

THE OHIO STATE UNIVERSITY WEXNER MEDICAL CENTER PURCHASE ORDER TERMS AND CONDITIONS

1. This offer is subject to immediate acceptance. Unless so accepted, PURCHASER reserves the right to cancel.
2. This Purchase Order constitutes the entire agreement between the parties, unless otherwise specifically noted by PURCHASER on the face of this Purchase Order. Each delivery of goods and/or services received by PURCHASER from SELLER shall be deemed to be upon the terms and conditions contained in this Purchase Order. No additional terms may be added and Purchase Order may not be changed except by written Instrument executed by PURCHASER. SELLER is deemed to be on notice that PURCHASER objects to any additional or different items and conditions contained in any acknowledgment, invoice or other communication from SELLER, notwithstanding PURCHASER'S acceptance or payment for any delivery of goods and/or services, or any similar act by PURCHASER.
3. SELLER expressly warrants that the goods and/or services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or specified by PURCHASER, and will be of satisfactory material and quality production, free from defects and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. These warranties shall survive inspection, acceptance, passage of title and payment by PURCHASER.
4. All goods and/or services delivered hereunder shall be received to PURCHASER's inspection and approval, and payment there for shall not constitute acceptance. All payments are subject to adjustment for shortage or rejection. All defective or nonconforming goods will be returned pursuant to SELLER's instruction at SELLER'S expense. To the extent that a purchase order requires a series of performances by SELLER, PURCHASER prospectively reserves the right to cancel the entire remainder of the Purchase Order if goods and/or services provided early in the term of the Purchase Order are non-conforming or otherwise rejected by PURCHASER. Failure of PURCHASER to act immediately in response to a breach of this Purchase Order by SELLER shall not constitute a waiver of breach.
5. In fulfilling the terms of this Purchase Order, SELLER agrees that it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, sex, sexual preference, handicap, disability, or veteran/veteran-era status, and covered prime contractors and subcontractors agree to require affirmative action to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. This covenant is required pursuant to: i) federal laws and regulations, including Executive Order 11246, 29 CFR Part 471, Appendix A to Subpart A, 41 CFR Parts 60-1.4, 60-1.7, 60-4.3, 60-300.5(a), and 60-741.5(a); ii) State of Ohio laws and regulations; and iii) policy of PURCHASER. Any breach of this provision may be regarded by PURCHASER as a material and substantial breach of the contract arising from this Purchase Order.
6. No SELLER providing goods and/or services to PURCHASER shall advertise the fact that it has contracted with PURCHASER for goods and/or services, or appropriate or make use of PURCHASER'S name or other identifying marks or property without the prior written consent of PURCHASER'S Office of Trademark and Licensing.
7. If OSUWMC agrees to pay for shipment, provided all goods shipped using OSUWMC's preferred shipping vendor and are sent FOB destination, Bill Third Party, suitably packed and prepared according to the OSUWMC's preferred shipping vendor's specifications. Otherwise, all goods are FOB destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. No charges will be paid by PURCHASER for packing, crating or cartage unless otherwise specifically stated in this Purchase Order. Unless otherwise provided in 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 the full amount of invoice. All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show this Purchase Order number. The container and Purchase Order numbers must be indicated on bill of lading. Packing slips must show Purchase Order number and must be included on each package of LCL shipments and/or with each carload of equipment. PURCHASER reserves the right to refuse or return any shipment or equipment at SELLER'S expense that is not marked with Purchase Order numbers, SELLER agrees to declare to the carrier the value of any shipment made under this Purchase Order and the full invoice value of such shipment. Purchase Orders numbers must be included on invoices; invoices without Purchase Order numbers will not be processed for payment.
8. SELLER shall indemnify and hold harmless PURCHASER from any and all claims, including claims of negligence, costs and expenses, including but not limited to attorneys' fees, arising from, caused by or related to the injury or death of any person (including but not limited to employees and agents of SELLER in the performance of their duties or otherwise), or damage to property (including property of PURCHASER or other persons), which arise out of or are incident to the goods and/or services to be provided hereunder. Nothing herein shall require Indemnification as to any claims against PURCHASER arising from under the Ohio Workers' Compensation law, unless the claim arises out of services performed by SELLER'S employees on University property.
9. 9.1 SELLER represents and warrants that all goods sold or services performed under this Purchase Order are: a) In compliance with applicable laws; b) do not infringe any patent, trademark copyright or trade secret; and c) do not constitute unfair competition. 9.2 SELLER shall indemnify and hold harmless PURCHASER from and against any and all claims, including claims of negligence, costs and expense, including but not limited to attorneys' fees, which arise from any claim, suit or proceeding alleging that PURCHASER'S use of the goods and/or services provided under this Purchase Order are inconsistent with SELLER'S representations and warranties in section 9.1. SELLER'S defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlement. 9.3 If any claim which arises from SELLER'S breach of section 9.1 has occurred, or is likely to occur, SELLER may, at PURCHASER'S option, procure for PURCHASER the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing (without any material degradation in performance, quality, functionality or additional cost to PURCHASER).

