

## PURCHASE ORDER STANDARD TERMS AND CONDITIONS

All purchase orders or pricing agreements (each a "Purchase Order" or "PO") issued by MaineGeneral Health system ("MGH") or any Affiliate (each a "Buyer") for Goods or Services are subject to these Purchase Order terms and conditions (these "Terms and Conditions") and upon acceptance of Purchase Order are agreed to by Vendor. "Affiliate" means an entity in which MGH is the sole corporate member, including but not limited to MaineGeneral Medical Center, MaineGeneral Rehabilitation & Long Term Care, and MaineGeneral Community Care. "Vendor" means the contractor, its employees, agents and representatives and sub-contractors. "Goods" means the Goods, materials, hardware, products being purchased or to be supplied as specified in the PO. "Services" means the services provided by Vendor to MGH.

- 1. INCORPORATED TERMS AND CONDITIONS:** THESE TERMS AND CONDITIONS ARE INCORPORATED INTO ALL OF BUYER'S PURCHASE ORDERS AND SHALL SUPERSEDE ANY AND ALL TERMS AND CONDITIONS SET FORTH IN VENDOR'S INVOICE OR POLICY OR ANY OTHER AGREEMENT, INCLUDING VENDOR'S PRICE QUOTATION OR PROPOSAL, AND IN THE EVENT OF ANY CONFLICT BETWEEN ANY SUCH TERMS AND CONDITIONS, THESE TERMS SHALL APPLY. Any objection by Vendor to these Terms and Conditions shall be ineffective unless Buyer is advised in writing by Vendor within ten (10) days of the date of the Purchase Order and such objections are not binding on Buyer unless specifically agreed to in a signed writing by Buyer's Materials Management Department. These terms shall apply to all Buyer orders, whether such order is communicated by PO, EDI, internet e-commerce, facsimile, orally, or any other method, or whether reference is made to this document.
- 2. SHIPMENTS AND DELIVERY:** Unless specified on the PO, all Goods will be delivered F.O.B. Destination (shipment, handling, insurance pre-paid by Vendor) no later than the delivery date indicated on the Purchase Order. Vendor will provide Buyer with immediate notice of any out-of-stock inventory identified on a Purchase Order. No substitutions are allowed without the prior written consent of Buyer. All Goods must be shipped in their original packaging and Vendor will make all commercially reasonable efforts to consolidate multiple orders in a single shipment. Notwithstanding anything to the contrary on any Purchase Order or as a result of who pays shipping charges, risk of loss shall not pass to Buyer until delivery to and acceptance of Goods or Services by Buyer at Buyer's designated location. All dated Goods must have a remaining shelf life of at least six (6) months from the date of delivery. Cost of special delivery and/or air shipments must be authorized in advance by Buyer, prepaid by Vendor and identified as a separate line item on Vendor's invoice. A packing slip or shipping documentation must be attached to the exterior packaging of each shipping container to identify the content's Purchase Order number(s), contents and quantity, and to indicate partial shipments. Vendor warrants and represents that all the Goods will, when delivered hereunder, be free and clear of all liens, claims and encumbrances of every kind. All Goods purchased hereunder are subject to Buyer's inspection and approval. Goods rejected by Buyer for whatever reason and in Buyer's sole discretion shall be held, transported and/or stored at Vendor's sole expense. Vendor shall promptly reimburse Buyer for any such expenses and the Goods.
- 3. VENDOR INVOICES AND PAYMENT:** Upon satisfactory delivery of the Goods or Services pursuant to a Purchase Order, Vendor may then invoice for any amounts due as expressly set forth in the PO. All other fees or costs, including handling, pick-up fees, taxes, minimum order fees, shipping markups or overhead allocations are not permitted and will not be paid by Buyer. Vendor's invoices must contain the relevant Purchase Order number(s) and any Invoice that fails to contain such information shall be rejected by Buyer and Vendor shall issue a new, corrected invoice to Buyer for payment. Invoices containing more than one Purchase Order shipment must be itemized by Purchase Order numbers. Failure of Vendor to follow the terms and conditions for payment shall relieve Buyer of any obligations for interest or other late payment charges to Vendor. Vendor shall issue any and all invoices within six (6) months of issuance of each Purchase Order in order to receive payment for same from Buyer. Buyer will pay all undisputed fees

on such invoice **NET 60 days** of receipt of such invoice. In the event of a dispute, the parties will work together in good faith to resolve the dispute in a timely manner.

