

## **TERMS AND CONDITIONS OF PURCHASE**

### **1. APPLICABLE TERMS AND CONDITIONS OF PURCHASE**

(a) Definitions:

"Buyer" means Blessing Corporate Services, Inc., an Illinois Not-for-Profit Corporation, and/or its divisions, subsidiaries, or affiliates that will purchase Goods from Seller pursuant to this Order.

"Seller" means the person, firm, or corporation that will provide Goods to Buyer pursuant to this Order. The Buyer's purchase order will identify the Seller's name and address.

"Goods" means those articles, materials, supplies, drawings, data, software and any other property or services to be delivered or performed by Seller to or on behalf of Buyer pursuant to this Order.

"Services" means those functions or activities to be performed by Seller for the Buyer.

"Order" means the Buyer's purchase order, and includes these Terms and Conditions of Purchase, the terms and conditions of any Agreement, and all performance requirements and specifications specified herein.

"Agreement" means the written or verbal agreement entered into between the Buyer and Seller, which covers the sale of Goods and Services covered by the Order, including any exhibits attached thereto and incorporated therein by reference, and unless otherwise specified by the Agreement, it shall also include the specific terms and conditions of the Order, and any other written documents between Buyer and Seller, executed by them and intended to supplement the terms of the Agreement.

(b) This Order shall become a legally binding contract between the Buyer and Seller upon the first of the following to occur:

- (i) Seller's receipt of an express written acceptance by Buyer of the Goods received;
- (ii) Seller's commencement of services subject to this Order; or
- (iii) The earlier of the shipment of the Goods or Seller's commencement of installation of services.

(c) Except as provided in Section 17 hereof, the terms and conditions of this Order are expressly limited to the terms and conditions contained herein. Buyer shall not be bound by any provisions in Seller's order acknowledgement,

acceptance forms, or any other documents (including counter-offers) that propose or include any terms or conditions in addition to or differing with the terms and conditions of this Order, and any such terms and conditions of Seller and any other modification to this Order shall have no force or effect and shall not constitute any part of the terms and conditions of purchase or lease, except to the extent separately and specifically agreed to in writing by the Buyer.

(d) No amendment, deletion, supplement, or change to the Order or the terms and conditions contained herein shall be binding on Buyer unless approved in writing by the Buyer.

### **2. STANDARD OF PERFORMANCE**

Seller will perform all work under this Order according to good, sound design and engineering practices and conforming to any applicable data and specifications attached to or included in this Order. If the Buyer requires Seller to remedy any deficiencies to the Goods, such corrections will be made at no additional cost to the Buyer. Any increase or decrease in the scope of the work or any modification of the specifications regarding the Goods must be made in writing and signed by both parties. The Buyer's inspection or approval of the services performed under this Order, or acceptance of Goods under this Order, or the Buyer's failure to so inspect or approve the Goods shall not be deemed an acceptance of defective Goods nor relieve the Seller of its obligation and liabilities with respect to such Goods.

### **3. PRICE**

Prices set forth in the Order shall be firm and not subject to adjustment or variation unless specifically approved in writing by the Buyer. Seller warrants that the prices specified for the Goods are as low as any net prices now given by Seller to any other customer for Goods of like grade and quality in like quantities. Seller agrees that if at any time during the term of the Order, lower net prices are quoted by Seller under similar conditions, then said lower net prices shall be from that time substituted for the prices herein. Seller agrees that any price reductions made to the Goods covered by an Order subsequent to its acceptance, but prior to payment thereof will be applicable to the Order. Except as otherwise provided herein, the prices on the Order include all costs and charges to be incurred by Seller, including, without limitation, installation and other service charges; all wages and fees for services

