

Shands Jacksonville Medical Center, Inc.
Purchase Order
Terms and Conditions

Effective Date: March 1, 2020

1. **Agreement, Amendments and Definitions**: These Terms and Conditions together with Buyer's Purchase Order and Seller's Quotation (collectively, the "Agreement") shall constitute the entire agreement between Buyer and Seller with respect to the Goods and Services that are the subject of the Agreement. Seller is deemed to have accepted and agrees to be bound by and comply with these Terms and Conditions, and all specifications and other documents referred to in Buyer's Purchase Order, upon the first to occur of: a) Seller's provision of written confirmation to Buyer, b) Seller's shipment to Buyer of any Goods or performance of any Services, or c) Seller's acceptance of payment for the Goods and Services covered by Buyer's Purchase Order. These Terms and Conditions apply to all Goods and Services listed in Buyer's Purchase Order and constitute Buyer's offer to Seller, which Buyer may revoke at any time prior to Seller's acceptance. Buyer's Purchase Order is not an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in Buyer's Purchase Order to any such offer to sell, quotation, or proposal will not constitute a modification of these Terms and Conditions. Any proposal by Seller for additional or different terms and conditions or other attempt by Seller to alter these Terms and Conditions will not be binding on Buyer, whether or not it would materially alter Buyer's Purchase Order, and is hereby rejected by Buyer, including without limitation any of Seller's shipping documents, bills of lading, invoices, payment applications, confirmations, and other documents, including documents referenced or hyperlinked therein. To the extent Seller's Quotation conflicts with, or addresses the same subject matters covered in these Terms and Conditions, these Terms and Conditions shall control. These Term and Conditions may only be modified in a writing signed by an authorized representative of Buyer that specifically references Paragraph 1 of these Terms and Conditions. If Buyer's Purchase Order is construed as an acceptance of Seller's offer, Buyer's acceptance is expressly conditioned on Seller's assent to any additional or different terms contained in these Terms and Conditions. If Buyer's Purchase Order is construed as a confirmation of an existing contract, the parties agree that these Terms and Conditions constitute the final, complete, and exclusive terms and conditions of contract between the parties except as otherwise specified in this Paragraph 1. Notwithstanding the foregoing, the terms and conditions of an applicable group purchasing organization contract ("GPO contract") or master agreement involving the parties shall govern and control except to the extent Buyer has obtained pricing, rebate, warranty, shipping, or other concessions that are more favorable to Buyer than those offered by the GPO contract or master agreement. As used in these Terms and Conditions, Buyer (and as applicable applicant or recipient or non-Federal entity) shall mean Shands Jacksonville Medical Center, Inc., a Florida not-for-profit corporation which does business under various registered fictitious names including UF Health Jacksonville and UF Health North. Seller shall mean the entity or individual identified on Buyer's Purchase Order that is selling the Goods and Services to Buyer. Goods and Services shall mean the goods, services, and other items as applicable described in the Agreement and provided by Seller to Buyer. Buyer's Purchase Order shall mean the purchase order delivered by Buyer's Supply Chain Services Department to Seller. Seller's Quotation shall mean Seller's proposal, quotation, or similar document. Terms and Conditions shall mean this document.

2. **Shipping and Payment**: Shipping terms shall be C.I.F., F.O.B. destination unless otherwise specified on the first page of Buyer's Purchase Order. All payments shall be due no earlier than net sixty (60) days from receipt and approval of invoice by Buyer unless otherwise specified on the first page of Buyer's Purchase Order.

3. **Deliveries**: Deliveries are accepted only between 8:00 AM and 4:00 PM E.S.T. Monday through Friday (excluding Buyer's holidays) at Buyer's receiving dock. Time is of the essence with respect to the Goods and Services. Buyer's Supply Chain Services Department shall be notified immediately of conflicts or delays regarding delivery. Buyer reserves the right to cancel without penalty any Goods or Services not timely delivered.