**4. PRICES:**

- a. No agreements as to pricing other than those shown on the Purchase Order and as required by these Terms and Conditions shall be binding unless made in writing and signed by both parties. Purchase Order Not to Exceed "NTE" terms must be honored by Vendor.
- b. Vendor will provide Buyer the most favored customer pricing for the Goods or Services as Vendor quotes to other customers purchasing comparable quantities. Vendor will notify Buyer of any reduction in the price of any Goods or Services and provide Buyer with a price reduction that is comparable to the largest price reduction given to its other customers purchasing comparable quantities. Vendor will issue Buyer either a full refund or credit for any Goods returned to Vendor pursuant to this Agreement.
- c. MaineGeneral Medical Center is a member of Vizient, Inc. ("Vizient") and is entitled to participate in Vizient's purchasing programs. If any Goods supplied under this PO are covered by an agreement between Vendor and Vizient, Vendor agrees to apply Vizient pricing, if lower and report all sales and pay all administrative fees to Vizient, in accordance with the terms of such Agreement.
- d. If Buyer is entitled to a cash discount the period of computation thereof will commence on the date of acceptance or receipt of a correctly completed invoice, whichever date is later. If an adjustment in payment is necessary due to damage, the discount period shall commence on the date on which an agreed adjustment of the price is reached. If a cash discount is made part of the contract, but the invoice does not reflect the existence thereof, Buyer is entitled to a cash discount with the period commencing on the date Buyer determines that a cash discount applies.

**5. NO TAXES:** Buyer represents that MaineGeneral Medical Center, MaineGeneral Rehabilitation & Long Term Care, and MaineGeneral Community Care are tax-exempt corporations under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Maine. A copy of the tax exemption certificate for the appropriate Buyer entity, issued by the State of Maine, will be provided upon request. Vendor shall take all action required to cause Buyer's purchase to be treated as tax-exempt transactions, and in no event shall Buyer be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to the purchase. MaineGeneral Health, the parent corporation is not tax exempt.

**6. DEFAULT:** Buyer may, subject to provisions in the Warranties section of these Terms and Conditions, by written notice of default to Vendor cancel the whole or any part of the Purchase Order or exercise any other remedy provided Buyers of Goods by law or in equity including any remedy under the Uniform Commercial Code (RCW Chapter 62A), in any of the following circumstances:

- a. If Vendor fails to make delivery of the Goods or to perform the services within the time specified in the Purchase Order or any extension thereof;
- b. If, in Buyer's good faith judgment, the Vendor fails to perform any of the other provisions of the Purchase Order or fails to make progress as to endanger performance of the Purchase Order in accordance with its terms and does not cure such failure within a period of ten (10) days, or such longer period as Buyer may authorize in writing, after receipt to notice from Buyer specifying such failure;
- c. Vendor is in breach of any of these Terms and Conditions or such other terms included in the applicable Purchase Order; or
- d. If Vendor becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Vendor any proceeding under any bankruptcy, reorganization, arrangement, readjustment or debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Vendor's property and such proceeding is not dismissed or cured within sixty (60) days.

**7. WARRANTIES:** Vendor represents and warrants Goods supplied and work or Services performed under the Purchase Order conform to specifications set forth in the applicable Purchase Order and for Goods any published documentation related to such Goods supplied must be merchantable and fit for the particular purposes for which Goods are ordinarily employed. All Services will be performed in a

professional and workmanlike manner.

