

MEMORIAL SLOAN KETTERING CANCER CENTER TERMS AND CONDITIONS OF PURCHASE

rev 7.23.2014

ACCEPTANCE: Whether construed as an offer, acceptance or confirmation, these terms govern all Purchase Orders ("Order(s)") issued by Memorial Sloan Kettering Cancer Center ("MSK") to the Seller identified on each Order. Fulfillment of any part of an Order, or any other conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of an Order, shall constitute acceptance by Seller of such Order and all of the terms included or referenced on this page (the "Terms"). MSK's submission of the Order is conditioned on Seller's agreement that any terms different from, or in addition to, the Terms, whether communicated orally or in any writing, irrespective of the timing, shall not form a part of the Terms, even if Seller purports to condition its acceptance of the Order on MSK's agreement to such different or additional terms. The Order and the Terms shall constitute the final, complete and exclusive statement of this contract and may be modified or rescinded only by a written instrument executed by an authorized representative of MSK. **As an offer, this Order expressly limits acceptance to its terms, and notification of objection to any different or additional terms from Seller in any response to this offer is hereby given.** If this Order is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the Seller's assent to any additional or different terms contained in this Order. If this Order is construed as a confirmation of an existing contract, the parties agree that this Order constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise executed signed, written contract covering the procurement of the products or services described in the Order, the terms of such agreement shall prevail over any inconsistent terms herein. **Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or services pursuant to an earlier contract, this Order incorporates by reference all terms of the Uniform Commercial Code providing any protection for MSK, including without limitation all express and implied warranty protection and all remedies.** This order is enforceable by MSK directly against Seller, regardless of whether the order was submitted directly to Seller by MSK, or was submitted to Seller by another party on behalf of MSK. No other party shall have any authority to: (a) act for MSK; (b) bind MSK to any agreements or modifications; or (c) otherwise act as agent for MSK.

SHIPPING AND RISK OF LOSS: Shipping and side mark instructions specified on face of the Order must be adhered to unless permission to deviate is given by MSK. Notwithstanding any agreement to pay freight or other transportation charges, delivery will not be deemed complete and all risk of loss shall remain with Seller until the goods have been received and accepted by MSK.

DELIVERY SCHEDULE AND DELAYS IN DELIVERY: It is Seller's responsibility to comply with the delivery schedule. Goods shipped to MSK in advance of schedule may be returned at Seller's expense. In the event Seller is unable to deliver any part or all of the Order, Seller shall immediately notify MSK. Such notice will not limit the remedies available to MSK or the liability of Seller for non-performance.

INSPECTION; REJECTION: All material shall be subject to MSK's inspection and rejection. Goods rejected and returned as defective or not in accordance with this order, shall not be replaced without a new order. Payment for material or for services on this order rendered prior to inspection shall not constitute acceptance. If any of the goods or services are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of the order, including any drawings and specifications, MSK shall have the right, in addition to any other rights which MSK may have under warranties or otherwise, to reject and return such goods at Seller's expense, and such goods shall not be replaced without written authorization from MSK.

WARRANTY: Seller expressly warrants that all goods and services covered by the Order will conform to the specifications, drawings, samples or other descriptions furnished or specified by MSK and will be merchantable, of good material and workmanship and free from defects. Seller expressly warrants that all goods and services covered by the Order, will be fit and sufficient for the purposes intended. All terms and conditions and all representations and warranties of the Seller shall survive delivery. Inspection, testing, acceptance or use of the goods by MSK shall not affect Seller's obligations under this warranty. Upon notice from MSK, Seller, at its own expense, shall promptly replace or correct defects of any goods or services not conforming to the foregoing warranty. If Seller fails to promptly correct defects or replace non-conforming goods or services, MSK may, upon notice to Seller, make such corrections or effect cover at Seller's expense. Seller hereby assigns to MSK all assignable warranty rights with respect to the goods in this Order, including without limitation all rights of Seller under warranties of any manufacturer of any of the goods or any part or component.

CHANGE ORDERS: MSK shall have the right to make changes in the Order, but no additional charge will be allowed unless authorized in writing by MSK. If such changes affect delivery or the amount to be paid by MSK, Seller shall notify MSK immediately and negotiate an adjustment.

PAYMENT: As full consideration for Seller's satisfactory provision of the products or performance of the services, MSK will pay Seller's invoice as specified on face of the Order. No charges of any kind will be allowed unless specifically agreed to by MSK in writing.

PRICE CHANGES: The prices specified in the Order are guaranteed by Seller against manufacturer's or Seller's own price decline and against legitimate competition until date of shipment. If prior to final shipment, Seller sells or offers to sell goods substantially of the same kind as ordered, at lower prices or on terms more favorable than those stated in the Order, the prices and terms herein shall be automatically revised to equal the lowest prices and most favorable terms and payment shall be made accordingly. In the event MSK becomes entitled to such lower prices, but has already made payment at the higher price, Seller shall promptly refund the difference in price to MSK. Discount terms begin with the receipt of invoice or goods, whichever is later.

