

# PURCHASE ORDER GENERAL TERMS AND CONDITIONS

If another fully executed agreement exists between the parties that govern the purchase, sale, or lease or the services specified on the Purchase Order, the terms and conditions of that agreement take precedence over the terms and conditions listed below.

## **I. Definition of Terms**

**"Buyer"** shall mean Premera Blue Cross, Premera Blue Cross Blue Shield of Alaska, LifeWise Health Plan of Washington, LifeWise Health Plan of Oregon, LifeWise Administrators, LifeWise Assurance Company, Calypso, Vivacity, and UCENTRIS, having their principal offices at 7001 220th Street Southwest, Mountlake Terrace, WA 98043-2124 (the "Buyer"). Any reference to "Buyer" shall, unless the context clearly requires otherwise, mean Buyer and its Affiliates and "Affiliates" shall, in all instances, mean the affiliated companies and subsidiaries of Buyer.

**II. Purchase Order:** The purchase order constitutes the entire contract between the vendor or seller named on the face hereof ("Seller") and the Buyer covering the goods or services described herein (the "goods"). Seller's acceptance of an order must be limited to the terms and conditions stated herein, without any modification, additions or alteration. Any terms contained in Seller's acknowledgments or any other documents that are different from or additional to the terms and conditions hereof or the terms of an existing agreement, whether or not seller has acknowledged this purchase order will be null and void.

This purchase order shall become a contract for the entire quantity specified upon the Seller's delivery of any portion of the items or services specified herein or upon any other act indicating the Seller's assent thereto.

**III. Price** This order shall not be filled at higher prices than specified herein. If price terms are omitted from the face hereof, the price of the goods shall be the lower of the price last quoted or paid (whichever is later). Unless otherwise provided herein, prices shown on this purchase order are deemed to include all taxes not expressly imposed by law on the buyer of the goods ordered hereunder. Buyer shall not be responsible for any charge for packing, boxing, storage or crating without Buyer's specific written consent. The prices set forth on the face hereof shall not be increased for any reason without Buyer's consent by issuance of a change order.

**IV. Shipment and Inspection:** The terms and routing of shipment shall be as provided on the face hereof, or as Buyer otherwise directs. Shipment must be made in the quantity specified and over-shipments may be rejected at Buyer's discretion. Buyer may revise shipping instructions as to any goods not then shipped. Buyer shall have the right to inspect any or all of the goods upon Buyer's receipt, which right shall be exercisable notwithstanding Buyer's having paid for the goods prior to inspection. Buyer, by reason of its failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods which do not conform to the specification therefor, or to have waived any of Buyer's rights or remedies arising by virtue of such defects or non-conformance.

Buyer shall be under no duty to examine merchandise prior to cutting, processing or altering same and Buyer's examination, cutting, processing, altering or otherwise dealing with the merchandise shall not be considered acceptance of the merchandise so as to bar any rights of Buyer. Complaints, claims or notice of any defect or breach shall be considered to be timely made if made within fifteen (15) days after Buyer actually discovers or learns of the existence thereof.

In addition to all other warranties, express or implied, Seller warrants that the merchandise will be as ordered, will not be defective, and will be fit for the purpose for which sold. Where purchase is made on the basis of a sample, Seller warrants that production deliveries will be the same as sample.

**V. Acceptance of merchandise** after any delivery date, shall not be construed as a waiver of Buyer's right to recover for late delivery.

**VI. Payments:** The time period allowed for payment, as indicated on the face of the Purchase Order, shall commence upon receipt of Seller's invoice or upon receipt of the goods, whichever is later. Seller must indicate the Purchase Order Number on the invoice. Should there be any discrepancy between the charges shown on the invoice and Buyer's records, Buyer shall notify Seller, identifying the discrepancy, within thirty (30) days after receipt of the invoice. Buyer and Seller shall reconcile the records and agree upon the correction. Adjusted invoices will be paid within thirty (30) days of receipt of the adjusted invoice.

