

**FROEDTERT HEALTH, INC. ("BUYER")  
TERMS AND CONDITIONS OF PURCHASE**

1. **BASIC AGREEMENT** – Buyer and Vendor agree that Vendor will sell to Buyer product from time to time ordered on or pursuant to Buyer's "Purchase Order," or otherwise, and that **EACH ORDER (AND ANY AND ALL OTHER PURCHASES BY BUYER FROM VENDOR) THAT IS PLACED OR PURCHASE MADE SHALL BE SUBJECT TO AND GOVERNED BY THESE TERMS AND CONDITIONS OF PURCHASE ("AGREEMENT")**. The term "Buyer" shall include Froedtert Health, Inc., and its affiliated entities Community Memorial Hospital of Menomonee Falls, Inc., Froedtert Memorial Lutheran Hospital, Inc., St. Joseph's Community Hospital of West Bend, Inc., and Froedtert & The Medical College of Wisconsin Community Physicians, Inc.
2. **CONFLICTING TERMS** – The terms of Buyer's Purchase Order constitute an offer to purchase. Any conduct by Vendor which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Vendor of any Purchase Order and all of its terms and conditions and, thereby, the terms and conditions of this Agreement. Neither silence nor any other conduct, including acceptance by Buyer of any products ordered, shall constitute an assent to any additional, different or conflicting terms proposed by Vendor or waiver of this provision.
3. **CANCELLATION** – Buyer reserves the right to cancel or suspend all or, from time to time, any undelivered or unexecuted portion of a Purchase Order (a) for cause if Vendor fails to make any delivery or to perform any work as scheduled or if Vendor breaches any of the terms of this Agreement or the Purchase Order or (b) without cause upon written confirmation thereof to Vendor. Buyer's entire liability and Vendor's exclusive remedy for any change and/or cancellation or suspension of all or any part of a Purchase Order shall be limited to Buyer being obligated to reimburse Vendor for Vendor's expenses incurred prior to notice of cancellation and resulting directly or indirectly from any such cancellation or suspension made without cause; provided, however, that such amount shall in no event exceed the applicable pro rata portion of the Purchase Order price.
4. **PACKAGING AND LABELING** – All product must be packaged and identified, without additional charge to Buyer, in the manner specified by Buyer and shipped in the manner and by the route and carrier designated by Buyer, FOB Buyer. If Buyer does not specify the manner in which the product must be packaged and identified, Vendor shall package the product so as to avoid any damage in transit and identify the product by displaying Buyer's name and Purchase Order number on each unit or package shipped. If Buyer does not specify the manner of shipment, route, or carrier, Vendor will ship the product at the lowest possible transportation rates and assure timely delivery. All dated goods must have a remaining shelf life of at least 6 months from the date of delivery.
5. **DELIVERY** – The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth herein is of the essence of Buyer's Purchase Order. Deliveries are to be made both in quantities and at times and destinations specified therein and, if not so specified, in such quantities and at such times and destinations as are specified pursuant to Buyer's written instruction. The risk of loss, damage, or delay in transit shall be borne by Vendor until actual receipt of the products by Buyer in conformity with the terms of this Agreement and Buyer's Purchase Order.
6. **FORCE MAJEURE** – In the event of the existence, happening, or continuance of any contingency preventing or substantially interrupting or curtailing the business of Buyer, such as fire, accident, war (whether international or civil and without regard to whether a formal declaration thereof has been made and whether or not affecting the country of Buyer or Vendor), restraint by any government, order, directive, law or regulation of any federal, state, or local agency, strike, site down, lock out, combination of workman, shortage of labor, fuel, power or raw materials, embargo, restriction of transportation facilities, act of God, involuntary shutdown of Buyer's production facilities, or any other similar or dissimilar cause beyond the reasonable control of Buyer, Buyer shall not be under any obligation during the period of such prevention, interruption, or curtailment to accept delivery of or pay for any product ordered.
7. **PRICES** – Buyer's Purchase Order must not be filled at a price higher than shown on the Purchase Order without prior approval. Vendor warrants that the prices for the product sold to Buyer under any Purchase Order are not less favorable than those currently extended to any other customer of Vendor for the same or like product in equal or less quantities. In the event Vendor reduces its price for such product during the term of this Purchase Order, Vendor agrees to reduce the prices hereof correspondingly.
