

## Purchase Order Terms and Conditions

**1. Terms and Order Acceptance.** This Purchase Order ("Order") becomes binding if: (1) the signed acknowledgement of the Party to which this Order is issued ("Supplier") is received by Wisconsin Physicians Service Insurance Corporation ("Buyer"), or (2) Supplier ships all or any portion of the goods covered by this Order according to an agreed upon schedule, if any; or (3) Supplier commences performance of the services covered by this Order according to an agreed upon schedule, if any; or (4) Buyer gives Supplier written approval of the price and delivery schedule of the goods or services as stated by Supplier if Supplier's written acknowledgment of this Order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items which requires Buyer's approval. Except as provided in the preceding sentence, it is a condition of this Order that any provision printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and condition herein stated, and any alteration in this Order, shall have no force or effect, and that Supplier by such acknowledgment thereby agrees that any such provisions therein or any such alterations in this Order shall not constitute any part of this Order.

**2. Inspection and Item Acceptance.** All goods and services, including installed work ("Items") are subject to the inspection of an authorized representative of Buyer prior to acceptance.

**3. Warranty.** Supplier expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the Items delivered hereunder will be of good quality, material, and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, and/or payment by Buyer of the Items. Nonconforming Items, all Items not fully up to standard and not in compliance with the specifications as referenced in this Order, Supplier's quote, or manufacturer specifications, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for Items described, or not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation (collectively, "Nonconforming Items"), may be rejected by Buyer and payment withheld. Nonconforming Items may be returned or held at Supplier's expense and risk. Buyer may charge to Supplier all expense of inspecting, unpacking, examining, repackaging, storing, and reshipping any goods rejected as aforesaid. Buyer shall notify Supplier of Nonconforming Items. Upon such notice, Supplier shall promptly replace or repair such Nonconforming Items (at Buyer's election), at Supplier's sole cost and expense. The remedies herein afforded to Buyer shall not be exclusive, but Buyer may hold Supplier liable for any and all damages arising from any breach or default hereinabove set forth.

**4. Notice of Delays.** Whenever Supplier has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, Supplier shall immediately give notice thereof, including all relevant information, to Buyer.

**5. Delivery.** Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's main office in Monona, Wisconsin or other specified location (FOB Destination, freight prepaid), unless otherwise specifically noted herein. Buyer reserves the right to refuse any Items and to cancel all or any part hereof if Supplier fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Supplier's deliveries will not meet agreed schedules, Buyer may require Supplier to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Supplier. Delivery shall not be deemed to be complete until Items have been received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted. All deliveries will be billed as shipped and all correspondence, proofs, invoices and packages must contain the Order number. Buyer reserves the right to refuse deliveries not identified by a correct Order number. The specific quantity ordered must be delivered in full and not be changed without Buyer's consent in writing. Any unauthorized quantity is subject to Buyer's rejection and will be returned at Supplier's expense. With respect to orders for printed material, a tolerance of 10% over or 5% under will be accepted unless otherwise specified on the face of the Order. Cash discount periods will date from the receipt of goods, or from the date of

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the invoice, whichever is later. C.O.D. shipments will not be accepted. No restocking fees shall apply for cancelled orders.

**6. Invoices.** Invoices must be sent to: [AccountsPayable@wpsic.com](mailto:AccountsPayable@wpsic.com)

All invoices must be in a format with sufficient detail acceptable to Buyer and, where applicable, include an attached bill of lading or express receipt. Freight charges must be supported by copy of original freight bill. All invoices submitted without a valid Order number/blanket purchase order release record will be returned to Supplier. Packaging: each package shall be numbered and labeled with Buyer's order number, stock number, contents, and weight, shall contain an itemized packing slip and shall be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified. No charges will be allowed Supplier for packing, breakage, freight, express, or cartage unless stated herein. Supplier acknowledges that Buyer is a federal contractor and that funding for this Order may be dependent upon Buyer's receipt of adequate funding from the federal government. In order to help ensure that adequate government funding is available, Supplier agrees to submit all claims for payment within 90 days of the date the claim is incurred or within 90 days after this Order is terminated—whichever is earlier. Supplier recognizes and agrees that any claims submitted more than 90 days after this Order is terminated will be payable only to the extent adequate funding is received from the federal government, if applicable. Supplier hereby waives any and all rights and/or causes of action against Buyer with respect to any claims for payment submitted more than 90 days after the termination of this Order.

