

**THE NEW JEWISH HOME
120 WEST 106TH STREET
NEW YORK, NY 10025**

STANDARD PURCHASE ORDER TERMS AND CONDITIONS

The following Standard Purchase Order Terms and Conditions (“Terms”) only apply to transactions that do not have a written agreement, duly executed by both parties. If there is such an agreement, then those terms shall be the terms that govern the transaction and relationship of the parties.

These Terms form a part of the purchase order (“Purchase Order”) issued by a New Jewish Home affiliate (“Purchaser”) to vendor (“Vendor”). References to “this Agreement” shall mean the Purchase Order and these Terms. In case of a conflict between the provisions of these Terms and the provisions of the Purchase Order, the provisions of the Purchase Order will control. New Jewish Home affiliates shall not be deemed jointly and severally liable for any obligations undertaken by one of them pursuant to a Purchase Order.

1. **ACCEPTANCE AND TERMS.** Vendor’s full or partial performance under the Purchase Agreement will constitute acceptance of the provisions of this Agreement. By acceptance of the Purchase Order, Vendor agrees to be bound by, and to comply with all of the provisions of this Agreement, which include any supplements to the Purchase Order, and all specifications and other documents referred to in the Purchase Order. Purchaser may revoke the Purchase Order at any time prior to Vendor’s acceptance. The Purchase Order is not an acceptance by Purchaser of any offer to sell, any quotation, or any proposal. Terms and conditions different from or in addition to this Agreement, whether contained in any acknowledgment of the Purchase Order, or with delivery of any goods or services under the Purchase Order, or otherwise, will not be binding on Purchaser, whether or not they would materially alter the Purchase Order, and Purchaser hereby rejects them. This Agreement may be modified only by a written document signed by duly authorized representatives of Purchaser and Vendor.

2. **DEFAULT.** Time is of the essence of the Purchase Order. Purchaser may by written notice of default to Vendor (a) terminate all or any part of the Purchase Order if Vendor fails to perform, or so fails to make progress as to endanger performance of the Purchase Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or such longer period as Purchaser may authorize in writing) after receipt of notice from Purchaser specifying such failure; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated. Vendor will continue performance of the Purchase Order to the extent not terminated and will be liable to Purchaser for any excess costs for such similar goods or services. As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Vendor’s performance, in which case an equitable reduction in the Purchase Order price will be negotiated. If Vendor for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of the Purchase Order, Vendor will promptly notify Purchaser in writing. If Vendor does not comply with Purchaser’s delivery schedule, Purchaser may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Vendor. The rights and remedies of Purchaser provided in this Section 2 will not be exclusive and are in addition to any other rights and remedies provided by the Uniform Commercial Code, by law, at equity or under the Purchase Order.

3. **PRICE.** The Purchase Order must not be filled at a price higher than shown on the face of the Purchase Order. If no price is set forth on the front of the Purchase Order, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, goods and services ordered under the Purchase Order will not be billed at a higher price than last quoted or charged without Purchaser’s specific written authorization. Purchaser will be entitled at all times to set off any amount owed at any time by Vendor or any of its affiliates to Purchaser or any of its affiliates against any amount payable at any time by Purchaser in connection with the Purchase Order. No extra charges of any kind will be allowed unless specifically agreed to in writing by the Purchaser. All applicable taxes arising out of transactions contemplated by the Purchase Order will be borne by Vendor except as otherwise specified by the parties in writing. If Vendor reduces its prices for such goods and/or services during the term of the Purchase Order, Vendor shall correspondingly reduce the prices of goods and/or services sold thereafter to Purchaser under the Purchase Order.

4. **WARRANTIES.** Vendor represents and warrants that (a) all goods and services are free of any claim of any nature by any third person and that Vendor will convey clear title to Purchaser, (b) all services are performed in a manner acceptable in the industry and in accordance with generally accepted standards, are free from all defects, are fit for the particular purposes for which they are acquired, and are provided in strict accordance with the specifications or other requirements (including performance specifications) approved or adopted by Purchaser, (c) all goods sold will be of

merchandise quality, free from all defects in design, workmanship and materials, and fit for the particular purposes for which they are purchased and that the goods and services are provided in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Purchaser, and (d) the prices for the goods or services sold to Purchaser under the Purchase Order are not less favorable than those currently extended to any other Purchaser for the same or similar goods and/or services in equal or lesser quantities. Purchaser's inspection, test, acceptance, or use of the goods shall not affect Vendor's obligations under these warranties. Vendor shall replace or correct, at Purchaser's option and at Vendor's cost, defects of any goods not conforming to these warranties. If Vendor fails to correct defects in or replace nonconforming goods within ten (10) days from the date the Purchaser notifies Vendor of the defect or defects, Purchaser may, on ten (10) days prior written notice to Vendor, either (i) make such corrections or replace such goods and charge Vendor for all costs incurred by Purchaser, or (ii) revoke its acceptance of the goods in which event Vendor shall be obligated to refund the purchase price and make all necessary arrangements, at Vendor's cost, for the return of the goods to Vendor. All warranties of Vendor herein or that are implied by law shall survive any inspection, delivery, acceptance, or payment by Purchaser. Any attempt by Vendor to limit, disclaim, or restrict these warranties or any remedies of Purchaser, by acknowledgment or otherwise, in accepting or performing the Purchase Order, will be null, void, and ineffective without Purchaser's written consent.