and materials; all charges for transportation, packing, packaging, and returnable containers; all costs of design, engineering, and development; and all costs for tooling, gauges, jigs, fixtures, dies, molds, patterns, and similar property that may be obtained or required by Seller for use in the manufacture, fabrication, or assembly of the Goods or performance of the services called for by this Order. The prices do not include the taxes (including income taxes) of the Seller directly applicable to the sale of the Goods to Buyer, which shall be paid by Seller. Notwithstanding the previous sentence, Buyer shall be liable to Seller only for such federal, state and local taxes levied on the Buyer for which the Seller is required by law to collect from the Buyer, and charged to Buyer on an invoice from Seller. Buyer shall not be obligated or required to pay, nor shall Buyer be charged under this Order or any Agreement entered into between the parties hereunder any tax not properly collected on an invoice from Seller at the time of payment for the Goods, or any additional fee, charge, assessment, or amount incurred by Seller pursuant to any other law or regulation, including, but not limited to, the Medical Device Excise Tax issued under the Patient Protection and Affordable Care Act (PPACA), as amended from time to time.

#### **4. DELIVERY OR PERFORMANCE SCHEDULE; QUANTITIES**

Time is of the essence in the performance of this Order and the delivery of the Goods hereunder. In addition, the parties agree as follows:

- (a) Buyer may cancel this Order prior to shipment;
- (b) Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time, or deliver Goods in advance of schedule;
- (c) In the event of termination of this Order or change in the terms of this Order prior to shipment or commencement of the Goods, no claim by Seller will be allowed for any such manufacture or procurement of performance of services in advance of such normal flow time without the prior written consent of Buyer;
- (d) Unless specified otherwise on the face hereof, this Order shall not be deemed separable as to the Goods ordered herein; and
- (e) Goods that are to be shipped shall be shipped F.O.B. destination unless otherwise specified by the Order or Buyer. Any shipments that are sent C.O.D. without Buyer's consent will not be accepted and will be made at Seller's risk. Seller agrees to pay for the return of any such Goods and to pay for reasonable storage fees until their return. Buyer, or a third party, may hold such Goods at Seller's risk until their return.

#### **5. ACCEPTANCE OF GOODS**

All Goods shall be received subject to Buyer's right of inspection and rejection per this Section. Defective Goods or Goods not in accordance with Buyer's written specifications will be held for Seller's instruction at Seller's risk and, if Seller so directs, will be returned at Seller's expense. Buyer shall have a reasonable time not to exceed ten (10) business days from receipt of the Goods, or substantial completion of the services, whichever is later, to submit claims of count, weight, quantity, loss, or damage to delivered Goods or otherwise. Buyer will calculate damages on claims for non-conforming Goods, and deduct such amount from Seller's invoice. If invoice was previously paid, Seller will reimburse the amount of damages to Buyer. Payment for Goods on an Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any, and all claims that Buyer may have against Seller. For all rejected Goods, Seller shall provide Buyer full credit or replacement of the Goods, unless Buyer cancels this Order, at Seller's risk and expense, including transportation both ways. The Buyer may, at Buyer's option, purchase substitute Goods in lieu of the rejected Goods. Acceptance by the Buyer of part of the Goods shall not bind Buyer to accept the remainder. Acceptance of all or part of the Goods shall not deprive the Buyer of the right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to this Order.

#### **6. CHANGES**

The Buyer reserves the right at any time prior to shipping of Goods by Seller to change by written notification to Seller any of the following:

- (a) Specifications, drawings, and data incorporated in this Order where the items to be furnished are to be specially developed for the Buyer;
- (b) Quantity;
- (c) Methods of shipment or packing;
- (d) Location of delivery, (provided that the delivery location is the location of the installation of the Goods);
- (e) Time of delivery; or
- (f) Any other matters affecting this Order.

If any change by Buyer causes an increase or decrease in the cost of or the delivery schedule for the Order, Buyer shall make, in writing, an equitable adjustment in the price or delivery schedule or both. Any claim by Seller for adjustment in the price or delivery schedule shall be deemed waived unless asserted in writing within ten (10) business days from Seller's receipt of the change.

## **7. OVERSHIPMENTS**

Buyer will pay only for the quantities of Goods ordered by Buyer. Shipments of Goods in excess of the quantity ordered by Buyer will be held by Buyer at Seller's risk, and Seller shall be liable for any expenses for holding the over shipment of Goods, including, but not limited to, storage for a reasonable time awaiting shipping instructions from Seller and return shipping charges.