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10. Time for delivery of goods or performance of services under this Purchase Order is of the essence. Failure of SELLER to meet delivery schedules or deliver within a reasonable time, as interpreted by PURCHASER alone, shall entitle PURCHASER to seek all remedies available to it at law or in equity. SELLER agrees to reimburse PURCHASER for any expenses incurred in enforcing its rights. SELLER further agrees that undiscovered delivery of nonconforming goods and/or services is not a waiver of the PURCHASER'S right to insist upon further compliance with all specifications.

11. PURCHASER may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of this Purchase Order. Should any such change increase or decrease the cost of, or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by the PURCHASER and SELLER. Notwithstanding the foregoing, SELLER has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by SELLER must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.

12. Neither PURCHASER nor SELLER shall be responsible for any delay or failure in performance resulting from any cause beyond their control, including, but without limitation to war, strikes, civil disturbances and acts of God. When SELLER has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of this Purchase Order. SELLER shall immediately give notice thereof, including all relevant information with respects to what steps SELLER is taking to complete delivery of the goods and/or services to PURCHASER.

13. SELLER agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by PURCHASER, and will use such items only in the production of goods and/or services under this Purchase Order, or any other Purchase Orders issued by PURCHASER. Upon the completion or termination of this or other Purchase Orders, SELLER shall immediately return all confidential information to PURCHASER or shall make other disposition of the confidential information as directed by PURCHASER.

14. SELLER may not assign this Purchase Order, nor any money due or to become due without the prior written consent of the PURCHASER. Any assignment made without such consent shall be deemed void.

15. Goods and services procured subject to this Purchase Order are exempt from Ohio sales tax (Ohio Revised Code Section 5739.02), and from federal excise tax.

16. SELLER shall, at its own expense, comply with all laws, order and regulations of federal, state, and municipal authorities, and with any lawful direction of any public officer which shall impose any duty upon SELLER regarding the performance under this Purchase Order. The goods and services provided under this Purchase Order, and their production and transportation, shall also conform with applicable laws, including but not limited to, state and federal employment laws, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Federal Transportation Act, and the Occupational Health and Safety Act, as well as any law or regulation noted on the face of this Purchase Order.

17. SELLER represents and warrants that it is not excluded from participation, has not been convicted of a criminal offense related to health care, has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent who is excluded from participation in any "Federal health care program" as defined in 42 U.S.C. 1320a-7b(f) to provide items or services hereunder, and that SELLER is not otherwise ineligible to participate, in a "Federal health care program" as defined in or in any other government payment program. SELLER further represents and warrants that no final adverse action, as that term is defined in 42 U.S.C. Section 1320a-7e(g) has occurred or is pending or threatened against SELLER or to SELLER'S knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement. In the event SELLER is convicted of a criminal offense related to health care, excluded from participation, or becomes otherwise ineligible to participate in any such program during the term, SELLER will notify PURCHASER in writing within three (3) days after such an event, and upon the occurrence of such event, whether or not such notice is given to PURCHASER, PURCHASER may immediately terminate this Agreement upon written notice to SELLER.

18. Email invoices to: medctrinvoices@osumc.edu. Inquiries to: accounts.payable@osumc.edu.
Mail rebates to: OSUWMC Financial Services Accounting Manager, 660 Ackerman Road, Room 426, Columbus, OH 43202.

19. This Purchase Order shall be governed by the laws of the State of Ohio, without reference to any choice of laws rules. All notices under this Purchase Order shall be sent to the respective addresses on the face page by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. Postage, delivery and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this section.

20. Unless otherwise agreed to, the effective date of pricing for items purchased pursuant to this purchase order will be the 1st day of the second month after this PO is issued, *e.g.*, if the PO is issued on May 1st, the price effective date is July 1st; if the PO is issued May 31th, the price effective date is July 1st.

21. All individuals employed by SELLER who provide personal services to PURCHASER and/or The Ohio State University are not public employees for purposes of Chapter 145 of the Ohio Revised Code, as amended.

22. Pursuant to R.C. 9.76(B), SUPPLIER warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract arising from this Purchase Order.