5. **TIME.** Time is of the essence regarding this Agreement. A waiver of Purchaser's right to cancel, by acceptance of any items after delivery date or otherwise, shall not constitute a waiver of such right with respect to any subsequent defaults.

6. **ACCESS TO VENDOR'S BOOKS, RECORDS AND DOCUMENTS.** Provided that Section 952 of the Omnibus Budget Reconciliation Act of 1980 and regulations promulgated thereunder are applicable to this Agreement, Vendor and organizations related to Vendor providing services hereunder valued at \$10,000 or more in a 12-month period shall, until four years after the completion of the services hereby contracted for, comply with requests by the Comptroller General of the United States, the Secretary of HHS, and their duly authorized representatives for access in accordance with Section 952 to this Agreement and to Vendor's books, documents and records to the degree necessary to verify the cost of the services.

7. **EXCLUDED PROVIDERS.** Vendor represents to Purchaser that, during the Term of the Agreement, it and each of its Qualified Persons (as that term is defined below) has not been: (a) convicted of a criminal offense that falls within the ambit of 42 U.S.C. §1320a-7(a), or (b) excluded, debarred, suspended or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs. For purposes of this Section, "Qualified Personnel" means all employees and independent contractors of Vendor who serve in an executive or leadership role with Provider or who are a necessary component to the provision of services to Purchaser and all persons with at least a five (5%) percent direct or indirect ownership interest in Vendor. Vendor shall immediately notify Purchaser in writing of any Qualified Personnel being an Excluded Person as soon as Vendor becomes aware of such. Purchaser shall have the right to terminate the Agreement upon written notice to Vendor if Vendor fails to remove an Excluded Person as a Qualified Person within one (1) business days of Vendor learning of such excluded person status.

8. **VENDOR'S PROPERTY OR EQUIPMENT.** Purchaser shall not be responsible for any damage to or loss of the property of Vendor that results from, arises out of or occurs in connection with the work performed by Vendor pursuant to this Agreement.

9. **WARRANTY OF PROPRIETARY RIGHTS.** Vendor warrants that it has all rights needed to enter into and complete this transaction. Vendor will defend, at its own expense, any action or proceeding brought against Purchaser based on a claim that the work performed or any product supplied by Vendor pursuant to this Agreement, infringes or violates a patent, copyright, trade secret, trademark, trade name, right of privacy or any other proprietary, personal, or civil right of a third party. Vendor will pay all costs and damages awarded against Purchaser in any such action and any expenses incurred by Purchaser as a result of such action. Purchaser reserves the right to cancel the Purchase Order forthwith in the event of any such claim. Vendor agrees that Purchaser shall receive a non-exclusive, royalty-free license to make, have made, sell and use any inventions first reduced to practice through development work performed under this Agreement. Vendor further agrees that Purchaser shall receive a non-exclusive, royalty-free license to use, reproduce or revise for its own use any written materials produced pursuant to this Agreement.

10. **HOLD HARMLESS AGREEMENT.** Vendor agrees to hold harmless and indemnify Purchaser from any and all liability, claim, loss, damage, award, cost, penalty, fine or expense, including without limitation legal fees and disbursements, (including without limitation a claim by an employee of Vendor or an employee of a subcontractor of Vendor or losses associated with survey deficiencies and government sanctions) which in any way arises out of or occurs in connection with the products purchased from Vendor, the work and services provided by Vendor pursuant to this Agreement, any physical injury or mental injury or disability to, or death of, any person (including, without limitation, any employee of Vendor, any employee of any subcontractor, or any third party) or a breach of an agreement between Vendor and a third party except if due to the sole negligence or willful misconduct of Purchaser. Vendor's responsibility for indemnification to Purchaser includes, but is not limited to,

payment of any judgment, settlement, claim and costs, including reasonable legal fees and expenses, if Purchaser is named as a party to any action or suit covered by this indemnification provision. In such an event Purchaser shall have the option of providing its own defense for which Vendor shall promptly pay Purchaser its reasonable costs and expenses or Purchaser may tender the defense to Vendor which shall assume it. All references to "Purchaser" shall include, and all provisions of this Hold Harmless Agreement shall inure to the benefit of Purchaser and its directors, officers, employees, agents and representatives. Vendor shall also cause all subcontractors to likewise indemnify Purchaser.

11. **CHANGES.** At all times Purchaser will have the right to make changes to the Purchase Order, including changes to drawings, designs, configurations, specifications, quantities, methods of shipment or packing and delivery schedules or location of delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of any work under the Purchase Order, an equitable adjustment will be made in the contract price or delivery schedule, or both, and the Purchase Order will be modified in writing accordingly. Nothing in this Section, including any disagreement with Purchaser as to any claimed adjustment, will excuse Vendor from proceeding with the Purchase Order as changed. Any claim by the Vendor for adjustment under this Section 11 must be in a detailed writing and delivered to Purchaser within five (5) days after the date Vendor receives notification of change. Any change will be authorized only by a duly executed amendment to the Purchase Order. Information, such as technical information or guidance provided to Vendor by representatives of Purchaser, will not be construed as a change within the meaning of this Section. If Vendor considers that the conduct of any of Purchaser's employees has constituted a change under the Purchase Order, Vendor will immediately notify Purchaser's Central Procurement Office, in writing, as to the nature of the change and any proposed adjustment, which will then be subject to this Section 11.