**VII. Risk of Loss:** Notwithstanding any provision hereof to the contrary, title to, and risk of loss of, the goods shall remain with Seller until the goods are delivered at the F.O.B. point specified in this Purchase Order, or if no such point is specified, then when the goods are delivered to Buyer. However, if the goods are of an explosive, inflammable, toxic or otherwise dangerous nature, Seller shall hold Buyer harmless from and against any and all claim asserted against Buyer on account of any personal injuries and/or property damages caused by the goods, or by the transportation thereof, prior to the completion of unloading at Buyer's plant or warehouse.

**VIII. Warranties:** Seller warrants and covenants with Buyer as follows: Seller will deliver to Buyer title to the goods free and clear of all security interest, liens, charges, restrictions or encumbrances of any kind, nature or description; the goods shall be free from defects in material and/or workmanship; unless otherwise specified in this Purchase Order, the goods shall be new and not used or reconditioned; the goods and their packaging shall conform to the description thereof and/or specifications contained in this Purchase Order. In placing this Purchase Order, Purchaser is relying on Seller's skill and judgment in selecting and providing the proper goods for purchaser's particular use. The goods shall in all respects be suitable for the particular purpose for which they are purchased and the goods shall be merchantable. Seller shall indemnify and save and hold Buyer harmless from and against any and all damages, losses, demands, costs and expenses arising from claims by third parties for property damage, personal injury or other losses or damages arising from Seller's breach of its obligations hereunder.

**IX. Remedies:** In the event of Seller's breach of this contract, Buyer may take any or all of the following actions, without prejudice to any other rights or remedies available to Buyer by law: (1) require Seller to repair or replace such goods, and upon Seller's failure or refusal to do so, repair or replace the same at Seller's expense; (2) reject any shipment or delivery containing defective or non-conforming goods and return for credit or replacement at Buyer's option; said return to be made at Seller's cost and risk, (3) cancel any outstanding deliveries hereunder, and treat such breach by Seller as Seller's repudiation of this contract. In the event of Buyer's breach hereunder, Seller's exclusive remedy shall be Seller's recovery of the goods or the purchase price payable for goods shipped or work performed prior to such breach.

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**X. Force Majeure:** For the purposes of this contract, an event of "force majeure" shall mean any strikes, work stoppages or other labor difficulties, fires, floods or other acts of God: acts of government or any subdivision or agency thereof; which are beyond the control of the party claiming the occurrence of a force majeure event and which delays, interrupts or prevents such party from performing its obligations under this contract. Notwithstanding any provision hereof to the contrary, the reduction, depletion, shortage, curtailment or cessation of Seller's supplies or reserves or any other supplies or materials of Seller shall not be regarded as an event of force majeure. The party affected by a force majeure event shall give notice thereof to the other party within ten (10) days following the occurrence thereof and shall apprise the other party of the probable extent to which the affected party will be unable to perform or will be unable to perform or will be delayed in performing its obligations hereunder. The affected party shall exercise due diligence to eliminate or remedy the force majeure cause and shall give the other party prompt notice when that has been accomplished. Notwithstanding the foregoing, within five (5) days following Seller's declaration of a force majeure event which prevents its full and/or timely delivery of the goods hereunder, Buyer may at its option and without liability (1) require Seller to apportion among its customers the goods available for delivery during the force majeure period; (2) cancel any or all delayed or reduced deliveries; or (3) cancel any outstanding deliveries hereunder and terminate this contract. After cessation of a force majeure event declared by Seller, Seller shall, at Buyer's option but not otherwise, be obligated to deliver goods not delivered during the force majeure period. After cessation of a force majeure event declared by Buyer, neither party shall be obligated to deliver or purchase goods not so delivered and purchased during the force majeure period.

