

Magellan Health Services Standard Purchasing Terms and Conditions

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1) EQUAL EMPLOYMENT OPPORTUNITY: Magellan Health Services (hereafter called "Buyer" or "MHS") serves from time to time as a contractor for the United States Government. Accordingly, the Seller shall comply with all federal laws, rules and regulations applicable to subcontractors/vendors of Government contractors including those related to equal employment opportunity and affirmative action in employment to minorities and women (Executive Order 11246, as amended), individuals with disabilities (Section 503 of the Rehabilitation Act of 1973, as amended) and Vietnam era/disabled veterans (Vietnam Era Veterans Readjustment and Assistance Act of 1974, as amended, 38 USC 4212). These clauses along with any other federal employment laws, rules and regulations applicable to the subcontractors/vendors of Government Contractors are incorporated herein by reference.

2) NON-SEGREGATED FACILITIES: The Contractor hereby certifies that it is in compliance and shall remain in compliance with the provisions of 41 CFR 60-1.8.

3) ARTICLES ORDERED: Seller agrees to sell to the Buyer designated on the face hereof (hereafter called "hereon") the quantities of goods and services (hereafter individually and collectively called the "Articles") specified hereon at the prices specified hereon and to deliver the same on or before the delivery dates specified hereon. Hereafter the term "delivery" and the like refers to performance when used with respect to services. Delivery time shall be of the essence of this contract. Buyer's count will be accepted as conclusive on all shipments not accompanied by a packing slip. Unless otherwise specified hereon, payments will not be made for partial deliveries. Affiliates of the Buyer, whether or not their names are printed hereon shall not be deemed sureties, guarantors, or other accommodation parties of the Buyer, and shall not be otherwise liable in connection with this order.

4) ACCEPTANCE: The acceptance of this order, by acknowledgment, shipment of goods or performance of services shall constitute acceptance of the conditions set forth below and on the face of this order. No purported acceptance of this order on terms and conditions which modify, supersede or otherwise alter the terms and conditions hereof shall be binding upon the Buyer. Any shipment of goods or performance of services by the Seller shall be deemed to be only upon the terms and conditions contained herein, except to the extent that an authorized purchasing representative of Buyer may otherwise expressly consent in writing, notwithstanding Buyer's acceptance or payment for any shipment of goods or similar act of Buyer.

5) TERMS TO GOVERN:

(A) This order is an offer made by Buyer and shall not be deemed an expression of acceptance or confirmation of any offer heretofore or hereafter made by Seller. If any acceptance of an offer made by Seller is deemed contained herein, such acceptance is expressly made conditional on assent by the Seller to all the additional and different terms contained hereon that those contained in any quotation, proposal, or other offer received from Seller. Buyer hereby notifies Seller of its objection to any additional or different terms contained in Seller's acknowledgment or confirmation of this order or otherwise. Neither the failure by Buyer to object to Seller's acknowledgment or confirmation of this order, nor the acceptance or use of the Articles hereunder, nor any other act or omission by Buyer shall be deemed an acceptance by Buyer of any terms or conditions in Seller's acknowledgment or confirmation or otherwise which are additional to or different from those contained in this order.

(b) When Seller has not otherwise accepted this order, Seller by commencing work hereunder, or by notifying Buyer of its commencement of work, or by the shipment of the Articles, shall be deemed to have agreed to all the terms and conditions contained herein and hereon, and no other, if Seller shall fail to make written objection to Buyer within five (5) days after receipt by Seller of this order.

(c) Notwithstanding anything to the contrary contained herein or hereon, if Seller has previously issued a quotation to Buyer by means of a form which incorporates these Terms and Conditions of Purchase, or a prior version thereof, and which offers the Articles to Buyer on the same terms specified herein, without any addition or change thereto, this order shall be deemed an unconditional acceptance of such quotation from Seller.

6) PRICES: Unless otherwise specified, prices are F.O.B. destination and shall include all federal, state, and local taxes. No additional charges of any kind, including but not limited to charges for boxing, packing, cartage, or other extras, will be allowed except as stated herein or otherwise specifically agreed to in writing. Seller warrants that the price, or prices, and terms, for goods ordered are no higher than net prices of terms offered or given by Seller to any other customer for the like goods sold to other customers under similar conditions and/or delivered under similar circumstances.

