

# SCL Health Purchase Order Terms and Conditions

1. Priority and Acceptance. These SCL Health Purchase Order Terms and Conditions ("T&C") apply to the Purchase Order ("PO") issued by SCL Health ("Buyer") to any entity selling products or services ("Seller"). Unless superseded by a previously executed binding written agreement, in which event that agreement shall apply, these T&C below together with those appearing on the face of this PO constitute the complete and exclusive agreement between Buyer & Seller. Seller's additional or different terms or any attempt by Seller to vary any of these T&C is objected to and rejected and shall be deemed a material alteration and is of no effect. Seller accepts T&C without any additional or different terms unless agreed to otherwise in writing by Buyer.

2. Pricing, Invoices and Payment.

2.1. Seller shall sell to Buyer the products and/or services contained in PO at the price specified. Buyer is exempt from paying such taxes.

2.2. Seller is solely responsible for correctly invoicing Buyer for products and services, and an invoice must be issued by Seller for each separate shipment made against PO. Each invoice shall reference PO number. Each invoice shall separately list associated prices for each product or each service, as applicable.

2.3. Seller warrants that the prices charged for the products and/or services are not higher than those charged to any other customer or buyer for products of like grade and quality in similar quantities or for similar services performed. Buyer shall pay the properly stated and undisputed invoice within thirty (30) calendar days of receiving the invoice, with a 1% discount if Seller receives payment within 10 calendar days. Buyer shall not pay any invoice in the event Seller fails to comply with Buyer's reasonable accounts payable procedures, fees, and costs. Additionally, Buyer shall not pay any invoice in the event Seller fails to provide the products and/or services as described in PO.

3. Shipping and Delivery.

3.1. Unless specified otherwise on PO, Seller is responsible for all shipping charges: FOB destination, freight prepaid and allowed. In any event, Seller shall insure, at its expense, the products against damage and loss until the Buyer accepts delivery of them. If Buyer is responsible for freight costs, Buyer may choose the method of shipping and the freight courier.

3.2. Unless Buyer agrees in advance and in writing, it will not pay any fee, including any handling fee, drop-ship fee, transfer fee, fuel surcharge, service charge, minimum order charge, small-order charge, or restocking fee.

3.3. If PO specifies a delivery date, Seller must deliver the product by that date. If Seller fails to do so, Buyer reserves the sole right and discretion to apply a five percent (5%) discount to the applicable invoice which shall be deemed the final invoice or terminate PO.

3.4. All containers, packing lists, bill of lading and invoices must list the PO number and Project Contact as listed on PO.

4. Quality/ Inspection. All products shall be subject to inspection and approval by Buyer prior to Buyer accepting the product. Buyer shall have the right to inspect the products to determine whether (i) any product was shipped in error; or (ii) any product is outdated, damaged, or nonconforming. If any of these conditions exist, Buyer may elect to return, without penalty, any of the products for a refund or credit equal to the original purchase price or require Seller to replace

# SCL Health Purchase Order Terms and Conditions

the product at Seller's sole cost and expense. Seller shall pay the freight and other costs for returning a product for the reasons outlined in this Section.

## 5. Warranties.

5.1. Seller warrants that it has title to the products, and that the products are free and clear of all liens and encumbrances and that such products do not violate the property rights or interests of any third-party, inclusive of the intellectual property contained therein, and that there is no actual or threatened demand or suit by any third-party based on an alleged violation of such rights or interests by Seller. Seller further warrants all products furnished under PO are free from defects in material and workmanship and conform to applicable specifications, drawings, samples or other descriptions provided by Buyer; shall fit the purpose intended; and shall be new and of merchantable quality.

5.2. Seller warrants that all services furnished under PO, whether performed by Seller or permitted subcontractor, employee, or agent of Seller, shall conform in all material respects to their documentation (including without limitation information on Seller's and its affiliates' websites and presentations made by Seller and Seller's representatives to Buyer and Buyer's representatives) and shall be provided in a good and workmanlike manner and in accordance with best practices in the industry.

5.3. Warranty failures may be returned to Seller for replacement or credit at Buyer's option and at Seller's risk and expense, including all costs of shipping. Replacement products shall be in "like new condition" and subject to full original warranty.