4. **Transfer of Title to Goods and Services; Acceptance**: Buyer shall have a reasonable period of time to inspect the Goods and Services and notify Seller of any nonconformance. Buyer may reject any Goods and Services that do not conform, and Seller will accept their return. Title to the Goods and Services shall pass to Buyer upon the earlier of: (i) the date Buyer has paid for the Goods and Services; or (ii) the date the Goods and Services are received and accepted by Buyer. Notwithstanding the foregoing, acceptance of any Goods that are equipment, instruments, or similar items shall occur no earlier than sixty (60) days after the first productive use of such items, and Buyer may, at

its sole discretion, withhold up to 50% of the purchase price which shall not be due until acceptance has occurred. Final payment for Services will not become due or payable until Seller has fully completed such Services to Buyer's reasonable satisfaction, has provided all deliverables required by the Agreement, and to the extent applicable has delivered to Buyer a complete release of all liens arising out of the Agreement and receipts in full covering all labor, materials and equipment for which a lien could be filed. Seller expressly warrants that it has good title to the Goods and Services and shall deliver them without restriction or condition and free and clear of all liens, encumbrances, and claims. Seller shall promptly execute and provide Buyer any documents required to transfer title to the Goods and Services to Buyer or to evidence Buyer's title thereto. If any lien, encumbrance, or claim is filed otherwise imposed by Seller, its vendors, or any other person or entity, and Seller does not cause such lien, encumbrance, or claim to be released and discharged upon demand, or file a bond in lieu thereof, Buyer shall have the right to pay all sums necessary to obtain the release and discharge, and Buyer may deduct these sums from any amount owed to Seller and recover damages incurred by Buyer in connection therewith. If any lien, encumbrance, or claim remains unsatisfied after payments are made, Seller will, within thirty (30) days of written notice, refund to Buyer all money that Buyer may be compelled to pay in discharging such liens, including Buyer's costs and reasonable attorneys' fees.

5. **Seller's Warranty of Quality Goods and Services:** Seller expressly warrants that the Goods: a) shall be merchantable in the trade as goods strictly of the kind and quality required to be furnished by Seller under the Agreement; b) shall be new, unused and of good quality and free from latent or patent defects in design, material, manufacture, and workmanship; c) shall be safe for use; d) shall strictly conform to all requirements of the Agreement; and e) shall be fit for the particular purpose for which Buyer intends to use the Goods if Seller knows or has reason to know of such particular purpose. Seller expressly warrants that all Services: a) shall be performed in a good and workmanlike manner; and b) shall strictly conform to all requirements of the Agreement as well as industry standards.

6. **Indemnification:** Seller shall defend, indemnify, and hold harmless Buyer and its directors, officers, employees, and agents (individually and collectively the "Indemnified Party") against any action brought against Indemnified Party, including all costs and expenses such as reasonable attorneys' fees, to the extent that such action is based on Seller's negligence or wrongful conduct or on a claim that the Goods or Services are defective or infringe a United States patent or copyright, provided that Indemnified Party gives Seller the sole control of the defense, all negotiations and any settlement, provided however that Seller agrees not to enter into any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations on an Indemnified Party without that Indemnified Party's prior written consent which will not be unreasonably withheld, and any such settlement or compromise shall include a release of the Indemnified Party from all further liability with respect to such claim. If the Goods or Services become, or are likely to become, the subject of an infringement claim, Seller may, at its option, secure Buyer's right to continue using the Goods or Services or replace or modify them to make them non-infringing with substantially similar functions and levels of performance and otherwise indemnify Buyer for any related costs it incurred prior to securing such a settlement. Nothing herein shall cause Seller to be responsible for infringement claims solely arising out of a modification of Goods requested by Buyer.