- a. Vendor further represents and warrants to Buyer and to any third party ultimately using any Goods and/or Services whether such third party is a customer of Buyer or not that all Goods and/or Services delivered under the Purchase Order will be free from defects in materials and workmanship and will conform to applicable specifications, drawings, samples and descriptions. If Vendor is responsible for design of Goods and/or Services, Vendor warrants that all Goods and/or Services delivered under the Purchase Order will be suitable for use by Buyer, including installation by Buyer in its ultimate products. Buyer's written approval of designs furnished by Vendor shall not relieve Vendor of its obligations under this warranty.
  - b. The foregoing express warranties shall be in addition to any warranty customarily made by Vendor of its Goods and/or Services and any implied warranties and shall be construed as conditions as well as warranties.
  - c. The warranties represented and covenants of parties hereto shall survive the delivery of the Goods or completion of the work or Services provided and shall be fully enforceable thereafter. Vendor's warranty hereunder is part consideration of the Purchase Order, any payment by Buyer hereunder is conditional upon these warranties remaining in effect; and not modification or other change of these warranties shall be valid unless otherwise agreed to by Buyer in writing.
  - d. Vendor guarantees that no food, drug, device or cosmetic constituting, or being part of any shipment or other delivery made pursuant to the Purchase Order will be adulterated or misbranded within meaning of Federal Food, Drug or Cosmetic Act or within the meaning of any state, municipal or local law in which definitions or adulteration and misbranding are substantially the same as those contained in said Act, or will be an article which may not, under the provisions of Section 404 or 405 of said Act, be introduced into interstate commerce.
  - e. All Services shall be rendered in a timely and reliable manner by qualified personnel and at a generally recognized professional level of quality in Vendor's industry;
  - f. Use of the Goods and Services shall not unlawfully infringe upon the copyright, patent or other proprietary rights of others;
  - g. The Goods shall have been properly stored, labeled, handled, crated and shipped by Vendor;
  - h. The Goods and Services conform to applicable federal and state laws, rules, regulations and standards, including any applicable standards of the Food and Drug Administration, Centers for Medicare & Medicaid Services, and the Joint Commission.
8. **INSURANCE:** Vendor shall maintain insurance coverage for the duration of the provision of Services to Buyer or the reasonable life of the Goods provided to Buyer, whichever is applicable as set forth in Buyer's Insurance Requirements as found on MGH's Information for Vendors webpage.
9. **SERVICE OR INSTALLATION OF WORK:** In the event the Purchase Order requires the performance of work or installation of Goods by Vendor upon any property or project of Buyer, the following conditions shall also be applicable:
- a. Vendor shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency, including the Joint Commission, and by Buyer and/or owner of the project which work is being performed and shall be responsible for the observance thereof by all sub-contractors, employees, agents and representatives of Vendor and sub-contractors. Vendor shall also obtain at its own expense and provide Buyer with proof of insurance coverage satisfactory to Buyer for worker's compensation and property damage, public liability, personal injury, employer's liability and other applicable insurance. Vendor shall keep the premises and Work free and clear of all mechanics and materialmen's liens or claims. Vendor shall promptly pay for all labor and material and if Vendor fails to do so Buyer without any obligation to do so, may pay the same and deduct the amount of such payments from sums due Vendor.
  - b. The work shall remain at Vendor's risk prior to written acceptance by Buyer and/or owner of the project and Vendor shall replace at its own expense all work damaged or destroyed by any cause whatsoever.

- c. Vendor shall act as an independent contractor and not as the agent or representative of Buyer.
- d. Vendor shall sign up for Vendormate program at its own expense and require Vendor's employees, agents, contractors or sub-contractors to abide by Buyer's Work and Safety rules when work or Services are performed at Buyer's premises. Buyer has the right to exclude personnel from Buyer's premises in its sole discretion, and at Buyer's election, to may declare a default under the Purchase Order if personnel come on Premises that Buyer has provided notice it wants excluded. ([Vendormate portal](#))
- e. Vendor is solely liable for its employees, agents, contractors or sub-contractors and their actions and inactions.
- f. Buyer shall have a minimum of thirty (30) days after completion of all Services to inspect and/or evaluate the Services provided and reject any unsatisfactory Services.

**10. DISCLOSURE OF INFORMATION:** All data and information developed or disclosed during the life of the Purchase Order, will be the property of the Buyer and will be classified as confidential by Seller. All disclosures thereof must have Buyers written consent.

**11. INFRINGEMENT CLAIM REMEDY:** If the use of the Products is enjoined due to an infringement Claim, Vendor will, at its own expense, either (i) procure for Buyer the right to continue using the Products; (ii) modify the Products so that they are no longer infringing, provided that such modification does not degrade the performance or quality of the Products or (iii) replace the infringing Products with non-infringing substantially similar products reasonably acceptable to the Buyer. Any Products modified or replaced hereunder shall be subject to the applicable requirements set forth in this Agreement. If none of the foregoing is possible, then Vendor shall refund to Buyer the full purchase price for such Products.

**12. COMPLIANCE WITH LAWS:** In fulfilling its obligations under the Purchase Order, Vendor shall comply with all applicable federal, state and local laws and governmental regulations and orders, including, without limitation, FDA, privacy laws, anti-kickback laws, the Medicare/Medicaid Anti- Fraud and Abuse Statutes, the restrictions on Buyer by virtue of its tax exempt status and the federal law relating to physician referrals. Vendor further agrees: (a) If Vendor is a "Business Associate" of Buyer as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time are collectively referred to as "HIPAA") or Buyer concludes it is necessary, Vendor agrees to execute Buyer's standard form of Business Associate Agreement; (b) Anti-Kickback: Vendor shall assist Buyer in compliance with all Buyer reporting requirements regarding "safe harbor" protection for discounts, including, without limitation disclosing the amounts of all rebates or discounts in the Purchase Order or related invoices; (c) Fraud, Waste and Abuse: Vendor shall submit accurate bills and such bills shall reflect accurate charges for Goods and/or Services actually provided; and (d) Vendor represents that neither it, nor its agents are excluded, debarred, suspended or otherwise ineligible to participate in federal or state health care programs. Vendor agrees that, for purposes of performing the Purchase Order, it will not knowingly employ or contract with, with or without compensation: (1) any individual or entity listed by a federal or state agency as excluded, debarred, suspended or otherwise ineligible to participate in federal health care programs; (2) any person or entity who is excluded from contracting with the State of Maine; or (3) any person who has been convicted of a criminal offense related to the provision of health care items or Services. In the event Vendor becomes aware of any individual providing Goods or Services who violates these provisions, Vendor will immediately notify Buyer. Violations of this provision could result in the Purchase Order being terminated.