6. Indemnification. Seller shall indemnify, defend, and hold harmless Buyer and its affiliates, subsidiaries, and Buyer's, affiliate's, and subsidiaries' current and future officers, directors, employees and agents from and against any and all claims, demands, liabilities, losses, damages, fines, assessments, costs and expenses (including attorney's fees, experts fees, and court costs) related to or arising out of: (i) Seller's product or service causing damage or injury, including, without limitation, death, bodily injury, personal injury or property damage; (ii) the infringement of Seller's product or service on the intellectual property right of a third party; or (iii) Seller's and Seller's employees, subcontractor's and agent's acts, errors and/ or omission, including negligence, intentional/ willful conduct, misrepresentation, or breach of PO and/ or T&C.

7. Insurance. Seller shall maintain the following insurance coverage:

7.1. Product liability, commercial general liability and property damage insurance against any claim or claims which might or could arise regarding products purchased by Buyer under PO. The minimum limit of liability for each product liability, commercial general liability, and property damages shall be \$3 million per occurrence and \$5 million annual aggregate, on an occurrence form, including broad form blanket contractual liability, for claims arising of the products purchased hereunder and/or work/services to be provided hereunder, including coverage for products liability (products and completed operations coverage), personal injury, bodily injury, property damage, and contractual liability.

7.2. Professional Liability/Errors & Omissions Insurance with liability limits of at least \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate.

# SCL Health Purchase Order Terms and Conditions

7.3. If Seller will have access to PHI, Cyber liability insurance (including HIPAA breach, unauthorized disclosure, cyber security, technology breach and electronic data loss coverage) with liability limits of at least \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate. At a minimum, this coverage shall include liability, event response, business interruption and cyber extortion coverage.

7.4. Worker's compensation insurance in accordance with the worker's compensation laws of all states where the work is performed, with the following minimum limits: (a) Bodily Injury by Accident - \$1,000,000.00 each accident; (b) Bodily Injury by Disease - \$1,000,000.00 policy limit; and (c) Bodily Injury by Disease - \$1,000,000.00 each employee.

7.5. All insurance coverage maintained by Seller hereunder may be maintained through a combination of primary, excess or umbrella insurance policies issued by one or more insurance companies that are admitted to do business in the states where the products and/or services are to be performed and that have an AM Best Rating of A-VII or higher (or equivalent). All insurance maintained by Seller in accordance with T&C shall be primary and not in excess of & shall be non-contributing with any insurance maintained by Buyer. No change, non-renewal or cancellation of any policy shall affect Seller's obligations hereunder to maintain the insurance coverages set forth above. In addition, the insurance requirements hereunder are separate and apart from and in no way limit Seller's obligations under T&C.

7.6. Upon execution of any PO and then upon subsequent request, Seller shall provide Buyer copies of certificate(s) or proofs of insurance coverages.

7.7. If any of Sellers' policies are written on a claims-made policy form, the policy shall have no Retroactive Date or the Retroactive Date shall be no later than the inception/effective date of PO/ T&C and the Certificate of Insurance (COI) must indicate the Retroactive Date for all claims-made policies. If any claims-made policy is cancelled or terminated, Seller shall obtain extended reporting coverage to cover the entire period of time Seller provided products or performed services under T&C and shall continue to maintain such tail coverage for no less than five (5) years from the date the product(s) are supplied to Buyer or services performed or the termination of PO/ T&C for any reason, whichever is later.

7.8. Seller shall provide Buyer with 30 days advance notice of any cancellation or change in material terms of any of its insurance policies hereunder (including coverage or limits). In the event that any of Seller's insurance policies hereunder are cancelled, Seller shall immediately secure coverage on the same PO as set forth in T&C.

7.9. Seller shall ensure that any of its independent contractors providing products or performing services under PO shall purchase and maintain insurance to cover products and/or services provided to Buyer in accordance with PO/ T&C and Seller's obligations hereunder and shall provide such independent contractor's COI to Buyer prior to any products or services are provider/performed by such independent contractor.