7) INVOICE & PAYMENT:

(A) For each shipment of goods or completed item of services, Seller will submit a properly prepared original invoice in accordance with Buyer's invoicing instructions for materials and supplies delivered to and accepted by Buyer. The invoice shall be submitted to the MHS Accounts Payable Department or such location as specified by Buyer on the Purchase Order. Taxes and freight, if any, must be separately itemized. The Purchase Order number must appear on all invoices, shipping documents, quality certificates and packing sheets.

(B) Determination of payment due date, whether under net or discount terms, will be based on the latest of: (i) the date the goods are received or services performed, (ii) the date provided in this contract for receipt of goods or completion of services, or (iii) the date in accurate invoice is received.

(C) Payment will be deemed to have been made when deposited in the mail.

(D) In no event shall payment be deemed to constitute acceptance by Magellan Health Services. Payment shall not be deemed to waive any warranty hereunder whether express or implied, or to prejudice any claim Magellan Health Services may have against Seller.

(E) All invoices submitted which contain total charges that are greater than ten percent (10%) higher than the amount shown on this Purchase Order will be rejected unless accompanied by an authorized Change Purchase Order. All additional or increased quantities, costs or pricing to the items shown on this Purchase Order, excluding tax and freight charges, must be approved in advance by the Buyer.

8) GENERAL WARRANTY:

(A) Seller expressly warrants that all goods and work covered by this contract will conform to the drawings, specifications, samples, Statements of Work, or other description furnished by Magellan Health Services, its affiliates or subsidiaries, and/or proposed by Seller, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Seller warrants that all services performed under this contract will be free from defects and will conform to the requirements of the contract. Any services corrected or re-performed will be covered by this warranty.

(B) Seller certifies that all goods and services sold to Magellan which are date sensitive are, and will remain, Year 2000 Compliant, in that: (i) all functions, calculations and other computing processes shall perform properly in a consistent manner regardless of the date in time on which the function, calculations or processes are or were performed before, on or after January 1, 2000, including leap year calculations; (ii) all functions, calculations and other computing processes shall perform without interruption caused by the date in time whether before, on or after January 1, 2000; and (iii) all functions, calculations, and other computing processes shall respond to date input (whether two-digit or four-digit years, or a combination thereof) data in a manner that resolves any ambiguities as to century in a defined and predetermined manner so as to avoid any errors in functions, calculations or computing processes which might otherwise arise due to a calendar date before, on or after January 1, 2000.

(C) If Seller breaches this warranty, Buyer may, at no increase in contract price: (i) require Seller to repair or replace promptly, at Seller's election, defective or nonconforming goods; (ii) require Seller to promptly furnish materials or parts and installation instructions required to successfully accomplish the correction of defective or nonconforming goods, and equitably reduce the contract price to account for the cost of removal and installation; (iii) require Seller promptly to redesign defective or nonconforming goods not manufactured pursuant to designs furnished by Buyer and require Seller promptly to repair or replace goods manufactured in accordance with such defective design; (iv) require Seller promptly to correct or reperform, at Seller's election, defective or nonconforming services; or (v) equitably reduce contract prices.

(D) Notwithstanding any disagreement regarding the existence of a breach of this warranty, Seller will comply with Buyer's direction to (a) repair or replace, at Seller's election, the goods or (b) furnish materials or parts and installation instructions required to successfully repair the goods. If it is later determined that Seller did not breach this warranty, the contract price will be equitably adjusted.

9) APPLICABLE LAW: This contract will be governed by and construed in accordance with the law of the state in which the MHS Purchasing Department placing this contract is located, with no consideration given to the state's conflict of law, rules, regardless of the places of execution or performance of this contract.

10) COMPLIANCE WITH LAWS AND STATUTES:

(A) Seller represents and warrants that the Articles have been and/or will be manufactured, constructed and sold, and that prices charged are in strict compliance with all federal, state, and local laws, regulations and orders. The Seller represents and warrants that no claim for infringement of US or foreign letters patent will be made against Buyer for which indemnity may be sought by Buyer under the Hold Harmless clause.

