

IHC Health Services, Inc. (Intermountain)
Purchase Order Terms

(These terms govern Intermountain's purchase orders unless an executed written contract between the parties applies.)

1. **ACCEPTANCE OF TERMS.** Company's (the Vendor identified on the face of the order) performance under this order constitutes acceptance of these terms. The parties may change this order, which includes these terms, only by written agreement of the parties.
2. **INVOICE AND PAYMENT.** Company will invoice Intermountain for items delivered under this order. Each invoice will apply to this order only, and will include a purchase-order number, supplier-catalog number, quantity, price, and reasonable descriptions of the items delivered. Intermountain will pay the properly stated and undisputed invoice within 45 days of receiving the invoice, unless specified otherwise on the face of the order.
3. **PRICING AND TAXES.** Company will charge the price stated in this order for each item. If the order states no price for an item, Company will bill Intermountain at the price last quoted to, or paid by, Intermountain, or the prevailing market price, whichever is lower. If the invoice includes a higher price than the price established by this order, the price of this order will govern. If any item's price is higher than stated in this order, Company will immediately notify Intermountain and Intermountain may accept or reject that price. Prices in this order do not include applicable sales, use, or excise taxes, which, if any, are Company's responsibility to collect and remit to the proper governmental authority.
4. **SHIPPING.**
 - 4.1 **Shipping Method.** Unless specified otherwise on the face of this order, Company is responsible for all shipping charges for items under this order: F.O.B. destination, freight prepaid and allowed. In any event, Company will insure, at its expense, the items against damage and loss until the applicable Intermountain facility accepts delivery of them. If Intermountain is responsible for freight costs, Intermountain may choose the method of shipping and the freight courier.
 - 4.2 **No Surcharge.** Unless Intermountain agrees in advance and in writing, it will not pay (and Company will not charge) any fee, including any handling fee, equipment-loaner fee, drop-ship fee, transfer fee, freight charge, fuel surcharge, service charge, minimum-order charge, small-order charge, or re-stocking fee.
 - 4.3 **Delivery.** If the order specifies a delivery date, Company must deliver the item by that date. If it fails to do that, Intermountain reserves the right to terminate this order.
 - 4.4 **No Substitute items.** Company will furnish only those items specified in this order and will not supply any alternate or substitute product or brand without Intermountain's prior written approval.
5. **INSPECTION AND RETURN.** The terms of this Section govern the return of items and supersede the return provisions of any other document.
 - 5.1 **Inspection.** Intermountain may inspect any item delivered under this order and determine if any of the following conditions exist: (a) Company shipped the item in error; (b) the item is outdated or unusable (e.g., damaged, defective, or nonconforming) when received by Intermountain; (c) Company or a governmental entity recalled the item or subjected it to any other corrective action; (d) an item fails to meet any warranty under this order; or (e) Company has withdrawn or discontinued the item. No inspection, approval, test delay, failure to inspect or test, or failure to discover any defect or other nonconformance relieves Company of any obligations under this order or applicable law, or impairs or waives any right or remedy of Intermountain.
 - 5.2 **Return.** If any these conditions exists, then Intermountain may elect to do one or more of the following: (a) return without penalty, any of the items for a credit, equal to the original purchase price; (b) require Company to correct, rework, or replace the item at Company's sole cost; and (c) to hold them at Company's risk and expense for disposal or correction according to Company's instructions. Company pays the freight and other costs for returning an item for any of the reasons contained in this Section.
6. **PRODUCT RECALL.**
 - 6.1 **Government-Mandated Recall.** If a governmental entity recalls or subjects an item to any corrective action (a "Government Recall"), Company will comply with the requirements of that Government Recall. Within 30 days of Intermountain's request, Company will reimburse Intermountain for any costs it incurs as a result of the Government Recall.
 - 6.2 **Voluntary Recall.** If Company voluntarily recalls an item for any reason (a "Voluntary Recall"), Company will (a) immediately notify Intermountain's recall center at (800) 442-9023, and recalls@imail.org; (b) within 24 hours of the Voluntary Recall, provide Intermountain a written proposal of the corrective action to be taken by Company as a result of the Voluntary Recall, which corrective action is subject to Intermountain's review and approval; (c) perform the corrective action approved by Intermountain; and (d) within 30 days of Intermountain's request, reimburse Intermountain for any costs it incurs as a result of the Voluntary Recall.
 - 6.3 **Survival.** This Section survives the termination of this order.