8. Cancellation. Buyer may cancel PO in whole or in part at any time if: (a) Seller defaults, in whole or in part, with respect to delivery, quality, terms or other obligation under PO/ T&C; or (b) insolvency of Seller, filing by Seller of a voluntary petition in bankruptcy, filing of an involuntary petition to have Seller declared bankrupt, provided the same is not vacated within thirty (30) days from the date of such filing, or the execution by Seller of any assignment for the benefit of creditors.

# SCL Health Purchase Order Terms and Conditions

## 9. Confidentiality.

9.1. Seller agrees to keep confidential from any third-party all information obtained from Buyer while performing obligations pursuant to PO, including without limitation Buyer's all data and information, in whatever form, financial information, technical design information, business plans, trade secrets, operations information, specifications, drawings, pricing, usage, schedules, verbal understandings or site observations or any material marked "confidential" and/or "proprietary" (collectively CI). At a minimum, Seller shall use same degree of care in protecting Buyer's CI as Seller would use in protecting its own.

9.2. Seller agrees that Buyer's CI shall be distributed internally only on a need-to-know basis and shall not be used, except to perform obligations under PO/ T&C.

9.3. Seller shall not disclose the existence of PO/ T&C to any third-party, including the products or services supplied, prices, pictures, descriptions or samples.

## 10. Compliance with Applicable Laws.

10.1. Seller shall comply with all applicable laws, including, the federal Anti-Kickback Statute (42 U.S.C.1320a-7b) and the Health Insurance and Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder, as amended, and the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"). If, due to the nature of the products and/or services provided, Buyer determines that Seller is acting as its business associate pursuant to HIPAA, Seller shall enter into an appropriate business associate agreement with Buyer and may be subject to additional data security requirements, including an information security assessment by Buyer and supplemental contractual terms.

10.2. Seller represents & warrants that neither it, nor any of its affiliates or employees, is excluded from participation in, or sanctioned under, any state or federal healthcare program. Seller shall immediately notify Buyer in writing of any change or anticipated change of the same.

10.3. Buyer is a provider under federal Medicare programs and is subject to Section 952 of the Omnibus Reconciliation Act of 1980. That law requires Buyer, as a provider, to include the following provision in its agreements with supplies who receive \$10,000 or more under an agreement with Buyer. If requested by the Secretary of Health and Human Services, by the U.S. Comptroller, or by an authorized representative of either of them, Seller shall make available to the requestor PO and the Seller's books, documents, and records to allow the requestor to certify the nature and extent of the charges for products (or services) provides under PO and charged to Medicare. Seller shall continue to make those items available for 4 years after Seller furnishes the final products (or services) under PO. If Seller contracts with another to carry out any of its duties under PO and the subcontractor is to receive \$10,000 or more in value under that subcontract, then Seller shall obtain a written contractual commitment from the subcontractor to comply with the obligations of this Section. The obligations of this Section survive the expiration or other termination of this PO.

# SCL Health Purchase Order Terms and Conditions

## 11. Miscellaneous.

11.1. Any notice to Buyer shall be directed to Buyer's authorized representative whose signature appears on the face of PO. Any notice required pursuant to PO shall be in writing and shall be deemed received as of the date of actual receipt of written notice.

11.2. Seller shall not delegate any duties or assign any rights or obligations under PO.

11.3. If any provisions herein shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or unenforceability, be reformed or, if necessary, severed to the minimum extent necessary to render the remainder of PO/ T&C to be valid or enforceable, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.

11.4. PO shall be construed in accordance with, and governed by, the laws of the State of Colorado. Seller hereby consents to submit any disputes arising hereunder to Colorado courts with jurisdiction over Broomfield.

11.5. T&C and PO constitute the entire agreement binding the parties, their representatives, successors, and assigns. All rights and remedies are cumulative & non-exclusive. A failure by a party to enforce or exercise any herein shall not constitute a waiver.

11.6. There shall be no use in any manner or for any reason SCL Health's or our affiliates' name, brand, logo or similar image without the separate express prior written permission of SCL Health – any Seller document related to this Purchase Order or any other Seller document that unilaterally gives permission for such use is stricken, is void as to any agreement between the Parties, and is invalid as to use of our name, brand, or logo.