(B) Seller represents and warrants that they shall comply with all Federal anti-terrorism rules and regulations. Seller's acceptance of this Purchase Order and delivery of the goods or services being ordered shall serve as certification that, to the best of Seller's knowledge, Seller (a) is not, (b) has not been designated as, (c) is not owned, affiliated, or controlled by, and (d) does not support, assist or aid a suspected terrorist organization or individual as defined by Federal Law, including, but not limited to, Executive Order 13224.

(C) Seller represents and warrants that:

a. Seller represents and warrants that: (i) Seller is not debarred, suspended, or otherwise excluded under the HHS/OIG List of Excluded Individuals ("LEIE List") <<http://exclusions.oig.hhs.gov/>>; the System for Award Management ("SAM") <<http://www.sam.gov/>>; or any State healthcare program; (ii) Seller's employees and subcontractors to provide services under this Agreement are not debarred, suspended, or otherwise excluded under the LEIE, SAM, or any State healthcare program; (iii) Seller's directors, officers, partners or owners with a five percent (5%) or more controlling interest are not debarred, suspended or otherwise excluded under the LEIE, SAM or any State healthcare program; and (iv) Seller is not debarred, and not under consideration to be debarred, by the Food and Drug Administration from working in or providing services to any pharmaceutical or biotechnology company under the Generic Drug Enforcement Act of 1992.

b. Seller shall immediately notify Buyer in writing of any commencement of debarment, suspension, or exclusion of Seller, Seller's employees, subcontractors, directors, officers, partners or owners with a five percent (5%) interest as described hereinabove.

c. In addition to any other remedies available to Buyer at law or equity, Buyer may immediately terminate the Agreement for any debarment, suspension, or exclusion of Seller, Seller's employees, subcontractors, directors, officers, partners or owners with a five percent (5%) interest as described hereinabove.

d. The Seller is not debarred, and not under consideration to be debarred, by the Food and Drug Administration from working in or providing services to any pharmaceutical or biotechnology company under the Generic Drug Enforcement Act of 1992.

11) ASSIGNMENT AND SUBCONTRACTING: Seller shall not assign any contract resulting from this order or any portion of such contract, nor shall Seller subcontract for completed or substantially completed goods or services purchased hereunder without the prior express written consent of Buyer, and any assignment made without consent shall be null and void. Seller's consent shall not be required for any assignment of this contract and its interest therein to any corporation affiliated with MHS, or to any corporation succeeding to MHS's business.

12) HOLD HARMLESS:

(i) Seller shall indemnify for an hold Buyer harmless from all liability, damage, and expense, and /or claims (including all attorney's and accountancy fees and costs of investigating and litigating claims) resulting, directly or indirectly, from any failure of Seller, its employees, agents, and/or Sellers to comply fully with and perform all federal, state, and local laws, ordinances, regulations and orders.

(ii) Seller shall indemnify for and hold Buyer harmless from all liability, loss, damage, expense and/or claims of infringement of U.S. or foreign letters patent (including all attorney's fees and costs of investigating and litigating claims) resulting, directly or indirectly, from the manufacture, use and/or sale of the Articles except to the extent that any such loss, damage, expense or claim shall have arisen because of Seller's manufacture of articles which are designed solely by Buyer, without Seller's participation, and provided such Articles are made by Seller exactly in accordance with the specifications and drawings furnished by Buyer.

(iii) Seller shall indemnify and hold Buyer harmless from all liability, loss, damage, and/or expense (including all attorney's and accountancy fees and costs of investigating and litigating claims) due to injuries to persons, (including death) and/or damage to or destruction to property resulting, directly or indirectly, from acts or omissions of Seller, its employees, agents, or Suppliers, in the manufacture, construction, sale, use, delivery, installation and/or servicing of the articles or otherwise in the performance of this order.

(iv) The obligation to indemnify Buyer and hold it harmless pursuant to this clause shall be deemed to also extend to Buyer's employees and agents, its affiliates, their employees and agents, and Buyer's customers and users of its products. The Seller agrees promptly to assume the defense and preparation for the defense (and costs thereof) of any suit or threatened suit brought against Buyer or any such aforesaid indemnitee.

