

The Medical College of Wisconsin, Inc
Purchase Order Terms and Conditions (General)

1. **Renewals:** Any Sellers' term that calls for automatic renewal shall be null and void. Any renewal must be accompanied by an MCW Purchase Order ("PO" or "PO/Contract").
2. **Invoicing:** MCW shall make payment net 30 days after receipt of a properly submitted invoice ("Properly Submitted Invoice"). A Properly Submitted Invoice must include MCW's PO/Contract number. Notwithstanding anything in Sellers' terms, MCW shall not be liable for late fees, credit card fees, collection fees, attorneys' or audit fees, court fees or any other fee in connection with late payment.
3. **Packaging and Delivery.** The items subject of this PO ("Articles") shall be packed and shipped by Seller in accordance with MCW's instructions and good commercial practices so as to ensure that no damage results from weather or transportation. All deliveries shall include a packing list indicating the contents of each package. All deliveries are FOB Destination or FOB Installation (if installation is required), freight prepaid and included, unless otherwise specified. Title to the Articles shall pass to MCW when the Articles are delivered to or installed at MCW.
4. **Warranty.** Seller warrants that all Articles provided by it (a) shall be of good quality and workmanship and free from all material 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 MCW, (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 by any third party. Seller shall automatically assign or cause to be assigned any manufacturers' warranties to MCW and such warranties shall run to MCW, its successors, assigns, and customers, and to users of the Articles. Unless specifically directed by the warranty, Seller shall not charge MCW for any costs related to the warranty including but not limited to: investigation, shipping, travel for Seller's employees to MCW site and other related costs. All warranties shall be construed as conditions as well as warranties. All warranty work must be completed in the continental United States.
5. **Inspection.** Articles purchased hereunder are subject to inspection and approval at MCW's destination up to 60 calendar days after receipt of the entire order. MCW reserves the right to reject and refuse acceptance of items which are not in accordance with MCW's instructions, specifications, drawings, and data or Seller's warranties (express and implied). Items not accepted shall be returned to Seller at Seller's expense, with no restocking fee. Exercise or non-exercise of this right shall have no effect on MCW's other rights and remedies.
6. **Time is of the Essence.** Time is of the essence in performance of this PO/Contract. MCW may cancel this order, in whole or in part, without liability to MCW if deliveries are not made at the time and in the quantities specified. Failure of the Seller to adhere to delivery schedules as specified or to promptly replace rejected Articles shall render Seller liable for all costs in excess of the Contract price when alternate procurement is necessary, including administrative costs.
7. **Indemnification.** MCW will hold Seller harmless for claims arising solely out of the acts of MCW employees acting within the scope of their employment in connection with this Contract. Except for the foregoing, MCW will not indemnify Seller in connection with this Contract, including for attorneys' fees, auditors' fees and any other costs related to litigation or dispute resolution.

Seller agrees to indemnify, hold harmless and defend MCW, its employees, officers, directors, and assigns, from any and against any claims or demands, actions or proceedings, liability, loss or expense whatsoever, including reasonable attorneys' fees (collectively "All Liabilities") arising out of or relating to claims for injuries, including death; from and against All Liabilities arising out of losses or damages to property caused by or resulting from the performance of work covered hereby; from and against All Liabilities arising out of defects in the Articles, failure to comply with specifications or with the express and implied warranties of Seller, violation from the manufacture or sale of the Articles of any statute, ordinance or administrative order, rule or regulation, or infringement of any third party intellectual property rights in or to the Articles. In the event of any claim,

demand, action or proceeding being commenced against MCW due to any of the above matters, MCW agrees to give Seller prompt notice thereof in writing.

8. **Termination/Effect of Termination.** MCW may terminate the PO/Contract for its convenience by providing 30 days' written notice. In the event of such termination, Seller shall reduce its activities immediately, and MCW shall make fair payment as negotiated for any work completed as of the date of termination and there shall be no further financial liability. MCW shall have the right to return any products received with no additional fees such as restocking fees
9. **Law/Venue.** The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this contract shall be governed solely by the laws of the State of Wisconsin. MCW shall not consent to waive a jury trial or to binding arbitration as part of this PO/Contract.
10. **Taxes:** MCW is a tax-exempt entity. It may be subject to taxes on purchases made in another State depending on the laws of that State.
11. **Patent Infringement:** The Seller of the Articles described herein guarantees the Articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe on any intellectual property.
12. **Prohibited Transactions:** Any attempt of recipients of federal loans or grants to purchase goods or services from the suppliers listed in Title 2 C.F.R § 200.216 will invalid this PO. This prohibition extends to all subrecipients.
13. **Health and Safety:** Seller and its employees, contractors, and other individuals under its control will follow all MCW health and safety rules, protocols, and guidelines, including but not limited to vaccination requirements, while providing services on-site at any facility or premises owned, leased, or operated by MCW. Copies of all health and safety rules, protocols, and guidelines in place for MCW facilities and premises shall be provided by MCW at the request of Seller.
14. **Contract.** This PO and any document executed by MCW constitute the sole PO/Contract with respect to the subject matter of this PO. Additional documents referenced on the face of the PO, if any, are also expressly incorporated by reference and shall become part of this Contract. In the event of a conflict among the terms or conditions constituting this PO/Contract, the order of priority to resolve conflicts shall be this PO/Contract, documents executed by MCW, if any, and documents, if any, in the order they are listed on the face this PO. If there are no documents referenced on face of the PO, these MCW PO Terms and Conditions any document executed by MCW are the only terms that shall apply. No other document, terms or change in pricing shall apply or be incorporated by reference to this Contract, including those set forth in Seller's quotes, click-through agreements, order acknowledgements, invoices, website, service catalogs, brochures, or technical data sheets, unless subsequently agreed to in writing and executed by both parties. Seller acknowledges and agrees that any attempt to negate the Terms and Conditions of this PO is null and void. The sole exception to the forgoing is in the instance that Sellers' warranty is superior to that set forth in MCW's PO/Contract, in which case Sellers' warranty shall take precedence. By accepting this PO, Seller fully and forever waives any right to claim that this PO does not represent the full and final contract.

The terms and conditions contained in MCW's Supplemental Terms and Conditions and MCW's Terms and Conditions for Purchase Orders Using Federal Funds, found at www.mcw.edu/purchasing.htm, are herein expressly incorporated by reference to these PO Terms and Conditions.

15. **Force Majeure.** Neither party shall be liable for failure to perform its obligations hereunder due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond the non-performing party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).