



## Purchase Order Terms and Conditions

This Purchase Order (“**Order**”) is an offer by Purchaser to Vendor for the purchase of goods or services (as specified in the Order), in accordance with and subject to these terms and conditions. The term Purchaser as used in this Order shall include HonorHealth, and each of its subsidiaries and affiliates.

These terms and conditions shall apply unless the parties have entered into a separate formal written agreement which sets forth the agreed upon terms and conditions for the purchase of goods and services that have been signed by authorized representatives of each party. These terms and conditions shall supersede any contrary provisions in Vendor’s quotation form or proposal and are not subject to variations or changes by printed terms and conditions on Vendor’s form. No modification of this Order shall be binding on Purchaser unless made in writing and signed by Purchaser’s authorized representative.

**1. Acceptance Agreement.** Vendor’s commencement of work on the goods or services subject to this Order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this Order. Any acceptance of this Order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Vendor to vary in any degree any of the terms of this offer is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price, or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Vendor without said additional or different terms. If this Order shall be deemed an acceptance of a prior offer by Vendor, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Vendor to vary in any degree any of the terms of this Order shall be deemed material and are objected to and rejected, but this Order shall not operate as a rejection of Vendor’s offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods.

**2. Electronic/Facsimile Transmission.** If this Order is transmitted by fax, email or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Vendor.

**3. Shipment.** If delivery is not made by the date indicated on this Order, Purchaser may, in addition to its other rights, cancel this Order, without any liability whatsoever. If in order to comply with Purchaser's required delivery date it becomes necessary for Vendor to ship by a more expensive way than specified in this Order, any increased transportation costs resulting

there from shall be paid for by Vendor unless the necessity for such rerouting or expedited handling has been caused by Purchaser.

**4. Force Majeure.** Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Vendor shall hold such goods at the direction of Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Vendor's direct additional costs in holding the goods or delaying performance of this Order at Purchaser's request. Causes beyond Purchaser's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

**5. Changes.** Purchaser shall have the right at any time to make changes in this Order by written notice to Vendor, and Vendor agrees to comply with such changes. If such changes cause a material increase or decrease in Vendor's costs or time of performance of this Order, Seller shall notify Purchaser immediately and negotiate an adjustment.

**6. Substitutions.** No unauthorized substitution of goods or services is permitted. Unauthorized substitutions of goods will be returned to Vendor and will not be paid for by Purchaser.

**7. Price and Payment.** Vendor warrants that the prices for the goods sold and/or services performed hereunder are not less favorable than those currently extended to any other customer for the same or similar products in similar quantities and/or services. In the event Vendor reduces its price for such goods and/or services prior to acceptance of Purchaser's Order (as defined in Section 1 of HonorHealth's Purchase Order Terms and Conditions) or before Vendor has shipped the goods, or during the term of performance of any Order for services, Vendor agrees to reduce the prices hereof accordingly. The price stated in this Order includes all charges for packaging, boxing, crating, and special handling, and freight, F.O.B. Destination. No modification or adjustment of the stated price may be made without the signed written agreement of Purchaser. If the price is not stated on this Order, the price shall be the lower of: the later price last quoted or paid, or the prevailing market price. Invoices must include the following data in order to receive payment, as applicable: (i) Order number; (ii) description of the goods and/or services used; (iii) quantity used; and (iv) the price(s); and if applicable the following data: (v) the manufacturer product number(s); and (vi) component definitions. Payment terms are net forty five (45) days after receipt of invoice by Purchaser.

**8. Setoff.** All claims for money due or to become due from Purchaser shall be subject to deduction or set off by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Vendor.

**9. Delivery and Risk of Loss.** Delivery shall be F.O.B. Destination unless otherwise mutually agreed upon in writing prior to issuance of the Order. Vendor shall comply with all applicable laws, rules and regulations for shipment of the goods, including, but not limited to, FDA approved

packaging specific to the product(s). In the event Purchaser has agreed in writing prior to issuance of the Order to pay freight or other transportation charges, the invoice shall include shipping charges as a separate item and shall contain the original or a copy of the bill indicating that payment by Vendor for shipping has been made. Delivery is not complete until the goods have been actually received and accepted the risk of loss or damage prior to completion of delivery shall be upon the Vendor, and any such loss or damage to goods or materials ordered hereunder shall not release Vendor from any obligation hereunder. Purchaser reserves the right to refuse C.O.D. shipments.

**10. Warranty.** Vendor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Vendor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Vendor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Vendor knows or has reason to know the particular purpose for which Purchaser intends to use the goods or services, Vendor warrants that such goods or services will be fit for such particular purpose. Vendor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Vendor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Vendor's warranty shall run to Purchaser, its successors, assigns and customers, and users of products sold by Purchaser. Vendor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Vendor with the opportunity to do so. In the event of failure of Vendor to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Vendor, may make such corrections or replace such goods and services and charge Vendor for the cost incurred by Purchaser in doing so. All equipment warranties will be for a term of no less than one (1) year.

**11. Indemnification.** Vendor shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Vendor, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Vendor.

**12. Inspection/Testing.** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Vendor at its expense and, in addition to Purchaser's other rights, Purchaser may charge Vendor all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformities are not apparent on examination, Purchaser reserves

the right to require replacement, as well as payment of damages. Nothing contained in this Order shall relieve in any way Vendor from the obligation of testing, inspection and quality control.