**7. Conflicting Terms.** If terms on this Order do not appear on or agree with Supplier's invoice or any other document provided by Supplier, Supplier agrees that the terms of this Order shall prevail. To the extent there is a conflict between the terms of a written agreement signed by both parties or these Terms, the terms of the written agreement shall govern.

**8. Pricing.** Prices recorded in this Order are not subject to increase. If prices of the goods or services covered by this Order are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) on or before the time of any shipment, Supplier agrees that the price to Buyer for such Items will be reduced accordingly and that Buyer will be billed at such reduced prices. If price includes taxes or excises, and if such taxes or excises or any part thereof are hereafter refunded to Supplier, Supplier shall immediately pay Buyer the amount of such refund. Supplier certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical Items in equal or smaller quantities at this time. Buyer shall not be obligated to pay Supplier an amount in excess of any ceiling price specified in this Order, unless Buyer has notified Supplier in writing that the ceiling price has been increased and has specified in the notice a revised ceiling that shall constitute the new ceiling price for performance under this Order.

**9. Taxes.** Except for state sales and use tax, if applicable, the price for each Item covered by this Order is inclusive of all other taxes, fees, excises, and/or charges which are now or may hereafter be imposed (whether by federal, state, municipal, or other local public authority) with respect to the manufacture and sale of such Items, any services to be rendered by Supplier hereunder, or this Order itself. Supplier shall separately state on its invoice the amount of state sales and use taxes applicable to the sale of the Items covered by this Order.

**10. Indemnification.** Supplier shall indemnify, defend, and hold harmless Buyer and its subsidiaries, affiliates, successors or assigns and its respective directors, officers, and employees and Buyer's customers against any and all losses related to the Items or this Order, including but not limited to (1) expenses and legal liability for damages resulting from any injury to person, or property or from death, caused by the delivery of merchandise, service being performed on-site or the installation of any work called for in this Order; (2) or to Buyer's increased production costs and lost profits, damages, liabilities, claims and suits at law or in equity, which may be brought against or suffered by Buyer arising directly or indirectly out of any Items or any actions or omissions of any officer, agent or employee of Supplier, including (a) deliveries not made within the time agreed upon in Supplier's quotation or as stated in this Order if different, or (b) any defective material workmanship or design in the items or materials supplied hereunder including the performance of services as set forth hereunder or in any other

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provision of this Order; (3) breach of this Order; or (4) negligence, willful misconduct, fraud or other illegal activity of Supplier or Supplier's employees, independent contractors or other personnel.

**11. Notices.** All notices required by this Order shall be sent by overnight courier for delivery on the next business day and shall be directed to:

Wisconsin Physicians Service Insurance Corporation  
Attention: Procurement Services  
1717 W. Broadway  
Madison, WI 53713

**12. Intellectual Property.** Supplier shall have sole responsibility for ensuring that all Items delivered to Buyer are appropriately marked and labeled in accordance with the applicable sections of the Federal Acquisition Regulation in order to protect any intellectual property interest Supplier asserts with respect to those Items.

**13. Modification.** Buyer shall have the right to make, from time to time, changes as to packing, testing, destination, specifications, designs, and delivery schedule. Supplier shall immediately notify Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment of prices or other terms hereof shall be agreed upon in a written amendment to this Order.

**14. Waiver of Liens.** Supplier agrees not to file liens and waives and relinquishes all liens and claims, statutory or otherwise, which Supplier now has or may have as a result of labor done and materials furnished by Supplier or Buyer in performance of this Order.

**15. Trade Name.** Unless authorized by Buyer in writing, Buyer's name, trade name and logos, or the name or trade name or logo of any of Buyer's subsidiaries or affiliates shall not be used in Supplier's advertising, including the internet.

**16. Remedies.** Remedies shall be cumulative, and remedies specified herein do not exclude any remedies allowed by law or equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any Items under this Order shall not waive any breach.

**17. Governing Law.** This Order shall be governed by and construed under the laws of the State of Wisconsin and any lawsuits brought hereunder shall be brought and tried in a court of competent jurisdiction in Madison, Wisconsin.

**18. Assignment.** This Order may not be assigned by Supplier without Buyer's written consent and any attempt to do so shall be null and void. Buyer may assign this Order to its parent, subsidiaries and its affiliates or to any successor of Buyer by merger, acquisition or purchase of substantially all its assets without prior notification to Supplier.