7. **Liability Exclusions and Limitations:** In no event will Buyer be liable for any indirect, exemplary, incidental, special, punitive, or consequential damages arising out of this Agreement, even if Buyer has been advised of the possibility or likelihood thereof. Buyer's total liability to Seller under any theory shall not exceed the amount actually paid by Buyer to Seller for the applicable Goods or Services. Any limitation or exclusions of liability under the Agreement in favor of Seller shall not apply in the event of personal injury, death, property damage, breach of confidentiality, or patent or copyright infringement. No liability limitation shall preclude Buyer from obtaining a full refund of any amounts spent under the Agreement. In no event will Buyer be required to indemnify, defend, or hold Seller harmless, nor will Buyer be responsible for any liability of Seller for any reason. Nothing in this Agreement shall be construed as a waiver or modification of Buyer's sovereign immunity.

8. **Cooperation in Claims:** If any claim, demand, suit, notice, or other legal proceeding arising out of any matter relating to this Agreement is made against Buyer, or in the event any audit or investigation of Buyer is initiated, Seller will promptly provide Buyer with all reasonable information and assistance in the investigation, defense, or other disposition at no expense to Buyer.

9. **Compliance with Laws:** Seller and all Goods and Services provided shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and the requirements of any applicable licensing or certifying organizations.

10. **Seller's Warranty of Non-Exclusion from a Federal Health Care Program:** Seller represents and warrants to Buyer that neither Seller nor any of its owners, officers, directors, employees, independent contractors, subcontractors, or agents ("Seller Representatives") is an Ineligible Person. For purposes of the representations and warranties contained herein, an "Ineligible Person" is an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C § 1320a-7b(f) or in federal procurement or non-procurement programs (the "Federal Health Care Programs"); or (ii) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible to participate in the Federal Health Care Programs. Seller further represents and warrants to Buyer that, to the best of Seller's knowledge, neither Seller nor any Seller Representatives is under investigation or otherwise engaged in conduct, which may result in Seller or Seller Representatives, as the case may be, becoming an Ineligible Person. The foregoing representations and warranties shall be ongoing during the term of the Agreement. Seller shall immediately notify Buyer of any change in their status. Any breach of the representations and warranties herein shall give Buyer the right to terminate the Agreement for cause and without penalty as of the date of breach or at such other subsequent time as Buyer may elect.

11. **Medicare Access to Records:** To the extent required by valid regulations promulgated pursuant to Section 952 of the Omnibus Reconciliation Act of 1980, Seller shall, until the expiration of four (4) years following the furnishing of Services pursuant to the Agreement, make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General or any of their duly authorized representatives, this contract, and books, documents, and records necessary to verify the nature and extent of costs incurred by Buyer by reason of Services rendered by Seller under the Agreement. Any subcontracts entered into hereunto by Seller with a related organization for provision of the Services contracted for herein, if otherwise allowed by this Agreement, with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, shall contain this clause imposing the same obligations upon each subcontractor.

12. **Discounts:** If Seller's price constitutes a discount or other reduction in price under the Discount Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h), Seller shall provide Buyer with invoices that fully and accurately disclose the discounted price of all Goods and Services purchased under this Agreement to allow Buyer to comply with the Discount Safe Harbor regulations, including sufficient information to enable Buyer to accurately report its actual cost for all purchases of Goods and Services.

13. **Confidentiality:** If Seller receives or has access to or becomes privy to any information in any form that Buyer considers to be either proprietary, confidential, or competitively sensitive information ("Confidential Information"), then Seller agrees: a) to keep that Confidential Information secret and confidential; b) not to use or disclose that Confidential Information; c) not to make or keep any copies of that Confidential Information; and d) to return to Buyer that Confidential Information upon request. In the event Seller is obligated to produce any Confidential Information under order of a court of competent jurisdiction or as otherwise required by law, Seller shall provide Buyer with timely notification of the intended disclosure prior to disclosing the information, and Seller agrees not to disclose any such Confidential Information without first providing Buyer the reasonable opportunity to object and seek a protective order.

14. **Advertising:** Neither party shall use the name, logo, or trademark of the other in any form of publicity or promotional or advertising material without the prior written consent of an authorized representative of the other party.