8. **INVOICES** – Invoices must be rendered immediately upon shipment of product. Invoices are paid from date of invoice date, net 30. All invoices must show Buyer's Purchase Order number and routing. Separate invoices must be tendered for each separate Purchase Order and for each separate shipment under each Purchase Order. Receipted express or freight bills must be tendered to support such charges when shown on an invoice.
9. **INSPECTION AND TESTING** – Acceptance of product and/or services by Buyer will be subject to inspection and testing by Buyer after physical receipt, installation, or assembly of product. Payment for product delivered hereunder shall not constitute acceptance thereof. In the event Buyer receives product whose defects or nonconformities are not apparent on reasonable examination, Buyer reserves the right to require the replacement of such product at no cost to Buyer upon detection of such defects or nonconformities.
10. **WARRANTIES** – Whether or not Vendor is a merchant of the product provided by it, Vendor warrants that all product provided by it (a) shall be of good quality and workmanship and free from all defects, latent or patent, in design, materials and workmanship, (b) shall conform to all specifications, drawings, samples, and other descriptions furnished, specified, or adopted by Buyer, (c) shall be merchantable and suitable, sufficient, and fit for their intended and particular purpose, and (d) shall be free of all liens and encumbrances and any claim of title of any third party. None of the remedies available to Buyer for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate written agreement specifically designating such limitation and signed by an authorized representative of Buyer.
11. **REMEDIES** - Each of the rights and remedies reserved by Buyer shall be cumulative and additional to any other or further remedies provided at law, in equity or otherwise. All product (a) not fully up to standard, (b) not in compliance with the specifications hereof, (c) shipped contrary to instructions or in excess of the quantities herein provided, (d) substituted for merchandise herein described, (e) not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications, in recognized standard containers conforming to carrier's specifications), (f) allegedly violating any statute, ordinance, or administrative order, rule, or regulation, (g) not packaged, bagged, labeled, invoiced, or stamped in compliance with any federal, state, or local law, rule, or regulation, or (h) allegedly infringing any patent, trademark, or copyright, may be rejected by Buyer and returned to Vendor at Vendor's expense and risk or held at Vendor's expense and risk.
12. **INTELLECTUAL PROPERTY** - Vendor warrants that the product furnished under this Agreement and the sale and ordinary use thereof will not infringe any patent, trademark, copyright, or other rights, whether in the United States or elsewhere, or constitute a misappropriation of trade secrets or breach of confidential relationship with respect to product covered by this Agreement.
13. **INDEMNIFICATION REGARDING DEFECTS** - Vendor shall defend and indemnify Buyer against all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees) arising out of or resulting in any way from any defect in the product covered by this Agreement or any Purchase Order of Buyer or from any act or omission of Vendor, its agents, employees, or subcontractors, whether based upon claims of negligence, breach of warranty, or strict liability in tort or otherwise. Vendor shall maintain such public liability insurance, including products liability, completed operations, contractors liability, and protective liability, automobile liability insurance (including non-owned automobile liability), worker's compensation insurance, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses, and expenses (including reasonable attorneys' fees). Vendor agrees to submit certificates of insurance evidencing its insurance coverage when and as requested by Buyer.
14. **PROVISION OF SERVICES** – If Vendor furnishes or agrees to furnish services of any of its employees or agents in connection with the installation of equipment or any other matter under this Agreement or to perform work on Buyer's premises, Vendor agrees that such employee or agent of Vendor in performing such services is not and shall not be deemed to be the agent or employee of Buyer. Vendor shall comply with all applicable laws relating to or affecting the employment of labor, including but not limited to Wisconsin Administrative Code Chapter HFS 12 (Caregiver Background Check) and OSHA requirements including the Bloodborne Pathogens Standards for Healthcare Workers. Vendor shall indemnify, hold harmless, and defend Buyer from any and all liabilities and expenses (including reasonable attorneys' fees) arising out of claims for injuries, including death, and also from and against any and all liabilities and expenses (including reasonable attorneys' fees) arising out of losses or damages to property caused by or resulting from the performance of the work covered hereby. Vendor shall maintain, at its expense, complete worker's compensation, employer's liability, and public liability insurance against injuries to persons, including death, and loss or damages to property.
