

GALVESTON COUNTY HEALTH DISTRICT

Protecting and Promoting the Optimal Health and Well-Being of Galveston County

Zach Davidson
Chairman, United Board of Health



Philip Keiser, MD
Local Health Authority
Chief Executive Officer

Purchase Order Terms and Conditions

ACCEPTANCE

Unless otherwise provided herein, the written acknowledgement of this Purchase Order or the delivery of any goods, services, or equipment pursuant to this Purchase Order shall constitute acceptance by Seller of this Purchase Order, subject to all its terms and conditions. Seller, by shipping the goods or equipment pursuant to this Purchase Order, agrees to the terms and conditions set forth herein. Inconsistent provisions or additional terms in any written form used by Seller shall have no force or effect unless accepted in writing by Buyer. Unless Seller advises Buyer promptly in writing and by return mail of any additions or exceptions to the terms and conditions on this Purchase Order, these terms and conditions shall be deemed to have been accepted by Seller.

PRICE AND PAYMENTS

Buyer shall not be billed at prices higher than those stated on the front of this Purchase Order; unless Seller advises Buyer promptly in writing the reason for the price adjustment. Payment of the Invoice will be initiated no earlier than 30 days after Seller sends and Buyer receives and accepts all the following: (a) All Deliverables specified in the Order; (b) Seller's itemized statement detailing itemized materials, equipment, work or goods as specified in the purchase order in sufficient detail to justify any charges and the Order number (the "Invoice"); and (c) Copies of warranties, manuals, and all other documents required for the Deliverables. Buyer may, but shall not be required to, make payments directly to any subcontractor or supplier. If Buyer disputes any portion, the Purchase Price shall be reduced by the amount of such payments, Buyer shall pay the undisputed portion of the Invoice in accordance with these Purchasing Terms and Conditions. Buyer shall submit a written claim for the disputed portion of the Invoice to Seller within sixty (60) days of the date of the Invoice. The Parties shall cooperate and act in good faith to resolve the dispute. Unless Buyer agrees to the contrary on the face of the Order, Buyer shall not be obligated to make advance or partial payments for any material or equipment. Buyer will only pay for the quantity received, not to exceed the maximum quantity ordered. Invoices with the Order number shall be emailed to Buyer's Accounting Department at ap@gchd.org.

TAXES

All applicable taxes arising out of transactions contemplated by the Purchase Order will be borne by Seller except as otherwise specified by the parties in writing. Seller recognizes that Buyer is a tax-exempt entity, and Buyer will provide Seller with its exemption certificate on request. All invoices of Seller to Buyer shall exclude taxes that are excludable under Purchaser's tax-exempt status.

HAZARDOUS MATERIALS

Seller is responsible for notifying Buyer of expected receipt of Products that are hazardous material (as defined by the United Nations' Committee of Experts on the Transport of Dangerous Good and the Globally Harmonized System of Classification and Labeling of Chemicals), prior to delivery. Seller agrees

that all Products that are hazardous material shall be shipped on a separate pallet from non-hazardous material and be accompanied by a Material Safety Data Sheet (MSDS). Seller is responsible for shipping Products that are hazardous material according to relevant International Air Transport Association (IATA) and International Maritime Dangerous Goods (IMDG) requirements, including labeling boxes and indicating UN Hazard Number and Class on shipping waybill.

TEMPERATURE REQUIREMENTS

Seller is responsible for notifying Buyer of any Products requiring storage outside of ambient temperature, customarily defined as 59 – 77 F/15 – 25 C, prior to shipment or delivery. Seller agrees to provide Buyer with manufacturer's temperature requirements for all Products that require storage outside of ambient temperature. Seller agrees to package and label Products in accordance with IATA guidelines, including labeling boxes and indicating temperature range on shipping waybill.

DELIVERY

Time is of the essence. Seller shall ensure that delivery is made in accordance with the time stated in Seller's quote. The Seller must notify the Buyer of any delays as soon as possible. The Buyer reserves the right to cancel the order if delivery is not made as specified. Seller will ensure that each shipment is accompanied by a master packing slip, which will include the Buyer's Purchase Order number and quantity of Product shipped, itemized per packaging unit. The Seller's packing slip shall clearly state unit conversions between packaging units. Seller will send an electronic copy of the master packing slip to the Buyer.

CERTIFICATES OF ANALYSIS (COA)

Seller agrees that all Products that are drugs must be shipped with accompanying COA. One COA is required per lot. If a COA is unavailable, a COC (certificate of conformity) may be supplied instead.

QUANTITY

Buyer shall return at Seller's expense all goods or equipment shipped in excess of the quantity ordered unless otherwise agreed in writing by Buyer.