## **8. PACKING AND SHIPPING**

Deliveries shall be made as specified without charge for boxing, crating, carting, or storage unless otherwise specified in the Order, and Goods shall be suitably packaged to secure the lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. Goods shall be described on bills of lading in accordance with current Motor Freight or Uniform Freight classification, whichever is applicable. Buyer's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Packing lists shall accompany each box or package shipment. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. When directed by Buyer, shipments for two or more destinations shall be shipped in separate boxes or containers for each destination at no extra charge to Buyer.

## **9. PAYMENT**

Invoices will normally be paid according to the discount terms set forth in the Order, or if no discount is offered, within thirty (30) to sixty (60) days after Buyer's receipt and acceptance of the Goods, or completion of the services according to other agreed upon payment terms. Buyer requires at least five (5) business days in order to process payments from the date of receipt of invoices, irrespective of when Goods are received. Unless specified otherwise, discount periods will be computed from either the date of delivery plus the time allowed for inspection or the date of receipt of correct invoices, prepared in accordance with the

terms of this Order, whichever date is later. Payment shall not be construed to limit Buyer's right of inspection, acceptance, set-off, or any other right granted herein.

## **10. SOFTWARE PERFORMANCE**

If any part of the Goods provided by Seller to Buyer contains computer software ("Software"), Seller's Software will be tested by Seller per the Software specifications for all features and timing within the processes and must meet those requirements prior to acceptance of the Software by Buyer. Seller will be responsible to resolve all non-conforming requirements relating to the Software. Any imbedded software from a third party will be treated to the same criteria as the Software.

## **11. ASSIGNMENT**

Seller may not assign, transfer, or subcontract this Order or any right or obligation hereunder without Buyer's written consent. Any purported assignment, transfer or subcontract not in compliance with this Section shall be void and ineffective.

## **12. COMPLIANCE WITH LAWS**

Seller warrants and agrees that it shall comply with all applicable laws, regulations and administrative requirements (including all applicable licensing and registration requirements) and shall not take any action that would subject Buyer or any of its affiliated companies to penalties under U.S. or foreign laws, regulations, or administrative requirements. Further, Buyer may terminate this Order and/or return any Goods and recover from Seller any payment made pursuant to any one or more Orders entered into between the parties that is determined by a court or government agency to be illegal or inconsistent with Buyer's tax-exempt status under Internal Revenue Code Section 501 (c)(3), as amended from time to time. The effective date of any termination pursuant to this Section shall be the date as stated in Buyer's notice of termination. Seller shall immediately notify Buyer of the occurrence of any event or circumstance that under the terms of this Section may be cause for termination. Buyer is also subject to certain federal fraud and abuse laws such as the federal and state anti-kickback and anti-referral laws, federal and state antitrust laws, and laws pertaining to third-party payors, including, but not limited to, the Illinois Health Care Referral Act, and the Health Insurance Portability and Accountability Act (HIPAA), all as may be amended from time to time. Buyer may terminate this Order and/or return any Goods and recover

from Seller any payment made pursuant to any one or more Orders entered into between the parties that are determined by Buyer's legal counsel, a court, or government agency to be illegal or inconsistent with those federal or state laws.

### **13. CONFIDENTIALITY**

Seller, except where otherwise required by law, shall maintain the terms of this Order as confidential and not disclose to any other party, other than its professional advisors, without the prior written consent of Buyer. Seller acknowledges that Seller and Buyer are subject to the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH") which regulates among other matters the use and disclosure of protected health information. Where applicable, Seller agrees to comply with HIPAA, the rules and regulations promulgated there under, and the practices and procedures requested by Buyer. If the Seller has access to protected health information (as defined by HIPAA), then Seller agrees to sign Buyer's Business Associate Agreement, which, if applicable, is incorporated into this Order by reference in a form that is reasonably acceptable to Buyer.