**13. Identification.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this Order shall contain the applicable Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Order, indicating the content of such boxes or packages.

**14. Waiver.** Purchaser's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

**15. Entire Agreement.** This Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

**16. Bankruptcy.** In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against Vendor, including any proceeding under the United States bankruptcy laws, or in the event of the appointment, with or without Vendor's consent, of a receiver of an assignee for the benefit of creditors, Purchaser shall be entitled to cancel any unfilled part of this Order without any liability whatsoever.

**17. Taxes.** Unless otherwise indicated on the face of the Order, Purchaser agrees to pay all State of Arizona sales or use taxes. Vendor will not charge for federal excise taxes, and Purchaser agrees to furnish Vendor, upon acceptance of goods or materials supplied under this Order, with an exemption certificate.

**18. Antitrust Assignment Clause.** Vendor and Purchaser acknowledge that overcharges by manufacturers are in fact borne by Purchaser and not Vendor. Vendor therefore, agrees to assign to Purchaser any and all claims which it may have for overcharges, as to goods and materials purchased in connection with any contract between Purchaser and Vendor, arising out of antitrust or similar actions, except as to overcharges which commence after the price is established under any contract between Purchaser and Vendor and which are not passed on to the Purchaser under an escalation clause.

**19. Compliance.** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations, including EEO and Affirmative Action, to which they are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference, as applicable, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, 12086, 13201 (including 29 CFR Part 470), as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts.

**20. Termination for Convenience of Purchaser.** Purchaser reserves the right to terminate this Order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge, consisting of a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

**21. Termination for Cause.** Purchaser may also terminate this Order or any part hereof for cause in the event of any default by Vendor or if Vendor fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of products which are defective or which do not conform to this Order, and failure to provide Purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this Order for cause. In the event of termination for cause, Purchaser shall not be liable to Vendor for any amount, and Vendor shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination.

**22. Proprietary Information -Confidentiality -Advertising.** Vendor shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Order, unless Vendor obtains written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Vendor for Purchaser in connection with this Order. Vendor shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Vendor, nor shall any information relating to the Order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Vendor to Purchaser shall be deemed secret or confidential and Vendor shall have no rights against Purchaser with respect thereto, except such rights as may exist under patent laws.

**23. Patents.** Vendor agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Vendor further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits, and damages, including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Vendor.

**24. Insurance.** In the event that Vendor's objections hereunder require or contemplate performance of services by Vendor's employees, or persons under contract to Vendor, to be done on Purchaser's property, or property of Purchaser's customers, Vendor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be

considered employees of the Purchaser. Vendor shall maintain all necessary insurance coverages, including general liability and Workers' Compensation insurance, in amounts acceptable to Purchaser. Vendor shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

**25. Assignments and Subcontracting.** No part of this order may be assigned or subcontracted without prior written approval of Purchaser.

**26. Limitation on Purchaser's Liability - Statute of Limitations.** In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

**27. Severability.** If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.

**28. Non-Profit.** Purchaser affirms that all purchased goods and/or services made under this Order are for use solely by Purchaser. Purchaser is a non-profit corporation organized under the laws of the State of Arizona for charitable purposes.

**29. Governing Law.** The laws of the State of Arizona shall govern this Order and the right and the obligations of the parties hereunder, and the venue of any action brought hereunder shall be in the Superior Court, County of Maricopa, State of Arizona.

**30. Debarred Vendors.** Purchaser is prohibited from contracting with or making sub awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. "Covered transactions" include those procurement contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000 or meet certain other criteria as specific in 2 CFR section 180.220. All non-procurement transactions entered into by accepting this Order, irrespective of award amount, are considered covered transactions, unless they are exempt as provided in 2 CFR 180.215. By accepting this Order Vendor certifies that Vendor and its associated principals have not been debarred by any arm of the Federal Government and that all participants to fulfilling this Order are aware of this requirement. By accepting an Order from Purchaser, Vendor certifies to the best of his/her knowledge and belief that the supplier and/or any of its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts with any federal agency.

**31. Compliance with Buyer's Policies and Procedures.** Vendor represents it read, understands, and shall abide by Purchaser's Standards of Conduct. The parties to this Agreement shall comply with Purchaser's Compliance Program and Purchaser's policies and procedures related to the Deficit Reduction Act of 2005, Anti-Kickback Statute and the Stark Law. Buyer's Standards of Conduct, summary of Compliance Program, and policies and procedures, including a summary of the Federal False Claims Act and applicable state false claims laws (collectively "False Claims Laws") with descriptions of penalties and whistleblower protections pertaining to such laws, are available at: <https://www.honorhealth.com/Vendor/corporate-integrity>. Vendor shall require any employees providing services to Purchaser to read the Standards of Conduct and information concerning Purchaser's Compliance Program and abide by same. Further, Purchaser and Vendor certify that they shall not violate the Anti-Kickback Statute and Stark Law, and shall abide by the Deficit Reduction Act of 2005, as applicable, in providing services to Purchaser. Hardcopies of any information noted herein shall be made available upon request.