15. **Relationship of the Parties:** The parties' relationship is that of independent contractors. The Agreement does not create any employment, agency, franchise, joint venture, partnership, or other similar legal relationship between the parties. Neither party has the authority to bind nor act on behalf of the other party except as otherwise specifically stated in the Agreement.

16. **Termination Without Cause:** Buyer may terminate the Agreement by giving not less than thirty (30) calendar days' written notice to Seller of intention to terminate. Any fees or other amounts owed between the parties shall be prorated to the termination date.

17. **Taxes:** Buyer is exempt from federal, state and local taxes and will provide evidence of such exemption upon request.

18. **Force Majeure:** Neither party shall be liable for delay or failure to perform hereunder due to strike, labor trouble, war, insurrection, civil commotion, acts of terrorism, fire, explosion, accident, flood, storm, act of God, act of any governmental authority, executive, or administrative orders or other legal restrictions, riot, embargo, blockade, quarantine, wrecks, or delay in transportation, or any cause beyond the control of that party which renders that party's performance impossible or impracticable. Notwithstanding the foregoing, and given the nature of Buyer's business, Seller shall make best efforts to perform during such circumstances.

19. **Waiver:** Any failure by Buyer at any time, or from time to time, to enforce or require the strict compliance with and performance by Seller of any of its obligations under the Agreement shall not constitute a waiver by Buyer of a breach of any such terms or conditions or any other breaches, or the right of Buyer to avail itself of the remedies it may have for any such breach. No waiver shall in any event be effective unless in writing and signed by an authorized Buyer representative.

20. **Assignment:** This Agreement and the rights and obligations of Seller hereunder, including, without limitation, the duty of performance, may not be assigned or delegated by Seller without the prior written consent of an authorized Buyer representative. Any assignment or delegation without Buyer's consent shall be null and void and of no force or effect.

21. **Survival:** Any provision of the Agreement that either: (a) provides for limitation of or protection against liabilities between Buyer and Seller; or (b) expressly or by implication comes into or continues in force and effect after Seller's provision of the Goods or completion of the Services, shall survive termination of the Agreement and Seller's provision of the Goods and completion of the Services.

22. **Severability; Interpretation:** If any provision of the Agreement is found to be unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect. The Agreement shall be construed without regard to any presumption or other rule requiring construction or interpretation against the party who caused it to have been drafted.

23. **Governing Law; Venue; Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles. Each party irrevocably and unconditionally consents to submit to the exclusive jurisdiction and venue of the federal and state courts within Jacksonville, Duval County, Florida, and each party hereby consents to personal jurisdiction in such forum, for any action, suits, or proceedings arising out of or relating to this Agreement.

24. **Notices:** All notices required or permitted pursuant to this Agreement shall be in writing. Notice to Seller shall be provided to the address provided by Seller for payments on record with Buyer's Accounts Payable Department. Notice to Buyer shall be provided to Shands Jacksonville Medical Center, Inc., Attn: Chief Operating Officer, 655 W. 8th Street, Jacksonville, Florida 32209, with a copy to Shands Jacksonville Medical Center, Inc., Office of Contract Administration, 655 W. 8th Street, Jacksonville, Florida 32209. Any notice will be deemed sufficiently made and received by the other party (i) if personally delivered, on the date of delivery, (ii) if given by overnight courier, on the next business day, or (iii) if sent by certified mail, postage prepaid, on the fifth (5th) day after the date of mailing.

In the event of a federal, state, regionally or locally declared emergency or disaster in the Buyer's geographic area and/or in the event the Buyer is operating under its Comprehensive Emergency Preparedness Plan ("Emergency/Disaster Period"), the Federal Emergency Management Agency ("FEMA") Contract Clauses shall be incorporated into this Agreement and shall be applicable as indicated for the duration of the Emergency/Disaster Period and for any Goods and/or Services purchased and provided in relation or response to the Emergency/Disaster Period after the conclusion of the Emergency/Disaster Period. The FEMA Contract Clauses are located at <https://ufhealthjax.org/professionals/vendors.aspx>.