13) BUYER FURNISHED MATERIALS OR SUPPLIES: Buyer may from time to time furnish Seller with materials or supplies which are required by Seller for the performance of this order. In such event, an equitable reduction in the price shall be accomplished prior to delivery of such materials or supplies to Seller, or as soon thereafter as possible, but in no event later than thirty (30) days after such delivery.

14) AUTHORITY TO EXECUTE DOCUMENTS: This order is not binding upon Buyer unless signed by a member of Buyer's Purchasing Department, and only such a member may act on behalf of Buyer in connection with this order. No modifications, amendment, rescission, discharge, abandonment or waiver of these Terms and Conditions shall be binding upon Buyer unless set forth in writing and signed by Buyer's Agent. No modification or amendment of the terms appearing hereon shall be binding upon Buyer unless set forth in writing and signed by a member of the Buyer's Purchasing Organization.

15) CHANGES: Buyer may, at any time, by written order, and without notice to any sureties, make changes, within the general scope of this order, in any one or more of all the following: (i) Drawings, designs, specifications, and other data incorporated in this order; (ii) Method of shipment or packing; (iii) Place of delivery, inspection or acceptance; (iv) Time of delivery. If any such change causes an increase or decrease in the cost of or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the contract price, the delivery schedule, or both, will be equitably adjusted and the parties will modify the contract in writing. Upon receipt of any such written change order, Seller shall proceed promptly; and in any event within ten (10) days from the date of Buyer's written order, to deliver a statement to Buyer showing the effect of any such change on delivery date and/or prices, and, in the absence of such a statement within ten (10) days, all Seller's claims for equitable adjustment as a result of the change shall be deemed waived. Seller shall not put such changes into effect unless and until an equitable adjustment (not to include delay costs), in writing, shall be made in the terms of this order, or (if sooner), when Seller's claims for adjustment have been waived.

16) DELIVERY: Seller will strictly adhere to the delivery and completion schedules specified in this contract. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, Seller will immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it, and will provide Buyer with a written recovery schedule. Seller will continue to notify Buyer of any material change in the situation. If Seller fails to deliver goods within the delivery schedule, Buyer may require Seller to ship goods, at Seller's expense, by air freight or expedited routing.

17) INSPECTION: All goods shall be received subject to Buyer's right of inspection and rejection.

18) OVERSHIPMENT: Goods shall not be supplied in excess of quantities and shipping tolerances, if any, specified hereunder. Seller shall be liable for handling charges and return shipment costs for any excess quantities, and unless Seller agrees to pay for such costs, the overshipped material will be retained by Buyer at no cost.

19) RISK OF LOSS: Seller assumes the following risks, in addition to other risks Seller assumes by law: (i) All risks of loss or damage to Articles until their delivery to and acceptance by Buyer; (ii) All risks of loss or damage to any property in the possession of Seller received from, or held for the account of, Buyer, until such property has been delivered to and accepted by Buyer; (iii) In the event the Articles are rejected by Buyer or Buyer revokes its acceptance of the Articles, all risks of loss or damage shall be deemed to have rested with the Seller from the beginning.

20) DISPUTES: Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of goods in accordance with Buyer's direction. Upon resolution of the dispute, this order shall be equitably adjusted, if necessary, to reflect such resolution.

21) EXCLUDED PERFORMANCE: If performance or compliance by either party is at any time without fault or negligence or the part of the affected party prevented, impaired or delayed by war, riot, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, Acts of God or the public enemy, public calamity, government restrictions or prohibitions, orders or directions of courts or government or their bureaus or their departments (governments are to be construed as federal, state, or local in respect to all of the foregoing), or failure of Seller's suppliers to provide essential materials, or failure of any trucker or carrier to provide timely service or anything beyond the control of the affected party, then in any such event, any performance or compliance or obligation on the part of the affected party shall be excused for as long as the said condition persists, without liability of any kind to the affected party. The affected party shall then resume performance under this order when able and shall complete performance hereunder, unless Buyer exercises its rights under Paragraph 23 to terminate, in which case Buyer may elect to pay Seller as set forth in Paragraph 23 or to revoke its acceptance of the Articles.