FORCE MAJEURE

Neither party shall be held liable for any delay or failure in performance of this Purchase Order if such delay is caused by fires; strikes; embargoes; requirements imposed by government regulation or civil or military authorities; acts of God / the public enemy or omissions of carriers or suppliers or all other causes beyond the reasonable control of either party. If such contingency occurs, the party affected by the other's inability to perform shall elect to: (a) terminate this Purchase Order or part thereof as to goods, services, or equipment not already received; or (b) suspend this Purchase Order for the duration of the delaying cause, buy or sell the goods, services, or equipment elsewhere, deduct from the Purchase Order commitment the quantity bought or sold and resume performance under this Purchase Order once the delaying cause ceases. In the event that a condition of force majeure exists/ the delivery date shall be extended up to the length of time that the contingency endures; however, in no event shall such extended period of time exceed thirty (30) days from the scheduled delivery date. Unless written notice is given promptly after such injured party is apprised of the existence of a condition of force majeure, (b) shall be deemed selected.

TERMINATION

As to non-custom goods, services, or equipment, Buyer reserves the right to terminate this Purchase Order or any part thereof without cause and to cancel all or part of the undelivered portion of the Purchase Order. As to custom made goods, services, or equipment, Buyer has the right to cancel if the Seller does not make deliveries as provided in this Purchase Order or if Seller breaches any of the terms hereof/ including the warranties. Buyer shall not have any obligation to Seller with respect to the cancelled portion of this Purchase Order, and Buyer's obligations shall be limited to payment for the delivered portion of this Purchase Order which meets all specifications contained herein.

INSPECTION

All goods, services, or equipment supplied shall be subject to Buyer's inspection at Buyer's premises within a commercially reasonable time after delivery. Goods, services, or equipment rejected as not conforming to this Purchase Order may be rejected by Buyer and returned at Seller's expense, including transportation and handling costs. If the Seller delivers nonconforming goods, services, or equipment or fails to deliver any goods, services, or equipment ordered by Buyer pursuant to this Purchase Order, Buyer may make any commercially reasonable purchase of substitute or equivalent goods, services, or equipment and may deduct from the Purchase Order the cost of such substitute goods, services, or equipment and any costs associated therewith. In addition, Buyer may deduct any costs resulting from such nonconformance or non-delivery of goods, services, or equipment, including incidental and consequential damages, and may withhold such damages from sums due or to become due. Prepayment for goods, services, or equipment shall not constitute Buyer's acceptance thereof. Acceptance of the goods, services, or equipment shall be deemed to occur when Buyer notifies Seller in writing that the goods, services, or equipment conform to the specifications of the Purchase Order or if Buyer fails to reject them within a commercially reasonable time after delivery.

TITLE AND RISK OF LOSS

Seller shall retain title and bear all risk of loss resulting from any cause for goods, services, or equipment covered by this Purchase Order in accord with F.O.B. designation set forth on the face of this Purchase Order.

INSURANCE

During the term of the Agreement, Seller shall maintain insurance coverage of such types and in such amounts as necessary to protect against liabilities that may arise from Seller's performance of its obligations under the Agreement, including Seller's indemnification obligations under these Terms. Such policies shall include, at a minimum, workers compensation or employer liability insurance, comprehensive general liability insurance, and, if applicable, automobile insurance. Evidence of such insurance coverage shall be submitted to Buyer upon request. Seller shall cause Buyer to be named as "additional insured" in connection with all policies except Seller's workers' compensation policy. Seller waives all rights of recovery or subrogation against Buyer for damages to the extent covered by the insurance obtained pursuant to this Section, whether or not such damage was caused by the negligence, strict liability or other actions or inactions of Buyer.

WARRANTIES

Seller expressly warrants that all goods, services, or equipment covered by this Purchase Order (a) shall be of good and merchantable quality and workmanship and free from defects, latent or patent; (b) shall conform to the drawings, specifications, descriptions, and samples furnished or specified by Buyer and

(c) if the goods, services, or equipment are produced in accord with Buyer's specifications, they shall be suitable and sufficient for the intended purposes. Without Buyer's prior written consent, no goods, services, or equipment may be substituted in lieu of those specified. Seller warrants that the manufacture of the Goods and any component part thereof, and the use or resale of such Goods do not infringe any patent, copyright, trademark, trade secret or other intellectual property right of any third party. Any copyright to material generated in connection with the Agreement shall be assigned by Seller to Buyer without cost or expense to Buyer, and Seller agrees to take appropriate action to assign such rights. Seller represents and warrants that the Goods comply with all applicable laws, permits, rules and regulations, including environmental and health and safety laws and regulations, and further, that the delivery of such Goods (if arranged by Seller) complies with all applicable laws, permits, rules and regulations regarding packaging, marking, and shipping of the Goods. Seller covenants with Buyer that Seller shall fully protect Buyer relative to all warranties provided by any manufacturers of components incorporated into the goods, services, or equipment. No implied warranties of Seller are excluded or disclaimed.