a. **Deficit Reduction Act**—Medicaid Requirements: Buyer is a recipient of Medicaid funds and subject to the Deficit Reduction Act. Buyer's Deficit Reduction Act policies are available to Vendor and Vendor will cooperate with Buyer to detect and prevent waste, fraud and abuse and protect whistleblowers.

b. **Equal Opportunity:** Vendor shall comply with the provisions contained in 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60 300.5(a), and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered federal

government Vendors and sub-Vendors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. As applicable, Buyer shall make its affirmative action plan for both protected veterans and qualified individuals with disabilities available to Vendor.

c. Copies of Buyer Compliance policies can be found on the MGH [Ethics and Compliance webpage](#).

- 13. FDA RECALL OF PRODUCTS:** If recall or modification of any of the Goods is required by the Food Drug Administration (“FDA”) or voluntarily recommended or required by the Vendor, Vendor shall, at its sole cost and expense, immediately notify Buyer in writing of such recall or modification; remove, package, and ship to Vendor’s plant the affected Goods; and at no additional charge to Buyer replace such Goods with Vendor Goods which have been evaluated and accepted by Buyer as clinically comparable. All recall notices must be immediately faxed to Buyer’s Risk Management Department at: (207) 626-1049. Vendor must reimburse Buyer for all recalled Products still in inventory of Buyer.
- 14. INDEMNIFICATION:** Vendor shall defend, indemnify and hold Buyer, its employees, its patients and end users, harmless from and against any and all claims, losses, damages, suits, fees, judgments, costs and expenses (including attorneys’ fees) (collectively, “Damages”) arising out of or in connection with: (a) injuries to persons (including death) or loss of, or damage to, property, caused by the Goods, Services or Vendor or its agents or representatives, (b) any person filing any lien against any property of Buyer, or any claim or lawsuit against Buyer in which the person claims payment from Buyer for Goods and/or Services provided under the Purchase Order; (c) any claims or liability for wages, workers’ compensation, unemployment compensation or employee benefits owed to Vendor’s employees and/or subcontractors, or payroll or related taxes or other governmental charges related to the performance of Services to be provided under the Purchase Order; (d) any claims or liabilities for breach of the confidentiality requirements herein; (e) any claim that Buyer’s use, copying, or distribution of the Goods and/or Services or any portion thereof infringes or violates any patent, copyright, trade secret, trademark, or other third party intellectual property right (f) failure of Vendor to timely delivery Goods and/or Services pursuant to the Purchase Order, and (g) by reason of any claim or findings by any governmental authority that any Goods and/or Services are not warranted or guaranteed hereunder. Vendor’s indemnification obligation hereunder shall not apply to the extent that any claim is caused by the gross negligence or intentional misconduct of Buyer.
- 15. ACCESS TO BOOKS AND RECORDS:** Vendor shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or the Commissioner of the Maine Department of Health and Human Services, or any of their duly authorized government representative, upon request, at any time within four (4) years following the expiration or termination of this Agreement, any of Vendor’s books, documents, or records that may be necessary to certify the nature and extent of the costs incurred by Buyer in purchasing Goods or Services pursuant to this Agreement, and shall include a like provision in any subcontract with a related party hereunder for Services having a value of more than \$10,000 over a twelve-month period. Each party shall notify the other party within five (5) business days of any such governmental request for books or records.
- 16. CONSTRUCTION AND JURISDICTION:** This Agreement shall be governed by the laws of the State of Maine. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
- 17. HUD REQUIRED SUCCESSOR CLAUSE FOR SPECIFIC CAPITAL LEASES.** This section only applies when MaineGeneral Medical Center or MaineGeneral Community Care are the Buyer and the Goods or Services are a capital lease. In the event of a default by Buyer under its insured mortgage and note with the Secretary of the U.S. Department of Housing and Urban Development (“HUD”), HUD or any mortgagee in possession or successor organization shall have the right, but is not required, to assume the responsibilities of Buyer with respect to leased Goods or Services under these Terms and Conditions so long as such party has agreed to be bound by all the terms and conditions of these Terms and Conditions. In the event that HUD assumes the obligations of Buyer with respect to leased Goods or

Services, any indemnity agreed to by the Buyer shall not apply to HUD, as HUD does not agree to provide any indemnification.

Effective: July 17, 2020

Updated: March 20, 2023