15. **MEDICARE EXCLUSION** – Vendor warrants that neither it nor any of its personnel (including employees and contractors) are currently excluded from participating in Medicare, Medicaid or other Federal health care programs. Vendor agrees to notify Buyer promptly, and in no event more than five days after receiving notice that it or any of its employees or contractors has been or may be excluded from participating in such health care programs. In the event that Vendor is so excluded, this Agreement shall terminate upon the effective date of such exclusion, notwithstanding any other provision of this Agreement. In the event that any of Vendor's employees or contractors is so excluded, Vendor agrees to remove such person from performing services under this Agreement (including any administrative or other services provided pursuant to this Agreement), and to inform Buyer of the steps it has taken to do so. If Buyer determines in its reasonable discretion that any such exclusion impairs Vendor's ability to render services pursuant to this Agreement, or impairs Buyer's ability to bill for services that it provides, then it may immediately terminate this Agreement.
16. **CONFIDENTIALITY** – Vendor shall not, without first obtaining Buyer's written consent, disseminate the fact that Vendor has furnished or has contracted to furnish Buyer with the items covered hereby nor, except as is necessary for performance of this Agreement, nor shall Vendor disclose any of the details connected with this Agreement to third parties.

17. NOTICES – All written notices, requests, demands, consents, certificates, or other communications required or permitted to be given hereunder shall be sufficiently given when mailed by (a) certified mail, return receipt requested, postage prepaid, (b) commercial overnight delivery courier, fees prepaid, or (c) facsimile transmission and confirmed by method (a) or (b) above, addressed to Buyer or Vendor, as the case may be, at their respective most recent addresses on file with the other party hereto. Either party may, by like notice at any time and from time to time, designate a different address to which notices shall be sent.
18. ASSIGNMENT AND SETOFF – This Agreement, may not be assigned or transferred by Vendor and no invoices may be rendered by persons other than Vendor, without the prior written consent of Buyer. All claims for monies due or to become due to Vendor from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this Agreement or any Purchase Orders of Buyer with Vendor.
19. WAIVER – No waiver shall be implied by Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege granted to Buyer hereby. No express waiver by Buyer shall be construed as waiving any breach hereunder or the performance of any of the terms or conditions hereof not specified in the express waiver, and then only for the time and to the extent stated therein. One or more waivers of any covenant, terms, or condition hereof shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.
20. SEVERABILITY – If any covenant, term, or condition hereof or the application thereof to any circumstance or person shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining valid and enforceable covenants, terms and conditions hereof and the application of such invalid or unenforceable covenant, term, or condition to circumstances or persons other than those as to which it has been held invalid or unenforceable shall not be affected thereby and each remaining valid and enforceable covenant, term, and condition shall be valid and enforceable to the fullest extent permitted by law.
21. COMMERCIAL REGULATION – Vendor agrees to comply promptly and fully with every federal, state, and local law, rule, or regulation which directly or indirectly regulates or affects the product or services called for by this Agreement including, without limitation, those relating directly or indirectly to the containers, packages, labels, handling, shipping, storing, performance, labor, insurance, licenses, permits, fees, and documents, if any, pertinent thereto, and to indemnify and hold harmless Buyer from and against liability, loss, and expense (including reasonable attorneys' fees) resulting from Vendor's failure to do so.
22. GOODS AND SERVICES – The terms and conditions contained herein shall be applicable to sales of product only, to mixed sales of product and services (regardless of which factor predominates), and to sales of services only and, in all such events, the term "product" as used herein shall be construed as including all services rendered hereunder, unless and only to the extent that the context clearly requires otherwise.
23. GOVERNING LAW – This agreement shall be governed and construed according to the internal laws of the State of Wisconsin without regard to conflict of laws principles.
24. RECORD KEEPING – The following shall apply to the extent required by law: Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, Vendor shall make available, upon written request of the Secretary, or upon request of the Comptroller General, or any of their duly authorized representatives, the Agreement, and books, documents and records of Vendor that are necessary to certify the nature and extent of such costs, and if Vendor carries out any of the duties of the Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, with a related organization (as that term is defined by regulation), such subcontract shall contain a clause to the same effect.
25. NONDISCRIMINATION. In addition to any other requirement of law, Vendor shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap in their performance of this Agreement, including, but not limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Notices shall be posted in conspicuous places available for employees and applicants for employment setting forth the provisions of this nondiscrimination clause.