### **14. WITHHOLDING OF PAYMENTS**

Buyer shall have the right (but no duty) to withhold any monies payable by it hereunder and apply the same to the payment of any obligations of Seller to Buyer arising in any manner out of this Order or its performance, or under any other purchase order or other agreement between Seller and Buyer.

### **15. COMPLETE AGREEMENT**

This Order represents the entire agreement between Seller and Buyer with respect to the Goods sold to Buyer under the Order and the performance of services by or on behalf of Seller for Buyer under this Order. All prior agreements, representations, statements, negotiations, and undertakings, whether oral or written, are superseded hereby.

### **16. SEVERABILITY**

It is understood and agreed by the parties hereto that if any part, term, or provision of this Order is by the Courts held to be illegal or in conflict with the laws of the State of Illinois, the validity of the remaining portions or provisions shall be construed and enforced as if the Order did not

contain the particular part, term, or provisions held to be invalid.

### **17. ORDER OF PRECEDENCE**

Specific terms and conditions of any Order issued by Buyer's authorized representative shall apply to the extent that they supplement the terms and conditions of this Order. In the event there is a conflict between the parties' terms and conditions, the documents and terms and conditions shall prevail in the following order:

- (a) Buyer's Purchase Order and its corresponding exhibits;
- (b) These Terms and Conditions of Purchase;
- (c) The Agreement and its corresponding exhibits; and
- (d) Seller's terms and conditions that do not conflict with the Buyers terms and conditions contained herein, and which have been specifically accepted by Buyer in writing.

### **18. SUBCONTRACTORS AND SUB-SUBCONTRACTORS**

Seller shall require all subcontractors and sub-subcontractors to carry insurance per Buyer's corporate policy then in place, and shall furnish separate certificates and endorsements for each policy as Buyer may require.

### **19. WARRANTY**

(a) Seller warrants that all Goods are free from defects in workmanship, material, and design, and that the Goods comply with the parties' agreement and this specific Order and with the drawings, specifications, and samples applicable. Seller warrants that when applicable all Goods are manufactured to FDA medical quality standards and are fit and suitable for the purposes designated by Buyer. All Goods will be warranted for a one-year period for parts and labor, unless Seller's (or third party's) warranty period is longer and in such a case Seller's warranty will apply. The warranty shall begin from date of acceptance of the Goods in full-time operation (including software). These warranties are in addition to all other warranties, express or implied, and shall survive delivery, inspection, acceptance, or payment by Buyer and shall run to Buyer, its successors, assigns, customers, and users of the Goods. Buyer agrees to assign all third party warranties for Goods to Seller or in the absence of such assignment to provide coverage for such third party warranty. (b) If any Goods delivered hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may at its election:

(i) require the Seller to promptly correct, at no cost to Buyer, any defective or nonconforming Goods by repair or replacement, at the location as specified by Buyer; or

(ii) return such defective or nonconforming products at Seller's expense to the Seller, and recover from the Seller the Order price thereof.

(c) Seller warrants and agrees that the Services shall be performed with due diligence, in a good and workmanlike manner and shall comply with all of Buyer's requirements applicable to the Services. Seller shall re-perform any nonconforming Service at Seller's sole expense and to the reasonable satisfaction of Buyer; or, at Buyer's option, refund to Buyer that portion of the consideration that is attributable to the nonconforming Service. If Buyer elects to have Seller re-perform the nonconforming Service and Seller fails to promptly commence and complete such performance to the reasonable satisfaction of Buyer, then Buyer shall have the right to have the nonconforming Service performed by other means, and Seller shall be responsible for all reasonable costs so incurred. The Services warranty period shall be for a minimum of twelve (12) months or as otherwise agreed to by the Parties, beginning on the date following completion of the Services performed or provided pursuant to the Order.

## **20. PROPRIETARY RIGHTS IN INVENTIONS**

Seller agrees to assign to Buyer and not otherwise to make use of any invention, improvement, or discovery, whether or not patentable, which is conceived or reduced to practice in performance of the work under this Order by any employee of Seller or any person working under Seller's direction. All such work shall be deemed to be "work for hire."

