

## TERMS AND CONDITIONS OF PURCHASE



1. **Offer and Acceptance.** Each purchase order that Sparrow Health System, a Michigan nonprofit corporation, or its affiliate (in either case, "Buyer") issues (each a "Purchase Order"), together with these Terms and Conditions of Purchase, is Buyer's offer to purchase the goods ("Goods") and services ("Services") identified in that Purchase Order. Each Purchase Order, together with these Terms and Conditions of Purchase (these "Terms"), and any other documents specifically incorporated into the Purchase Order by Buyer or separately agreed to in writing, such as specifications, drawings, requirements of Buyer's customer, or quality requirements, are, collectively, a "Supply Agreement." All sales by Seller to Buyer are conditional on Seller's assent to the terms of the Supply Agreement exclusively and without regard for any Seller-proffered terms or conditions. If these Terms are first tendered to Seller before Seller tenders Seller's terms and conditions to Buyer, these Terms are in lieu of any terms and conditions later submitted by Seller and Buyer rejects all additional or different terms and conditions of Seller, whether confirmatory or otherwise. If Buyer tenders these Terms after the tender by Seller of other terms and conditions, whether as part of a Seller-generated purchase order or otherwise, then Buyer's acceptance of any offer by Seller associated with Seller's terms and conditions is expressly conditioned upon Seller's acceptance of the Supply Agreement, including these Terms, exclusively and to the exclusion of any proffered Seller terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Seller. Seller's confirmation or acknowledgement of a Purchase Order, these Terms, or a Supply Agreement, Seller's commencement of performance, or Seller's tendering of Goods or Services ordered will constitute Seller's acceptance of these Terms, and of the Supply Agreement, exclusively.

2. **Invoices.** Seller must submit invoices plainly marked with Buyer's purchase order number. Except as otherwise expressly stated in a Purchase Order, Buyer will pay all undisputed amounts under Seller's properly-issued invoices within 30 days after the later of receipt of the invoice or receipt of the Goods and/or Services to which the invoice applies.

3. **Pricing.** The prices contained in each Purchase Order are firm prices that are not subject to change, regardless of materials prices, the prices of labor, or any other causes. For the avoidance of doubt, under no circumstances will UCC Sec. 2-615 or any other similar rule of law be construed to permit any change in pricing. Pricing includes all packing costs. Seller represents and warrants to Buyer that the prices and terms stated in any Supply Agreement are at least as favorable to Buyer as any prices and/or terms that Buyer offers or provides to any other customer of Buyer for each good and service that is similar to the Goods and Services. If and when Seller offers or provides to any third party prices and/or terms that are more favorable than the prices and/or terms with respect to a Good or Service under any Supply Agreement, Seller will immediately notify Buyer of such more favorable price(s) and/or term(s) and give to Buyer the more favorable price(s) and/or term(s).

4. **Taxes.** Buyer will not be liable to Seller for, and Seller may not collect from Buyer, any taxes associated with the provision or receipt of the Goods and/or Services other than taxes imposed by a governmental unit that expressly requires 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 Buyer's tax-exempt status.

5. Seller to collect such taxes from Buyer. Whenever federal, state, or local taxes are charged or collected, Buyer must list taxes separately on each invoice.

6. **Shipping Terms.** Unless otherwise expressly stated in a Purchase Order, all prices are F.O.B. (UCC Sec. 2-319) Buyer's location for orders shipped within the United States and DDP (Incoterms 2010) Buyer's location for orders shipped internationally.

7. **Packing; Containers.** Seller will plainly mark all containers, crates, boxes, and packages with Buyer's order number and include packing lists with all shipments. Failure to properly mark purchased Goods will delay payment until Buyer receives proper documentation.

### 8. Deliveries.

(a) Time is of the essence in all of Seller's performances under any Supply Agreement. Deliveries of Goods must be made between 7:00 a.m. and 3:30 p.m., Monday through Friday, unless otherwise instructed in the Purchase Order notes. If Seller fails to timely deliver any goods or services provided for in a Supply Agreement, Buyer may, among its other remedies, (1) require that Seller ship by express or other more rapid means of delivery, any additional expense to be paid by Seller, or (2) cancel all or any part of the applicable Supply Agreement. Seller will promptly give notice to Buyer of any fact or circumstance of which Seller is aware or of which Seller could, with reasonable diligence, be aware, that could reasonably be expected to delay any delivery of Goods or Services under any Supply Agreement. Seller may not ship excess quantities unless expressly authorized by Buyer in a signed writing. If Seller ships unauthorized excess quantities, Buyer may ship the same back to Seller F.O.B. (UCC Sec. 2-319) Buyer's location of, if Buyer retains the unauthorized excess quantities, Seller will reimburse Buyer for the reasonable costs of storing any unauthorized excess quantities delivered and, in any case, risk of loss to the Goods will remain with Seller. Buyer need not perform incoming inspections of any Goods or Services and Seller waives any right to require Buyer to conduct any such inspections.