**19. Rights in Data.** Supplier warrants that all software, products, documentation and/or other items provided under but not first developed, produced or created for this Order are "Commercial Items" as defined by the applicable federal regulations and that these commercial items were developed with private funds.

**20. Non-Infringement Warranty.** Supplier represents and warrants that all Items provided/performed hereunder shall be original and shall not infringe any right of any third party including, but not limited to, any valid patent, copyright, trademark, or other proprietary or personal right of any person or entity. **SUPPLIER SHALL INDEMNIFY, DEFEND AND HOLD BUYER AND ITS AFFILIATES HARMLESS AGAINST ANY DAMAGES, SETTLEMENTS, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING FROM ANY THIRD PARTY CLAIM OR LEGAL ACTION ALLEGING THAT THE WORK DONE, OR SOFTWARE CODE WRITTEN, BY SUPPLIER INFRINGES ANY RIGHT OF ANY PERSON OR ENTITY.** In addition to the foregoing, Supplier, upon being notified of an infringement claim,

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shall at its sole option and expense provide for one of the following: (i) obtain through negotiation the right of Buyer to continue using the products, services and/or work provided under this Order; (ii) rework the products, services and/or work provided under this Order so as to make them non-infringing while preserving the original functionality, or (iii) replace the products, services and/or work provided under this Order with a functionally equivalent alternative. This clause shall survive the termination of this Order.

**21. Buyer Property.** Supplier agrees that any data, records, deliverables and/or materials furnished to Supplier by or for the benefit of Buyer for use in the services to be provided herein shall remain the property of Buyer.

**22. Compliance with Laws.** Supplier warrants and represents that it complies with all applicable federal, state and local laws, rules and regulations or ordinances and agrees to indemnify Buyer against any loss or damage (including but not limited to court expenses and reasonable attorneys' fees) resulting from the violation of any such laws or regulations. With respect to Items that are the subject of this Order, such warranty includes, but is not limited to, the Service Contract Act of 1965, the Civil Rights Act of 1964 (Title VII), E.O. 11246, as amended, E.O. 11375, the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. Sections 12101 *et seq.*, 48 CFR 52.222-26 (Equal Opportunity), 48 CFR 52.222-35 (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era), 48 CFR 52.222-36 (Affirmative Action for Workers with Disabilities), the False Statements Act, Anti-Kickback Act, and the Privacy Act.

**23. Location.** All services provided under this Order shall be performed at facilities and locations within the United States and its territories, unless agreed to otherwise by Buyer in writing.

**24. Confidentiality.** Except as expressly provided herein, Supplier shall maintain in confidence and will not disclose or use, at any time, any confidential information of Buyer without Buyer's express written consent. Supplier shall treat all confidential information of Buyer with the same care and degree of secrecy with which Supplier treats its own confidential and proprietary information, but in no event shall use less than reasonable care to protect the secrecy of Buyer's confidential information. Supplier's breach of confidentiality may cause irreparable harm to Buyer, who shall have recourse to all appropriate remedies at law or in equity to compensate Buyer for damages arising from Supplier's breach. Supplier agrees to indemnify, defend, and reimburse Buyer for any and all costs, including reasonable attorney's fees, reasonably incurred by Buyer in the process of protecting its confidential information through any legal process available at law or in equity. The obligation in this provision shall extend for three (3) years following the termination of this Order.

**25. Cancellation for Convenience.** Buyer reserves the right, at any time without cause, to cancel all or any part of the undelivered portion of this Order by written notice to Supplier. The provisions of this paragraph shall not limit or affect Buyer's right to terminate this Order for default of Supplier. Upon receiving notice of such termination, Supplier shall:

- (i) stop all work on this Order on the date and to the extent specified;
- (ii) place no further contracts hereunder except as may be necessary for completing such portions of the Order as have not been terminated;
- (iii) terminate all contracts to the extent that they may relate to portions of the Order that have been terminated; and
- (iv) protect all property in which Buyer has or may acquire an interest.

**26. Automatic Cancellation.** This Order shall immediately cancel, with no liability of Buyer to Supplier upon Supplier's suspension or debarment from participating in any United States Government contracting program.

**27. Compensation—Cancellation.** In the event of cancellation under any provision of this Order, Supplier agrees that it shall only be entitled to compensation for Items rendered up to the date of the cancellation. In no event shall Buyer be liable to Supplier for loss of anticipatory profits or for any other damages, including, but not limited to, consequential damages, punitive damages, exemplary damages and/or lost profits.