7. **MSDS.** Before shipping an item, Company will provide Intermountain with all applicable data for the item required by law, including the most current Material Safety Data Sheet (MSDS).
8. **SHELF LIFE.** Each item that Company delivers under this order will have the longest shelf life and the latest expiration date reasonably possible.
9. **WARRANTIES.**
- 9.1 **Item Warranties.** Company warrants that all original manufacturers' warranties for items will be valid through the items' expiration dates (copies of which will be provided to Intermountain upon request). Company also warrants that each item or service (as the case may be): (a) is manufactured, tested, packaged, labeled, priced, shipped, sold or provided in compliance with all applicable laws; (b) is free from defects in design, material, and workmanship; (c) does not infringe on or violate the intellectual property rights of any third party; (d) is free from all liens and encumbrances; (e) fit for the purpose set forth on the product label or insert; and (f) the services in this order will be performed in a safe, proper, and workmanlike manner.
- 9.2 **Remedies.** Company will immediately notify Intermountain if an item fails to meet any warranty under this order or any FDA requirement or standard. If Company breaches any of these item warranties, Intermountain may exercise the remedies described in section 5.2 of this order.
- 9.3 **Survival.** This Section survives termination of this order.
10. **DEFAULT AND REMEDIES.** A party defaults under this order if it fails to perform any obligation of this order and does not cure that failure within 30 days after receiving written notice from the other party or makes a representation or warranty in this order or other statement that is inaccurate or misleading. If one party defaults under this order, then the other party may (a) immediately terminate this order upon written notice to the defaulting party; (b) require the defaulting party to immediately return or destroy (as directed by the non-defaulting party) any Confidential Information; or (c) exercise any other remedy under this order, under any other agreement between the parties, or under applicable law, or any combination of these remedies.
11. **PATIENT SAFETY EXCEPTION.** As a healthcare organization, Intermountain must protect the safety, health, and well-being of its patients. Accordingly, if Intermountain determines that terminating this order because of an Intermountain default would jeopardize patient safety, health, or well-being, and that Intermountain cannot cure the default within 30 days, then Intermountain will have the additional time needed to cure the default. If the default is incurable, and Intermountain takes reasonable steps to prevent repeating the default, then the parties will deem the default to be cured. Intermountain's failure to pay is not an incurable default under this section.
12. **CONFIDENTIAL INFORMATION.** Company will keep confidential all of Intermountain's Confidential Information and maintain it a safe and secure place. "Confidential Information" means the terms of this order; proprietary and confidential information, trade secrets, know-how, software, technology, specifications, and non-public business or financial information; Intermountain's member, patient, customer and employee data; and any other information which reasonably should be understood to be confidential. This Section survives the termination of this order.
13. **INSURANCE.** Company has and will maintain the following insurance types and coverages: (a) Comprehensive General Liability Insurance: \$2,000,000 per claim, \$5,000,000 annual aggregate; (b) Auto Liability Insurance: \$1,000,000 combined single limit; and (c) worker's compensation insurance covering its full liability under the appropriate state statutes. Company will maintain this insurance until the expiration of the statute of limitations applying to each insured event. At Intermountain's request, Company will provide Intermountain with evidence of insurance coverage as specified above.
14. **INDEMNIFICATION.** Company is liable for, indemnifies, and holds Intermountain harmless from, any claim, lawsuit, action, and legal expense relating to (a) Company's negligent act or omission, intentional misconduct, misrepresentation, or breach of this order; (b) Company's product or service causing damage or injury, including, without limitation, death, bodily injury, or property damage; or (c) the infringement of Company's product or service on the intellectual property right of a third party. This Section survives termination of this order.
15. **LIMITATION OF LIABILITY.** IN NO EVENT IS INTERMOUNTAIN, OR ANY OF ITS SUBSIDIARIES, AFFILIATES, FACILITIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR ANY OF THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, LIABLE FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR OTHER INDIRECT DAMAGES, LOSSES, OR EXPENSES.
16. **USE OF SUBCONTRACTORS.** If Company needs to engage a subcontractor to help perform Company's obligations under this order, Company must first obtain Intermountain's written approval and then enter into a written contract with the subcontractor that contains terms at least as protective of Intermountain as the terms of this order.
17. **COMPLIANCE.**
- 17.1 **General Compliance with Laws.** Both parties will comply with all applicable federal, state, and local laws, statutes, regulations, rules, orders, and ordinances.
- 17.2 **Financial Relationships.** To its knowledge, Company (a) is not a physician-owned entity and (b) has no prohibited financial relationship with any physician who is in a position to generate business for Intermountain, or with an immediate family member of that physician. Intermountain defines a "physician-owned entity" as any entity in which a physician, or immediate family member of a physician, holds an ownership, investment, or royalty

interest (if royalties are paid on any purchase resulting from the royalty holder's order). The Code of Federal Regulations (CFR) defines "financial relationship" (in 42 CFR 411.354) and "immediate family member" (in 42 CFR 411.351).

[Note: Physicians and their immediate family members may own investment securities of Company if that investment complies with 42 CFR 411.356(a) or (b), and may have a compensation arrangement that both complies with 42 CFR 411.357(p) and does not take into account the volume or value of referrals or other business generated for Intermountain by a physician or a physician's immediate family members.]