(b) Seller will conform to Buyer's then-current Transportation Routing Guide.

9. **Inspection; Acceptance.** All Goods and Services, and the facilities at which Seller manufactures, processes, or provides the same, are subject to inspection and/or test at

any reasonable time or place, and in any quantity by Buyer or Buyer's direct or indirect customer(s). If any such inspection and/or test is made on Seller's premises or the premises of Seller's subcontractor(s), Seller will furnish, without additional charge, all reasonable facilities and assistance required by the inspectors. Such inspections and/or tests shall not relieve Seller of the obligation to make full and adequate inspections and tests. Receipt of, and/or payment for, Goods and Services will not itself constitute acceptance by Buyer of any Goods or Services. If a Good or Service is non-conforming, the Buyer may reject such Goods and/or Services or require their replacement or correction. Buyer may return all rejected Goods or Services at Seller's invoice price plus all transportation charges and handling expenses. Buyer will have no obligation to reject only commercial units of the Goods or Services.

10. **Warranties.** Seller represents and warrants to Buyer and to each of Buyer's direct and indirect customers and users (a) that the Goods and Services will conform strictly to the specifications, drawings, samples or descriptions; (b) that the Goods and Services and new and of good quality and workmanship; (c) that the Goods and Services will be free of defects in design (unless, and then only to the extent that, Buyer provided the design), materials, or manufacture; (d) that the Goods and Services will be merchantable; (e) that the Goods and Services will be fit for the particular purposes intended by Buyer of which Seller knows or should know; (f) that the Goods and Services will comply with all applicable environmental, occupational, safety, health and other laws, rules, and regulations applicable to the design, function, or use of the Goods and/or Services in any jurisdiction of which Buyer informs Seller; and (g) neither the Goods nor the Services, nor their possession or use by any Buyer Indemnitee (defined below) as contemplated by a Supply Agreement or as implied by the nature or character of the Goods and Services, will infringe upon, violate, or misappropriate any intellectual property, contract, or other right of a third party. Seller shall immediately notify Buyer of any errors in specifications or drawings provided by Buyer to the extent that Seller is aware of same or that a reasonably skilled manufacturer, provider, or merchant of goods and services of the kind should have discovered. Seller further warrants that it has merchantable title to all Goods and that Seller will deliver all Goods free and clear of liens and encumbrances.

11. **Hazardous Materials.** If any Goods are, or contain, materials that are identified by any workplace health or safety or environmental law as hazardous, Seller will prominently label the Goods as such and will provide to Buyer, before delivery or concurrently with delivery, all Material Safety Data Sheets and any other information necessary to handle and store the Goods safely.

12. **Documentation** Seller will, for no additional consideration, provide to Buyer all technical documentation and other literature necessary to enable Buyer to properly use the Goods and Services.

13. **Indemnification.** Seller will indemnify, defend, and hold harmless Buyer and Buyer's equityholders, directors, managers, officers, employees, agents, and direct and indirect customers (each a "Buyer Indemnitee") against any third-party claim or demand for injury or death of persons, property damage, economic loss, and any other damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other theory, to the extent caused or alleged to have been caused by Seller's defective design, manufacture, or provision of Goods or Services, Seller's willful or negligent acts or omissions in its performance under a Supply Agreement, or any other fact that, if true, would be, or be evidence of, a breach by Seller of any warranty under a Supply Agreement.

14. **Insurance.** Seller will, at all times while performing under a Supply Agreement and for the duration of all warranties, insurance with coverage limits customary in the healthcare industry and reasonably acceptable to Buyer. If Buyer so requests, Seller will provide to Buyer one or more certificates of insurance evidencing such coverage and will cause Buyer to be listed as an additional insured on such policies.

15. **Intellectual Property Infringement.** Seller will indemnify, defend, and hold harmless each Buyer Indemnitee from and against all claims, suits, actions, liabilities, losses, damages, penalties, interest, costs, and expenses, including reasonable legal fees, arising out of, or relating to, any actual or alleged infringement by the Goods or the Services (or the possession or use thereof by any direct or indirect customer of Buyer) of a third-party Intellectual Property Right, contract right, or other right.

16. **Compliance with Law.** In the performance of all Supply Agreements, Seller will comply with all federal, state, and local laws, ordinances, rules, orders, regulations or requisitions that are applicable to each Supply Agreement and/or to Seller. Seller will, upon Buyer's request, furnish to Buyer such certificates of compliance with the same, including, but not limited to, Customer environmental requirements, and in such form, as Buyer from time to time requires.

