these terms and conditions must be commenced within twelve (12) months after the event giving rise to the cause of action has occurred or it shall be deemed irrevocably waived and time-barred.
- 35. **Survival.** Each term and provision of these terms and conditions that should by its sense and context survive any termination or expiration of the purchase order, shall so survive regardless of the cause and even if resulting from the material breach of either party to these terms and conditions.