DRUGS, MEDICINES AND RELATED PRODUCTS

Seller expressly warrants that any drugs, medicines, or other products manufactured for human consumption and covered by this Purchase Order are of good quality, free of contamination and are fit for human consumption. Without limiting the provisions of the following paragraph 15, "PATENTS," Seller further agrees to indemnify, save harmless and defend Buyer and its agents, employees and other users from all liability, loss, injury, or damage, including all incidental and consequential damages, to person or property arising out of Seller's delivery of contaminated drugs, medicines, or other products. In the event that any drugs, medicines, or other products purchased under this Purchase Order are subject to a recall program, any and all expenses incurred by Buyer relative to compliance with such recall program shall be for the account of Seller. All drugs, medicines or other products manufactured for human consumption or use covered by this Purchase Order must have all necessary approvals of the Food and Drug Administration.

PATENTS

Seller warrants that the goods, services, or equipment covered by this Purchase Order and the sale or use of them will not infringe any United States or foreign letters patent, and Seller shall indemnify and hold harmless Buyer, its agents, employees and other users against all suits at law or in equity from all damages and expenses, including all incidental and consequential damages, resulting from claims and demands for actual or alleged infringements of any patent by reason for the sale or use of the goods, services, or equipment covered by this Purchase Order. Buyer shall promptly notify Seller in writing of any patent infringement action or proceeding which is filed against Buyer and as to which Seller is obligated to indemnify Buyer, and Seller shall defend or settle such action at its own expense. However, Buyer reserves the right to control or participate in any such patent infringement action brought against Buyer. In the event that Buyer should be enjoined in any such action or proceeding from using any of the goods, services, or equipment that are the subject of this Purchase Order, Seller, at its option, shall promptly: (a) secure termination of the injunction and procure for Buyer the right to use such goods, services, or equipment without any obligation or liability; (b) replace said goods, services, or equipment with non-infringing goods, services, or equipment or modify same to make them non-infringing, all at Seller's expense and to Buyer's satisfaction or (c) remove said goods, services, or equipment at Seller's expense and refund to Buyer the amount paid to Seller therefore. If (c) is selected, Seller shall also be responsible for Buyer's expenses incurred in purchasing substitute goods, services, or equipment.

INDEMNIFICATION

Seller shall indemnify and hold Buyer harmless from and against any and all loss, cost, expense, liability, or damage, including, without limitation, all reasonable attorneys' fees, and court costs, arising out of or in connection with Seller's negligence, wilful misconduct or breach of this Agreement. For the purposes of this section, Buyer shall be deemed to include its employees, agents, officers, and members of its governing boards.

LIMITATION OF LIABILITY

BUYER'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS PURCHASE ORDER IS LIMITED TO THE AMOUNT PAID BY BUYER FOR THE PRODUCTS. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, BUYER SHALL NOT BE LIABLE UNDER THIS PURCHASE ORDER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

COMPLIANCE WITH LAW

Seller agrees that all performance pursuant to this Purchase Order is and shall be subject to and in compliance with all laws, rules, regulations, ordinances, demands, executive orders or other requirements of the municipal, state and federal governments and all political subdivisions thereof which now govern or may hereafter govern the manufacture, sale or delivery of the goods, services, or equipment covered by this Purchase Order, including, but not limited to, the Fair Labor Standards Act of 1938, the Federal Food, Drug and Cosmetics Act, the Federal Consumer Products Safety Act, the Federal Hazardous Substances Act and any other applicable laws. Seller further warrants that each chemical substance contained in goods or equipment covered by this Purchase Order is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act.

ASSIGNMENT

Seller shall not delegate any duties nor assign any rights or claims under this Purchase Order without the prior written consent of Buyer, and any attempted delegation or assignment shall be void. All claims for moneys due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other purchase order that Seller has placed with Buyer, whether such setoff or counterclaim arose before or after any such assignment by Seller.

SEVERABILITY

If any of the provisions of this Purchase Order shall be declared to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Purchase Order. In such event, the entire Purchase Order shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

GOVERNING LAW

Buyer and Seller agree that this Purchase Order and any terms or provisions, as well as the rights and duties hereunder, shall be governed by the laws of the State of Texas. In the event that any legal proceeding is brought to enforce this agreement, or any provision hereof, Galveston County is the venue for said action.