## **21. INDEMNITY**

Seller agrees to indemnify and save Buyer, and Buyer's parent, subsidiary, and affiliate companies, and their respective directors, officers, shareholders, employees, managers, members, and agents harmless from all third party claims, (including a claim from Seller's parent or affiliate company) judgments, fines, and costs (including reasonable attorney fees) arising out of (i) the Goods supplied by Seller; (ii) Seller's breach of the terms of this Order, or (iii) Seller's breach of any applicable law referenced in this Order, if and to the extent such injury is proximately caused by the negligent act or omission or willful misconduct of Seller, or Seller's parent, subsidiary or affiliate company or one of their respective employees or agents, and is determined by Buyer in Buyer's sole discretion, settlement between the parties, or a

court of competent jurisdiction to be a legal liability of Seller; and provided that Buyer furnishes to Seller notice of such indemnification obligation within a reasonable period of time, and such requisite authority, information and reasonable assistance to defend any such third party claim.

## **22. INSURANCE**

Seller shall furnish to Buyer a certificate of insurance confirming that Seller has obtained insurance coverage in the type and amounts required by Buyer per the certificate of insurance or insurance exhibit attached to the Order, these Terms and Conditions of Purchase, or the Agreement, and that Buyer is an additional insured, where applicable.

## **23. GOVERNING LAW AND VENUE**

Each party waives all rights to a jury trial in connection with any disputes related to this Order. All disputes arising in connection with this Order shall be resolved in the Eighth Judicial District of Illinois, Adams County. The parties hereto agree that the laws of the State of Illinois shall govern and control the Order, excluding any such law that may direct the application of the laws of any other jurisdiction, including the Uniform Commercial Code. All references herein to federal, state, or local statutes, regulations, rules, and orders shall be deemed to include any and all subsequent amendments thereto and revisions thereof.

## **24. LIEN WAIVERS**

Seller expressly waives and releases any and all claims to any lien, statutory, common law, or otherwise, upon any Goods owned or purchased by Buyer, whether such Goods are sold to Buyer pursuant to this Order, or delivered to Seller by Buyer pursuant to this Order. The foregoing waiver and release of liens shall not apply to any consensual security interest created under a separate security agreement executed by Buyer. Seller hereby agrees to pay promptly any lien and Seller shall indemnify, protect, and hold harmless Buyer, its successors and assigns from all costs, and expenses, including reasonable attorneys' fees, damages, or claims arising out of any of Seller's subcontracts or disputes between Seller and its subcontractors or other entities or from failure of Seller to pay promptly its subcontractors and other entities possessing any right to any lien.

## **25. INTELLECTUAL PROPERTY**

Seller shall, at its expense, indemnify Buyer and defend any suit or proceeding brought against Buyer, its successors' and assigns, based on any

claim that any Goods or any component part delivered or furnished hereunder infringes or the like the rightful claim of any third party, including any United States or foreign patent, copyright, trademark, or service mark (excepting infringement or the like necessarily resulting from the adherence of specifications furnished by Buyer). Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any of the Goods delivered hereunder, Seller, at its option, shall:

- (a) secure termination of the injunction and obtain for Buyer the right to use such Goods without any obligation or liability;
- (b) replace said Goods with non-infringing goods, all at Seller's expense and to Buyer's satisfaction;
- or
- (c) remove said Goods at Seller's expense and refund to Buyer the amount paid for such Goods.

## **26. CUMULATIVE REMEDIES**

Any right or remedy of Buyer provided herein is in addition to the Buyer's other rights and remedies provided herein or by law, and all of Buyer's rights and remedies hereunder are cumulative and non-exclusive.

## **27. WAIVER**

Buyer shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of the rights or remedies under this Agreement, and no waiver whatever shall be valid as against Buyer unless in writing, signed by an authorized representative of Buyer, and then only to the extent set forth therein. Buyer's waiver of any right or remedy under the Order on any one occasion shall not be construed as a waiver of any right or remedy that Buyer would otherwise have on a future occasion.