22) HAZARDOUS MATERIALS: Seller shall notify Buyer of every article supplied hereunder which contains material hazardous or injurious to the health or physical safety of persons even though that hazard or injury may only occur due to mishandling or misuse of the article. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each article so identified, Seller shall supply to Buyer material safety data sheets, warning labels and other instructional material appropriate to warn persons of the hazard and its effects if they come in contact with the material.

23) CONFIDENTIAL RELATIONSHIP: Seller agrees to treat as strictly secret and confidential all specifications, drawings, blueprints, nomenclatures, samples, models, and other information supplied by Buyer. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the purchase of the Articles shall be deemed to be confidential or proprietary information, and shall be acquired by Buyer free of any restriction as part of the consideration for this order notwithstanding any endorsements of confidentiality which Seller may place on copies of documents and material containing such knowledge or information. The Buyer shall have the right to reproduce in whole or in part any documents and material, whether copyrighted or not, supplied to Buyer as part of, or in connection with, the Articles.

24) INSURANCE: Seller shall carry and maintain such insurance as will protect Seller and Seller's employees, agents and subcontractors, and Buyer from and against claims by employees of Seller under any Worker's Compensation or similar acts, and also from any other claims for personal injury including death or property damages, which may be made by or on behalf of employees, agents, or subcontractors of Seller and/or the general public due to the performance of this agreement. In the event that Seller, Seller's employees or agents enter onto Buyer's premises for any reason in connection with this contract, Seller and such other parties shall observe all security, safety, plant protection and traffic regulations as applicable. Seller shall defend, indemnify and hold Buyer harmless from all claims, actions, demands, loss and causes of action arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees or agents, save and except damage caused by the negligence of Buyer. Seller, and any contractor used by Seller in connection with this order, shall carry Worker's Compensation and Employees' Liability Insurance to cover Seller's and contractor's legal liability on account of accidents to their employees. Seller and the contractor shall carry adequate Commercial General Liability, including Completed Products coverage, and adequate Comprehensive Automobile Liability insurance covering the legal liability of Seller and the contractor on account of accidents arising out of the operations of Seller or the contractor and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. Seller shall furnish Buyer with certificates of insurance evidencing these coverages, and shall provide Buyer with written notice of cancellation of the coverage, within ten (10) days of notice to Seller.

25) PRECEDENCE: If the various parts of this contract are inconsistent, the following order of precedence will apply: (i) Special Terms and Conditions; (ii) the terms and conditions in this form; (iii) specifications; (iv) all other attachments incorporated in this contract by reference.

26) RIGHTS AND REMEDIES: The rights and remedies of the parties set forth in this agreement are cumulative and in addition to any other rights or remedies that they may have at law or in equity. Buyer may offset any damages resulting from a breach of any contract between Buyer and Seller against the price due under any other such contract.

27) TERMINATION FOR DEFAULT: (a) Buyer may, by written notice to Seller, terminate the whole or any part of this order in any one of the following circumstances: (i) if Seller fails to make delivery of the goods or to perform this order within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this order, or (iii) Buyer reasonably believes that Seller's prospective ability or willingness to perform is materially impaired; or (iv) in the event of any bankruptcy or insolvency action or proceedings is brought by or against Seller, and such action or proceeding is not finally dismissed within 60 days, or Seller so fails to make progress as to endanger performance of this order in accordance with its terms, and does not cure such failure or remove such impairment within a period of ten (10) days (or longer period as Buyer may authorize in writing) after receipt of notice by Buyer specifying such failure or impairment. (b) In the event Buyer terminates this order in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for the same; provided, that Seller shall continue the performance of this order to the extent not terminated hereunder. (c) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

28) TERMINATION FOR CONVENIENCE: Buyer may at any time by written notice terminate all or any part of this order for Buyer's convenience. If this order is terminated, in whole or in part, for Buyer's convenience, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Seller's actual performance of work under this order. In no event shall the total amount paid under this provision exceed the prices set forth in this order for the work terminated.

29) GRATUITIES: Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer any gratuity, including, but not limited to, entertainment or a gift, with a view toward securing any business from Buyer or influencing the employee, agent or representative with respect to the securing, terms and conditions, or performance of this order.

30) ECONOMIC OPPORTUNITIES: Seller will, when applicable, have made good faith efforts to work with or obtain materials to be used in providing the goods or performing the services from minority-owned and emerging small business enterprises.