17. **Licensure; Permits.** Where a rule of law requires that the seller or provider of Goods or Services possess any license or permit in order to do so, Seller will, at all applicable times, procure and maintain such licenses and/or permits. Where Goods or Services are to be delivered or rendered on Buyer's premises (including, but not limited to, in the case of construction on, or alteration of, real property, or installation requiring a building or similar permit), Seller will apply for, and cause to be issued (whether to Buyer, Seller, or otherwise), such permits as are required to provide the Goods and Services as required.

18. **Activities at Buyer's Facilities.** Seller will cause each agent of Seller who enters any facility of Buyer to comply with all workplace rules and security requirements of Buyer.

### 19. Fraud and Abuse.

(a) Seller warrants that neither Seller nor, to the best of Seller's knowledge, Seller's personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement

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Programs in accordance with Executive Orders 12549 and 12689, "Department and Suspension." Seller shall immediately notify Sparrow if it becomes debarred or suspended during the term of any Supply Agreement.

- (b) Seller further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Seller or its affiliates or, to the best of its knowledge, against any Seller personnel. Seller shall not perform any act that causes Seller to be excluded from a federal health care program or debarred, suspended, or listed in the GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of this Agreement.

20. **Civil Rights.** In connection with the performance of services under this Agreement, the parties agree to comply with the provisions of the Elliott-Larsen Civil Rights Act, PA 453 of 1976, as amended, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and specifically agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position, or because of race, color, religion, national origin, age, sex, height, weight, or marital status.

### 21. Term and Termination.

(a) **Generally.** Each Supply Agreement will remain in effect for the term specified in the Supply Agreement (which term may be specified as a platform life, product life, quantity, or by other means) unless earlier terminated by Buyer by reasonable (but not less than 30 days') notice to Seller. Upon termination of a Supply Agreement, Seller will assist Buyer in locating an alternative source for the Goods and Services and in moving production to the alternate source selected by Buyer.

### (b) Termination for Seller's Default.

(i) Buyer may forthwith cancel and terminate, in whole or in part, any Supply Agreement in the event that:

(A) Seller becomes unable to pay its debts as they become due;

(B) A receiver or similar custodian or agent is appointed for Seller or any material part of Seller's business;

(C) Seller makes an assignment generally for the benefit of creditors;

(D) Seller becomes entitled to demand adequate assurance of performance under [UCC Sec. 2-609](#) and Buyer fails to deliver to Buyer adequate assurance of performance by the earlier of the fifth day after such demand or, if shorter considering the circumstances, a reasonable time after demand; or

(E) Seller materially defaults under any of its obligations under any Supply Agreement (whether the Supply Agreement that is the subject of termination or any other Supply Agreement) or any other agreement between Buyer and Seller and fails to cure such default within 10 days after receipt of notice of such default.

(ii) In the event of termination of a Supply Agreement or part thereof by Buyer for Seller's default, Buyer may, in addition to termination, have any and all other remedies available at law or in equity.

22. **Confidential Information.** Seller will keep in confidence and prevent the disclosure to any third party all information and data disclosed to it by Buyer or that Seller learns from Buyer, in either case that is not readily ascertainable by the public by proper means, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and information about research and development.

23. **Assignment; Third Parties.** Seller may not assign or subcontract its duties or responsibilities under any Supply Agreement without the prior written consent of Buyer. Buyer may freely assign its rights and obligations under any Supply Agreement or part thereof and, thereupon, Buyer will have no liability for any obligation that arises after the date of the assignment. Buyer may, at its option, permit one or more of its affiliates to purchase Goods or Services under any Supply Agreement, any such purchases by Buyer's affiliates will be solely for each Buyer affiliate's own account, and Buyer will have no liability for any breach by any Buyer affiliate with respect to such Buyer affiliate's purchases. All Buyer Indemnitees are express third-party beneficiaries of all indemnification obligations and warranties of Seller under these Terms and any Supply Agreement. There are no other third-party beneficiaries of any right or obligation under any Supply Agreement.