## **28. NO SUBSTITUTIONS**

Seller must deliver the Goods specified in Buyer's Order, without material deviation. Seller is hereby prohibited from providing any substitutions without express written authority from Buyer.

## **29. TERMINATION FOR CONVENIENCE**

- (a) Any Order may be terminated by Buyer promptly upon written notice to Seller for the convenience of Buyer prior to acceptance of the Goods, or if after acceptance of the Goods, with thirty (30) days prior written notice to Seller at the address located on the Buyer's purchase order.
- (b) In the event of termination for the convenience of Buyer, Seller may, in writing, make claim for the

cost of any work or service or both, in process, but not for any cost of design, engineering or development, special tooling, or general-purpose equipment unless such items have been specifically ordered and separately priced in the Order. Other than as specified in the preceding sentence, Seller shall not be entitled to any claim, remedy, or damages. Any and all claims or requests by Seller under this subsection (b) shall be deemed waived unless made in writing and received by Buyer within ten (10) business days from the date of termination of the Order.

## **30. TERMINATION FOR DEFAULT**

- (a) Buyer may, by written notice, terminate this Agreement in whole or in part if the Seller:
  - (i) fails to make delivery of the Goods or to perform the service within the time specified herein;
  - (ii) fails to replace or correct defective Goods in accordance with the provisions of this Order;
  - (iii) breaches any of the other provisions of this Order or fails to make progress as to endanger performance in accordance with the terms hereof, including delivery schedules; or
  - (iv) becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition of bankruptcy, makes an assignment for the benefit of creditors, or if a petition under any bankruptcy laws is filed against it.
- (b) In the event of termination pursuant to this Section, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, products or services similar or substantially similar to those so terminated, and Seller shall be liable to Buyer for any excess costs occasioned by Buyer thereby; provided that, in the event Buyer elects to terminate only a portion of this Order, Seller shall continue the performance of this Order to the extent not terminated.
- (c) Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to Buyer in the manner, time, and to the extent directed by the Buyer:
  - (i) any completed Goods; and
  - (ii) such partially completed Goods and material, parts, tool, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has produced or acquired for the performance of the terminated part; and
  - (iii) Seller shall grant Buyer a royalty-free, assignable, nonexclusive license to use and license others to use, Seller's designs, processes, drawings, and technical data, substantially relating to the quantity of the products terminated hereunder. Seller shall, upon direction of Buyer, protect and preserve property encompassed in this paragraph in the possession of Seller.

(d) If Buyer issues a notice of termination for default under this Section, and it is subsequently determined that Buyer's termination was incorrect, the termination shall be deemed by Buyer and Seller to have been originally issued as a termination for convenience, and the rights and liabilities of the parties hereto shall in such event be governed by such clause.

### **31. FORCE MAJEURE**

No party to this Order shall be liable except under the indemnities provided herein for failure to perform its obligations under the Order in so far as such performance is hindered or prevented by strikes or industrial disputes (except Seller induced strikes or industrial disputes by the Seller's personnel), riots, war (declared or undeclared), acts of God, civil insurrection, fire or other similar cause, provided that any such specified cause or other similar cause is beyond the reasonable control of such party (collectively, "Force Majeure"). In case a party hereto shall be unable wholly or in part, because of such Force Majeure, to carry out its obligations under this Agreement, it shall promptly give written notice to that effect to

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the other party of the suspension of performance of such obligations and giving full particulars of such Force Majeure. The performance of any obligation or obligations suspended while Force Majeure is operative shall be resumed as soon as reasonably possible after the suspension thereof, and prompt notice of such resumption shall be given. If after ten (10) business days the supply of Goods has not resumed the party not affected by Force Majeure shall be entitled to give written notice terminating the parties' agreement or the particular Order or Orders.

### **32. Non-Material Errors**

Any stenographic or clerical errors contained in this Order are subject to correction by Buyer.

**CERTIFICATE OF INSURANCE**  
**(Insurance Exhibit)**