NON-ASSIGNMENT: This order is placed upon the condition that the Seller shall not assign it or any interest therein, including payment due or to become due, without MSK's prior written consent.

SET-OFF: MSK shall be entitled at all times to set-off any amount owing from Seller to MSK or any of MSK's affiliated companies against any amounts due to Seller with respect to the Order.

COMPLIANCE WITH LAWS: Seller represents and warrants that the goods to be furnished or the services to be rendered pursuant to the Order were or will be sold, produced or performed in compliance with all applicable requirements of Federal, State, and Local Law and administrative rules and regulators pertaining thereto, including but not limited to: (i) all laws, rules and regulations pertaining to Medicare, Medicaid, other federally funded State entitlement programs promulgated by the United States Department of Health and Human Services, including its Office of the Inspector General and the Centers for Medicare and Medicaid Services, (ii) all rules, regulations and standards promulgated by the Joint Commission, (iii) all applicable rules of the Federal Trade Commission, the Consumer Products Safety Commission and the Department of Health, Education and Welfare, including care labeling requirements, and (iv) the requirements of each of the following Acts to which it may be subject; The Federal Food Drug and Cosmetic Act, and the Federal Hazardous Substances Act.

PRIVACY: The parties shall treat as private and confidential, in accordance with all applicable federal, state and local laws, rules and regulations governing the privacy and confidentiality of individually identifiable health information, including, without limitation, Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 and any regulations and official guidance promulgated thereunder, all individually identifiable health information used or disclosed pursuant to the Order. Seller agrees to immediately notify MSK if it anticipates it will have access to patient health information and agrees to enter into a Business Associate Agreement.

TERMINATION: At any time and by written notice, MSK may terminate for convenience: (i) the Order; or (ii) its obligation to purchase any products or services from Seller. MSK shall pay for any products delivered or services performed prior to the date that termination becomes effective (on a pro rata basis if MSK has paid any fees in advance covering a fixed period of Services). Unless MSK has requested and received a refund in respect of any undelivered product(s) or terminated services, it shall be entitled to the delivery of all product(s) and completion of all services for which it has paid prior to the effective date of the termination. In addition to any other remedy provided at law or equity, MSK shall have the right to terminate or cancel the Order, and any obligation to purchase, sell or provide a product or service, in the event Seller: (a) fails to comply with any condition of the Order or any related Agreement, and such failure is not remedied within thirty (30) days after written notice thereof has been given to Seller; (b) becomes insolvent, makes an assignment for the benefit of creditors, suffers or permits the appointment of a receiver, trustee in bankruptcy or similar officer for

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all or parts of its business or assets; or (c) avails itself of or becomes subject to any bankruptcy proceeding under the laws or any jurisdiction relating to insolvency or the protection of rights of creditors.

BUILDING PERMITS AND LICENSES: Seller shall at its own cost and expense obtain and pay for all surveys, permits, certificates, and licenses necessary for performance of the Order.

INDEMNIFICATION AND INSURANCE: Seller agrees to indemnify and hold harmless MSK against all inter-party and/or third party demands, claims, lawsuits, assessments, judgments, settlements, fines or expenses including costs and reasonable attorneys' fees arising out of or related to: (a) any breach or alleged breach of any of the Terms or conditions of the Order or any representations or warranties of Seller made in the Terms or otherwise, (b) the acts or omissions of Seller, its employees, subcontractors, or agents in performance of the Order, (c) a claim that the goods or services provided by Seller are dangerously defective, (d) a claim that Seller's products or services, or any part thereof, infringes a patent, copyright, trademark, trade secret, drug exclusivity period, or other intellectual or proprietary right of a third party, or (e) a claim originating in Seller's failure to comply with applicable regulatory provisions. During the performance of any work under the Order, Seller shall provide and maintain, at its sole cost and expense, minimum insurance coverage as follows: (a) Workers' compensation insurance with statutory limits of liability, (b) Commercial General Liability Insurance, including products-completed operations liability insurance, written on a "ISO" commercial general liability form or its equivalent, with combined single limits for bodily injury and property damage, including sexual abuse, of not less than \$1,000,000 each occurrence and \$2,000,000 in the general aggregate and \$2,000,000 in the products-completed operations aggregate in a policy year, (c) automobile liability (covering owned and non-owned vehicles) coverage with limits of not less than \$1,000,000 per accident, and (d) Umbrella Liability Insurance in excess of the employer's liability, commercial general liability and business auto liability insurance in an amount not less than \$10,000,000. Seller shall name MSK as an additional insured under the coverage required by subsection (b) and (d). To the extent permitted by applicable law, such coverage shall: (a) be primary and non-contributory to any other insurance carried by MSK; (b) contain standard cross-liability provisions as to separation of insureds; (c) provide for a waiver of all rights of subrogation which Seller's insurance carrier might exercise against MSK; and (d) not require contribution before any excess or umbrella liability coverage will apply.