- 17.3 **Exclusion or Sanction.** Company warrants that neither it, or any of its affiliates or employees, is excluded from participation in, or sanctioned under, any state or federal healthcare program, including those set forth in 42 U.S.C. §1320a-7b(f). Company will notify Intermountain immediately in writing if the warranty in the preceding sentence is, or becomes, inaccurate and will immediately remove any employee or affiliate that is excluded or sanctioned.
- 17.4 **Access to Books and Records.** Intermountain is a provider under Federal Medicare programs and is subject to Section 952 of the Omnibus Reconciliation Act of 1980. That law requires Intermountain, as a provider, to include the following provision in its agreements with suppliers who receive \$10,000 or more under an agreement with Intermountain. If requested by the Secretary of HHS, by the U.S. Comptroller, or by an authorized representative of either of them, Company will make available to the requestor this order and the Company's books, documents, and records to allow the requestor to certify the nature and extent of the charges for items (or services) provided under this order and charged to Medicare. Company will continue to make those items available for four years after Company furnishes the final items (or Services) under this order. If Company contracts with another to carry out any of Company's duties under this order and the subcontractor is to receive \$10,000 or more in value under that subcontract, then Company will obtain a written contractual commitment from the subcontractor to comply with the obligations of this section of the order. The obligations of this Section survive the expiration or other termination of this order.
- 17.5 **Code of Ethics.** In its dealings with Intermountain, Company has and will comply with all codes of ethics applicable to suppliers and their interactions with purchasers like Intermountain, including, without limitation, the AdvaMed Code of Ethics on Interactions with Health Care Professionals.
- 17.6 **Company Access Program.** All of Company's representative(s) entering any Intermountain facility must comply with Intermountain's Company Access Program. This program requires each of these Company representatives to check in with Intermountain on each visit to an Intermountain facility to receive an identification badge; and as applicable, log onto www.reptrax.com and complete the registration requirements.
- 17.7 **Equal Opportunity; Affirmative Action.** Intermountain is an equal opportunity employer and federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with the following, which are incorporated herein by reference: 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws, specifically:
 - A. Intermountain and Company shall abide by the requirements of 41 CFR 60-300.5(a), as applicable. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
 - B. Intermountain and Company shall abide by the requirements of 41 CFR 60-741.5(a), as applicable. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.
- 17.8 **HIPAA.** To the extent that Company has access to patient information, Company will comply with all applicable laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act (HITECH), and the accompanying regulations.
- 17.9 **Remedies.** If Company breaches any obligation of this Section, Intermountain may immediately terminate this order upon written notice to Company.
18. **ASSIGNMENT.** Neither party may assign this order, or any of its rights or obligations without the other party's prior written consent. A party's attempt to assign is null and void and is a default under this order.
19. **GOVERNING LAW; VENUE; ATTORNEYS' FEES.** Utah law, excluding its conflict-of-law provisions, governs this order, and both parties submit to the exclusive jurisdiction of state and federal courts in Utah. The prevailing party in any litigation proceedings is entitled to recover its reasonable attorneys' fees, other fees, and costs incurred in the litigation, in addition to any other relief to which that party may be entitled.
20. **NO PUBLICITY.** Company will not distribute any publicity regarding this order or use Intermountain as a business reference in any form without receiving prior written approval from an Intermountain vice president.
21. **NOTICES.** Unless sent electronically under Intermountain's instructions, Company will send (a) an acknowledgment of this order to the email address on the face of this order; (b) invoices to the Bill To address on the face of this order; and (c) all other correspondence to 7302 South Bingham Junction Blvd., Midvale, Utah 84047, Attention: Senior Administrative Assistant, with a copy to contractadministration@imail.org.

22. **RELATIONSHIP; THIRD PARTY BENEFICIARIES.** The parties are independent contractors, and this order does not create a partnership, agency, joint venture, or employment relationship. Nothing in this order gives one party the right, power, or authority to bind the other. Unless it states otherwise, this order does not create any right in, or inure to the benefit of, any third parties.
23. **MISCELLANEOUS.** This order contains the entire agreement and understanding between the parties relating to the subject matter of this order. The terms of any other document (including without limitation any Company quotation or invoice) are inapplicable. This order binds the parties, their representatives, successors, and assigns. All remedies provided in this order, at law, or in equity, are cumulative and do not limit a party's other available rights or remedies. No failure by either party to enforce or exercise any right under this order shall constitute a waiver. If a provision of this order is invalid or unenforceable, then the remainder of this order will remain in full force and effect. Each section heading in this order is for convenience only and does not modify or restrict any term of this order. The parties may sign this order in any number of counterparts, each of which when signed and delivered will be deemed an original, and all of which together will constitute one and the same instrument. The parties may sign and deliver this order by facsimile or other electronic means, such as e-mail.