12. **COMPLIANCE WITH LAWS.** Vendor represents and warrants that it is in compliance with and all goods and/or services supplied hereunder have been produced or provided in compliance with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules and regulations. Vendor shall comply with any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Order. Vendor shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any good and/or service.

13. **WORK ON PURCHASER'S PREMISES.** If Vendor's work under the Purchase Order requires Vendor to be on the premises of Purchaser or at Purchaser's direction, Vendor will take all necessary precautions to prevent any injury to persons or damage to property, including following any rules, procedures or other requirements of Purchaser.

14. **TERMINATION.** Purchaser may terminate all or any part of the Purchase Order for convenience at any time by written notice to Vendor. Upon such termination, Purchaser's liability will be limited to reasonable termination charges mutually agreed by Vendor and Purchaser, provided that Vendor must specify any proposed charges in writing within fifteen (15) days after termination. The Purchase Order shall terminate automatically, without notice, if Vendor becomes insolvent or the subject of any proceeding under the laws relating to bankruptcy or the relief of debtors.

15. **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE.** Vendor agrees that during the performance of this Agreement it shall not discriminate against any employee of Vendor or patient/client of Purchaser on the basis of race, creed, color, national origin, handicap, sex, age, sexual preference or gender.

16. **CONFIDENTIALITY.** Vendor and its employees, agents and subcontractors shall hold in confidence and shall not disclose, distribute, sell, copy, share or otherwise use any information obtained by Vendor while performing this Agreement, which is related to Purchaser's patients, employees, research, development, business affairs, records, processes, techniques or types of equipment, whether past, present or future, except as may be contemplated by this Agreement or authorized by Purchaser in writing. Upon completion of its work under this Agreement, Vendor and its employees, agents and subcontractors shall return to Purchaser all confidential information and all records or documents received from Purchaser, including, without being limited to, any and all copies thereof which may have been made. Vendor shall defend and indemnify Purchaser against all claims, suits, judgments or expenses that may arise out of the breach of this provision by Vendor, its employees, agents or subcontractors.

17. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York and the parties hereto shall submit to the jurisdiction of the federal and state courts located in New York County, New York State, for the resolution of any dispute arising hereunder, regardless of the place of execution or performance of this Agreement.

18. **MISCELLANEOUS.**

a. **NON-ASSIGNMENT.** Assignment of the Purchase Order or any interest in it or any payment due or to become due under it, without the written consent of the Purchaser, will be void. An assignment will be deemed to include not only a transfer of the Purchase Order or such interest or payment to another party but also a change in control of Vendor, whether by transfer of stock or assets, merger, consolidation, or otherwise.

b. **TRANSPORTATION.** All the prices are established as F.O.B. Vendor and/or Origin Dock, Freight Prepaid, unless otherwise specifically provided on the front of the Purchase Order. Title and risk of loss shall not pass to Purchaser until delivery of the goods to the location designated on the face of the Purchase Order and acceptance by Purchaser. If Purchaser rightfully rejects the goods, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Vendor. The responsibility for freight damaged merchandise will be assumed by Vendor. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Vendor.

c. **FORCE MAJEURE.** Purchaser may delay delivery and/or acceptance occasioned by causes beyond its control.

d. **REMEDIES.** Each of the rights and remedies reserved to Purchaser in the Purchase Order shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Purchaser in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Purchaser shall be deemed to be a waiver of any such right or remedy.

e. **PUBLICITY.** Vendor will not use Purchaser's name or logo in publicity, advertising, or similar activity, except with Purchaser's prior written consent. Vendor will not disclose the existence of the Purchase Order or any of its respective terms to any third party without Purchaser's prior written consent.

f. **SURVIVAL.** Any provision of this Agreement that contemplates performance or observance subsequent to any termination of this Agreement shall survive any termination or expiration of this Agreement for any reason and shall continue in full force and effect.

g. **WAIVER; MODIFICATION.** No claim or right arising out of a breach of the Purchase Order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless supported by consideration and in a writing signed by the aggrieved party. The failure of Purchaser to enforce at any time or for any period of time any of the provisions hereof will not be construed to be a waiver of such provisions or of the right of Purchaser thereafter to enforce each and every such provision. The Purchase Order can be modified or rescinded only by a writing signed by authorized representatives from both parties.

h. **SEVERABILITY.** If any provision of the Purchase Order shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in the Purchase Order.

i. **PARAGRAPH TITLES.** The paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of the Purchase Order.

j. **ENTIRE AGREEMENT.** This Agreement, with such documents as are expressly incorporated by reference in the Purchase Order, is intended by the parties as a final expression of their agreement with respect to such terms as are included in it, and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.