EQUAL EMPLOYMENT / AFFIRMATIVE ACTION: Seller warrants that it does not and will not in violation of applicable law: (a) discriminate in hiring on the basis of gender, religion, race, creed, color, national origin, ancestry, military status, veteran's status, sexual orientation, marital status, age, genetic information, disability, or status as a victim of domestic violence or (b) utilize child labor, prison labor or indentured or forced labor in the operation of its business.

CONFIDENTIALITY: All specifications, documents, artwork, data or drawings delivered to Seller by MSK, and any other non-public information MSK discloses to Seller, remains MSK's property. The information is provided to Seller solely for the purpose of Seller's performance of the Order and on the express condition that neither the Order nor the information contained therein or provided in connection therewith shall be disclosed to others or used for any purpose other than in connection with the Order, without MSK's prior express written consent. Upon request, Seller shall return all such information to MSK or destroy it. Seller's obligations under this paragraph shall survive the cancellation, termination or other completion of the Order.

LIMITATION OF LIABILITY: In no event will MSK be liable to seller or any third party, in contract, tort or otherwise, for any loss of profits or business, or any special, incidental, indirect, exemplary, punitive or consequential damages, arising from or as a result of the Order or any agreement between the parties relating to the products, services or deliverables supplier provides, even if MSK has been advised of the possibility of such damages.

ON-SITE SERVICES. If Seller performs any services at one of MSK's sites, Seller agrees to employ only competent and skilled personnel who have been adequately trained in applicable safety procedures and provided with all necessary safety equipment to perform the services. Upon MSK's request, Seller will immediately remove from all facilities and replace any personnel who are unsatisfactory to MSK for any reason. Seller warrants that all personnel assigned to the MSK facility shall have a prior satisfactory work record in a responsible capacity, be legally authorized to work in the United States, and will be paid all legally required wages and applicable overtime. Seller further agrees, while Seller's personnel are on MSK premises, that they will abide by MSK's normal rules of work and other policies provided to Seller in writing.

REMEDIES: MSK's remedies shall be cumulative. Waiver of any breach by MSK shall not constitute a waiver of any other breach of the same or any other provision. Acceptance of any items or payments shall not waive any breach.

GOVERNING LAW/SUBMISSION TO JURISDICTION: These Terms shall be construed in accordance with the laws of the State of New York without regard to choice of law provisions and shall not be subject to or governed by the U.N. Convention on Contracts for the International Sale of Goods. Seller hereby consents to the jurisdiction of any local, state, or federal court located within New York City, New York and waives any objection which Seller may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court.

USE OF NAME: Seller shall not use the name of Memorial Sloan Kettering Cancer Center, Memorial Hospital for Cancer and Allied Diseases or Sloan-Kettering Institute for Cancer Research, or a variant of any of the foregoing in any advertising or publicity matter, or any other communication with a third party, without MSK's prior written consent.

BOOKS AND RECORDS: Seller agrees that if the Order is determined to be a contract or "subcontract" within the meaning of the Medicare statutes and regulations, the Seller will allow, until the expiration of four years after the furnishing of the Products or Services, the Secretary of the Department of Health and Human Services and the Comptroller General or any of their duly authorized representatives, access any books, documents and records necessary to certify the nature and extent of costs incurred by MSK. Seller will provide accurate and complete information to MSK on the purchase price of the goods, including any discounts and rebates, so that MSK can include the cost of goods purchased from Seller in its cost report and any other reports to government agencies.

EXCLUSION FROM GOVERNMENTAL PROGRAMS: Seller represents and warrants that it is not excluded from participating in the Medicare or Medicaid program and not ineligible to participate in any governmental program. Seller shall immediately notify MSK in the event Seller becomes debarred or suspended from any governmental program.

DEFICIT REDUCTION ACT: Seller shall comply (when applicable) with the requirements of the Deficit Reduction Act of 2005 ("DRA") which requires implementation of a compliance policy designed to prevent and detect fraud and abuse. Seller agrees to comply with MSK's Fraud and Abuse policy implemented in compliance with the DRA.

SEVERABILITY: If any provision of the Order is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Order; and the Order will be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Order.

WORKS CREATED: Seller and MSK each consider the works created and produced and any documentation or other products and results of the services to be rendered by Seller (the "Work") to be a work made for hire as that phrase is understood under the copyright laws of the United States. Seller acknowledges and agrees that the Work (and all rights therein) belongs to and will be the sole and exclusive property of MSK. Seller agrees that its assigns, agents, successors, and representatives will not have the right to make any claims in any way or with regard to any aspect of, the Work. Seller agrees that its exclusive rights are to be paid in full upon satisfactory performance of the Order. If the Work is not considered a work made for hire under applicable law, Seller hereby sells, assigns, and transfers to MSK, its successors and assigns, the entire right, title and interest in the copyright of the Work, and any related registrations and copyright applications, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and, in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all corresponding rights throughout the world. Seller agrees to execute all papers and to perform such other proper acts as MSK may deem necessary to secure for it or its designee the rights herein assigned.