24. **Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OR (B) DAMAGES IN EXCESS OF THE PRICE OF THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THESE LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THAT THEY CAUSE ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE AND NOTWITHSTANDING THAT BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

### 25. Miscellaneous.

#### (a) Arbitration.

(i) All disputes under any Supply Agreement, including but not limited to, claims for breach of a Supply Agreement, claims based on state or federal statutes, including civil rights claims under state and federal law, and claims based on common law, shall be resolved through arbitration. Arbitration shall be

conducted according to the Michigan Court Rules and the applicable rules of the American Arbitration Association ("AAA"). In the event of a conflict between the Michigan Court Rules and AAA Rules, the Michigan Court Rules shall control. Arbitration shall prevail. The party asserting the claim must initiate the arbitration by filing a written demand for arbitration (the "Demand") with both the regional office of AAA and the other party. This Demand shall be filed within one hundred eighty (180) days of the date the claim accrued or the claim shall be forever barred. The arbitration shall be conducted in Ingham County, Michigan. The parties shall have the right to legal counsel and reasonable discovery. The parties shall bear equally the cost of AAA's filing fee. The arbitrator, however, shall have the authority to grant any remedy or relief that would have been available to the parties had the matter been heard in court, including the allocation of fees. The arbitrator's award shall be final and binding upon the parties. Judgment upon the arbitration award may be entered in any federal or state court of competent jurisdiction. Judicial review shall not be permitted, unless allowed by Michigan law.

(ii) The prevailing party in any arbitration or litigation arising out of or related to any Supply Agreement shall be entitled to include payment of attorney fees and expenses from the other party, including fees and expenses related to an appeal, as part of the prevailing party's claim.

(b) **Choice of Law; Jurisdiction; Venue.** These Terms and all Supply Agreements will be governed by and construed in accordance with the law of the State of Michigan without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Supply Agreement. Except as provided in Section 25(a), any action or claim arising out of or related to these Terms or any Supply Agreement must be brought only in the courts of the State of Michigan sitting in Ingham County, Michigan or the United States District Court for the Western District of Michigan and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts.

(c) **Access to Records.** In the event that the Secretary of Health and Human Services, the Comptroller General of the United States, or any other government agency or representative determine that this Agreement is a contract described in Section 1961(v)(1)(I) of the Social Security Act, then, until the expiration of four (4) years after the furnishing of Goods or Services under any Supply Agreement, each party will make available, upon written request by any such agency or representative, this Agreement and any books, documents, and records that are necessary to certify the nature and extent of the costs incurred. Each party will promptly notify the other party of any requests it receives from any of the entities listed above for access to its records.

(d) **Advertising.** Seller will not advertise or otherwise disclose to the public its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as is necessary in order to perform a Supply Agreement or as required by law.

(e) **Audit Rights.** Seller will maintain, for not less than three years after completion of each Supply Agreement, records necessary to support amounts charged to Buyer under such Supply Agreement. Buyer and its representatives may audit such records to the extent needed to verify that Seller's invoices and any payments to Seller are supported by the Supply Agreement. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit reveals material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.

(f) **Relationship of the Parties.** Buyer and Seller are independent contractors, and nothing in a Supply Agreement makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

(g) **Waiver.** Buyer's failure to insist on performance of any obligation, or to exercise any right or privilege, or Buyer's waiver of any obligation, shall not thereafter be a waiver of other terms, conditions, rights, or privileges, or of the same terms, conditions, rights, or privileges on a different occasion.

(h) **Severability.** If any provision of a Supply Agreement is invalid or unenforceable in any jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of a Supply Agreement or the validity or enforceability of that provision in any other jurisdiction.

(i) **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service. The addresses for notice for each party are those on the Purchase Order, Attn: Legal Department. Either party may change its address for notice by giving to the other party notice of the change of address.

(j) **Remedies Cumulative.** Each and every remedy of Buyer is cumulative and no exercise or pursuit by Buyer of any particular remedy will be deemed an election of that remedy exclusively. Any claim, suit, or action resulting from any Buyer breach of any Supply Agreement must be commenced within six months after the cause of action has accrued or be forever waived.

(k) **Drafting Party.** No rule that requires the construction of any language against the drafting party will apply to the construction of these Terms.

(l) **Business Associate Matters.** If, and to the extent that, Seller is, or becomes, a Business Associate (as that term is defined and understood under the Health Insurance Portability and Accountability Act of 1996, the regulations thereunder, or other

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applicable law) of Buyer and Buyer so requests, Seller will promptly execute, deliver, and perform under Buyer's then-current standard form of Business Associate Agreement. A breach of any Business Associate Agreement is a breach of all applicable Supply Agreements.

(m) Entire Agreement. Each Supply Agreement constitutes the entire agreement between the parties with respect to its subject matter, and each Supply Agreement supersedes all prior oral or written representations or agreements by the parties with

respect to the subject matter of that Supply Agreement, including, but not limited to, any Seller quotation unless Buyer specifically incorporates it into a Supply Agreement in a signed writing. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of any Supply Agreement will be binding unless in writing and signed by the party against which enforcement is sought.