**XI. Patents:** It is anticipated that the goods will be possessed, used and or sold by Buyer and/or its customers. If by reason of any of these acts a suit is brought or threatened for infringement of any patent, trademark, trade name or copyright with regard to the goods, their manufacture or use, Seller shall, at its own expense, defend such suit and shall indemnify and save and hold Buyer and its customers harmless from and against all claims, damages, losses, demands, costs and expenses (including attorneys fees) in connection with such suit or threatened suit.

**XII. Labor:** If this Purchase Order covers the performance of labor by Seller on Buyer's premises, Seller shall indemnify and save and hold Buyer harmless from and against any and all claims and liabilities for negligence, willful misconduct, injury or death to any person, or damage to property arising out of Seller's performance under this Purchase Order. Seller shall abide by any and all Buyer's policies and procedures.

**XIII. Compliance with Law:** Seller warrants that it will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938, as amended, the Equal Employment Opportunity Clause prescribed by Executive Order 11246 dated September 24, 1965 as amended, and any rules, regulations or orders issued or promulgated under such Act and Order. Seller shall indemnify and save and hold Buyer harmless from and against any and all claims, damages, demand, costs and losses which Buyer may suffer in the event that Seller fails to comply with said Act, Order, rules regulations, or orders. Seller further warrants that all goods sold hereunder will comply with and conform in every respect to the standards applicable to the use of such goods under the William's -Steiger Occupational Safety and Health Act of 1970, as amended, and any regulations and order issued thereunder. Any clause required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein.

**XIV. Governing Law:** The Purchase Order and these General Terms and Conditions between the parties evidenced hereby shall be performed, construed and interpreted in accordance with the laws of the state of Washington, without regard to conflict of laws principles.

**XV. Miscellaneous:** This Purchase Order may be performed and all rights hereunder against Seller may be enforced, wholly or in part, by Buyer or by any one or more of the corporations now or hereafter subsidiary to or affiliated with Buyer.

The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

Seller shall not assign its rights or obligations under this Purchase Order without the prior written consent of Buyer.

Seller shall not insure the goods for Buyer's account unless the terms of this Purchase Order so require.

Stenographic and clerical errors, whether in mathematical computations or otherwise, made by Buyer on this Purchase Order or any other forms delivered to Seller shall be subject to correction.

The entire understanding and agreement of the parties with respect to the transactions contemplated herein is contained in this document, and any prior understanding, agreements, and representations, oral or written, shall be deemed superseded and merged herein. Any modification hereof, to be valid, must be in writing and executed by both parties.

Buyer may upon notice to Seller and without liability to Buyer, cancel this contract and any outstanding deliveries hereunder, (1) as to standard products of Seller not then shipped hereunder, at any time prior to shipment, or (2) if (a) a receiver or trustee is appointed to take possession of all or substantially all of Seller's asset's, (b) Seller makes a general assignment for the benefit of creditors, (c) any action or proceeding is commenced by or against Seller under any insolvency or bankruptcy act or under any other statute or regulation having as its purpose the protection of creditors, or (d) Seller becomes insolvent or commits an act of bankruptcy. If an event described in (2) of this section occurs. Buyer may at Buyer's sole election pay Seller its actual direct out-of-pocket costs to date of cancellation, as approved by Buyer, in which event the goods shall be the property of Buyer and Seller shall safely hold the same subject to receipt of Buyer's shipping instructions.

**XVI. Insurance:** Seller shall carry such policies of general liability, errors and omissions, workers compensation and other such usual and customary insurance coverages in amounts as may be necessary to insure itself against claims, liability or damages arising out of or connected to the performance of its obligations under this Purchase Order.

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THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPRESSLY CONDITIONED ON, SELLER'S ACCEPTANCE OF THE TERMS OF THE ORDER AND SUBJECT TO THE TERMS AND CONDITIONS OF THE PREMIERA PURCHASE ORDER GENERAL TERMS AND CONDITIONS. PREMIERA OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.

**Acknowledged and Accepted By:**

**Seller (Representative):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_