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Vendor Compliance with Identity, Medical and Financial Information Security Agreement

The Ohio State University Wexner Medical Center (“OSUWMC”) maintains confidential patient, staff, faculty and customer information as well as confidential business information (“OSUWMC Confidential Information”). This Confidential Information includes, but is not limited to, patient, staff and customer identifying information, patient demographics, patient medical information, patient medical insurance and third party payor information, credit card information, employee demographics, OSUWMC financial information, and other proprietary information.

1. Vendor agrees to comply with OSUWMC’s Information Security Standard or other comparable industry security framework and/or standards. Vendor and its employees shall maintain the necessary security arrangements to prevent the theft or unauthorized disclosure of OSUWMC’s Confidential Information received or accessed in any form.
2. Vendor hereby acknowledges that all OSUWMC Confidential Information, including information from OSUWMC’s information systems, is confidential and the property of OSUWMC. Vendor shall cause any and all OSUWMC Confidential Information to be kept in strict confidence and not disclose or release to any other person or entity.
3. Vendor agrees to access and use OSUWMC Confidential Information only for the purpose(s) for which vendor is granted permission. Vendor agrees not to access, use, share or disclose any data or other OSUWMC Confidential Information obtained from the OSUWMC’s information systems to any third party, other than those employees of the Vendor with a need to know in the performance of this Agreement, without the prior written permission of OSUWMC.
4. For vendors having access to any OSUWMC electronic data, the following Information Security Standards will apply:
 - a. **Data in Use.** Vendor agrees to maintain secure computing environments that are up to date with all appropriate security patches. Vendor agrees to monitor, respond to and log all access and access attempts to OSUWMC data. Vendor also agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all OSUWMC data according to the standards enumerated in D.O.D. 5015.2 or NIST 800-88r1, as amended, and certify in writing that these actions have been complete within 30 days of the termination of this Agreement or within 7 days of the request of an agent of OSUWMC, whichever shall come first.
 - b. **Data in Motion.** Vendor agrees at all times to maintain network security that at a minimum includes: network firewall protection, intrusion detection/prevention and regular vulnerability scanning and penetration testing. Any and all transmission or electronic exchange of OSUWMC data shall take place via secure encrypted transmissions such as HTTPS or FTPS.
 - c. **Data at Rest.** Vendor agrees that any and all OSUWMC data will be stored, processed, and maintained solely on designated servers and that no OSUWMC data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is encrypted using no less than 128 bit encryption key.
 - d. **Security Risk Assessments.** Vendor agrees to provide reports from third party security assessments, or to allow OSUWMC to conduct random security assessments to certify the Vendor has adequate security controls and practices that meet the above standards. Vendor agrees to meet with OSUWMC to discuss any noted deficiencies from such an assessment and reasonably treat them in a mutually agreed time frame based upon risk severity. Vendor agrees to annual security assessments of its security practices to ensure any deficiencies have been fully addressed and that such security practices continue to meet the terms and requirements herein. The security assessments will occur during normal business hours and at a mutually agreed-upon time. Each party will be responsible for its own costs related to the security assessments.
5. Both parties agree that any breach of the confidentiality obligations of this Agreement will result in irreparable damage for which there is no adequate remedy at law. Therefore, it is agreed that OSUWMC shall be entitled to equitable relief, including an injunction enjoining any such breach by any court of competent jurisdiction. Such injunction shall be without prejudice to any other right or remedy to which OSUWMC may be entitled, including damages. Vendor hereby agrees to defend, indemnify and hold OSUWMC, its officers, agents, and employees harmless from any and all claims, suits, demands, awards and judgments for personal or bodily injury resulting from any disclosure of OSUWMC Confidential Information by Vendor or by Vendor’s agents or employees to any third party in violation of the terms of this Agreement. The terms of this paragraph shall survive termination of this Agreement.
6. Vendor agrees to notify OSUWMC immediately of any violation of this Agreement, including the misuse or unauthorized disclosure of any OSUWMC Confidential Information.
7. Vendor agrees that OSUWMC may immediately terminate this Agreement and deny Vendor access to OSUWMC’s facilities and information systems without notice whenever OSUWMC, in its sole opinion, has determined that Vendor, its agents, or employees has violated any of the provisions of this Agreement. In the event of such termination, Vendor agrees that OSUWMC shall not be liable to Vendor for any damages resulting from Vendor’s inability to access facilities or information within OSUWMC information systems. The obligation to maintain the confidentiality of the OSUWMC Confidential Information survives the termination of this Agreement. Upon termination of this Agreement, all OSUWMC Confidential Information accessed shall either be returned to OSUWMC or destroyed, and certified in writing as such.
8. If either party becomes legally compelled by law, process or order of any court or governmental agency to disclose any OSUWMC Confidential Information, that party shall notify the other, if legally permitted, so that it may seek a protective order or take other appropriate action.